

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS**

UNITED STATES SECURITIES AND
EXCHANGE COMMISSION,

Plaintiff,

v.

GOLDEN STATE EQUITY
INVESTORS, INC.,

Defendant.

Case No. 4:09cv1307 (MH)

UNOPPOSED PLAINTIFF SEC'S MOTION TO APPROVE DISTRIBUTION PLAN

The Securities and Exchange Commission ("SEC" or "Commission") respectfully requests that the Court enter an Order approving the distribution of more than \$1.5 million to injured investors from funds paid by defendant Golden State Equity Investors, Inc. ("Golden State") in settlement of the SEC's securities law enforcement actions.

I. BACKGROUND

The Commission commenced this action on April 30, 2009, alleging that Golden State, formerly known as Golden Gate Investors, Inc. ("GGI"), violated the registration provisions of the federal securities laws in connection with the sale of unregistered stock transactions in the securities of Grifco International, Inc. ("Grifco"). Beginning in June, 2005 and continuing throughout 2006, Grifco, a publicly-traded company, pursuant to agreements with GGI, issued blocks of stock to GGI in return for up-front monetary advances and a large percentage of the net sales proceeds. Shortly after receiving the securities, GGI sold the Grifco shares to the investing public and returned a portion of the proceeds to Grifco. None of the securities transactions were registered with the Commission and were not exempt from registration.

The SEC entered into a settlement¹ with defendant and the Final Judgment, entered on May 11, 2009, provided that monies paid may be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. Pursuant to the settlement agreement, Golden State consented to pay disgorgement in the amount of \$1,269,907, plus \$257,672 in prejudgment interest, and to pay a civil penalty in the amount of \$50,000. On or about May 26, 2009, Golden State paid \$1,577,579 to the Clerk of the Court. The funds were subsequently deposited into an interest bearing account in the Court Registry Investment System (“CRIS”), receipt number 601894, under the case name designation “SEC v. Golden State Equity Investors, Inc.” As of March 14, 2013, the balance in the CRIS account is \$1,572,247.91.

By Order dated November 2, 2012, in accordance with Section 308(a) of the Sarbanes-Oxley Act of 2002,² this Court established a Fair Fund comprised of the amounts contained in the CRIS account, plus interest, minus appropriate expenses incurred in establishing and maintaining the account or ordered by the Court to be paid to satisfy the fund’s tax-related obligations (hereinafter the “Grifco Fair Fund”). At that time, the Court also appointed RG/2Claims Administration, LLC (“RG/2”) as Distribution Agent charged with assisting the Commission in developing a plan of distribution and administering the distribution.

RG/2, in consultation with Commission staff, has prepared a proposed Distribution Plan for the Grifco Fair Fund, which the Commission now submits to this Court for approval. A copy of the proposed Distribution Plan and accompanying Plan of Allocation is attached as Exhibit 1 to this motion.

¹ See Docket No. 3

² Section 308(a) of the Sarbanes-Oxley Act, known as the “Fair Funds” provision, provides that a Court shall, upon the Commission’s motion, include a defendant’s civil penalties in a disgorgement distribution to benefit victims of securities laws violations. A fair fund permits the distribution of penalties to investors instead of paying them to the United States Treasury.

II. ARGUMENT

A. The Court May Give Significant Deference to the SEC's Distribution Plan.

Nearly every plan to distribute funds obtained in SEC enforcement actions requires choices to be made regarding the allocation of funds among potential claimants within the parameters of the amounts recovered. In recognition of the difficulty of this task, courts give the Commission significant discretion to design and set the parameters of a distribution plan. *See SEC v. Wang*, 944 F.2d 80 (2d Cir. 1991); *SEC v. Levine*, 881 F.2d 1165 (2d Cir. 1989).

The court's review of a distribution plan focuses on whether the plan is fair and reasonable. *SEC v. Fishbach*, 133 F.3d 170, 175 (2nd Cir. 1997); *See Official Comm. Of Unsec. Creditors of Worldcom, Inc. v. SEC*, 467 F.3d 73, 81 (2d Cir. 2006). ("unless the consent decree specifically provides otherwise(,) once the district court satisfies itself that the distribution of proceeds in a proposed SEC disgorgement plan is fair and reasonable, its review is at an end),³ citing *Wang*, 944 F.2d at 85. For the reasons articulated below, the Commission believes that the proposed distribution plan for the Grifco Fair Fund constitutes a fair and reasonable allocation of the limited funds available and should be approved.

B. The Commission's Proposed Distribution Plan Provides a Fair And Reasonable Allocation of the Grifco Fair Fund

The Commission's principal goal in fashioning a distribution plan for the Grifco Fair Fund was to identify a methodology that would allocate the available funds fairly and reasonably, in a manner proportional to the injury that investors in Grifco securities suffered as a result of the actions of Golden State. The Commission's Complaint alleged that Golden State sold unregistered shares of Grifco into the marketplace from June 2005 through December 2006.

³ Courts have historically deferred to the Commission's decision regarding whether and how to distribute disgorgement and prejudgment interest. *SEC v. Fischbach Corp.*, 133 F.3d 170, 175 (2d Cir. 1997). With respect to the distribution of civil penalties, courts have held that the decision of whether and how to distribute penalty money is soundly within the Commission's discretion. *Official Committee of Unsecured Creditors of Worldcom, Inc. v. SEC*, 467 F.3d 72, 84 (2d Cir. 2006).

The proposed Distribution Plan would equitably distribute the Grifco Fair Fund to investors who purchased Grifco common stock from January 1, 2005 through December 14, 2006 (the “Recovery Period”) and either sold between June 13, 2005 and December 14, 2006 or retained the stock as of December 14, 2006, and have an Eligible Loss Amount⁴ that is equal to or greater than the Minimum Distribution Amount after pro-rated payment awards are calculated pursuant to the proposed Distribution Plan.

The Eligible Loss Amount will be determined by aggregating the Recognized Loss (or Gain) per Share for all transactions which occurred during the Recovery Period. For shares of Grifco International, Inc. (“Grifco”) common stock that were purchased during the Recovery Period and:

- (a) Sold on or before June 12, 2005, the Recognized Loss (or Gain) per Share is zero (0).
- (b) Sold between June 13, 2005 and December 14, 2006, the Recognized Loss (or Gain) per Share is equal to the purchase price less the sales price.
- (c) Retained as of December 14, 2006, the Recognized Loss (or Gain) per Share is equal to the purchase price less \$0.048 (the closing price on December 14, 2006).

For each investor who held shares of Grifco as of the beginning of the Recovery Period or made multiple purchases or sales during the Recovery Period, the first-in, first-out (“FIFO”) method will be applied to such holdings, purchases and sales. Under the FIFO method, sales of shares during the Recovery Period will be matched, in chronological order, first against shares held at the beginning of the Recovery Period. The remaining sales of shares during the Recovery Period will then be matched, in chronological order, against shares purchased during the Recovery Period. The date of acquisition or sale is the “contract” or “trade” date as distinguished from the “settlement” date.

⁴ Capitalized terms used herein but not defined shall have the meanings attributed to them in the attached proposed Distribution Plan.

An investor will be eligible to receive a distribution not to exceed the overall net loss, after all profits from transactions in Grifco common stock during the Recovery Period are subtracted from losses. Payments to Eligible Claimants will reflect their pro rata share of the Available Distribution. No Eligible Claimant will receive a payment unless the pro-rata share of their Eligible Loss Amount results in a payment of at least \$10.

The Commission believes that the proposed Distribution Plan for the Grifco Fair Fund should be approved as fair and reasonable. The proposed plan directs the Fair Fund's proceeds to investors who traded during the specific time period when Golden State was selling unregistered Grifco shares into the marketplace and who were harmed by the improper conduct alleged in the Commission's lawsuit. It reasonably and fairly allocates the fund in accordance with each Eligible Claimant's Eligible Loss Amount.

III. CONCLUSION

For all of the foregoing reasons, the Commission respectfully requests that the Court grant its Unopposed Motion to Approve Distribution Plan and grant other relief as it deems necessary and proper.

Dated: March 20, 2013

Respectfully submitted,

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