

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

**LONGFIN CORP. and
VENKATA S. MEENAVALLI,**

Defendants.

Case No.: 19-cv-5296-DLC

**NOTICE OF MOTION AND
MOTION FOR AN ORDER TO
SHOW CAUSE**

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that, upon the accompanying Motion, Memorandum, and Proposed Order, and all related papers and proceedings, Plaintiff, the Securities and Exchange Commission (the “SEC”) will move this Court, at a date and time to be determined by the Court, for an Order to Show Cause why the Court should not:

1. Establish a Fair Fund pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002 (“Section 308(a)”) for all funds under the Court’s jurisdiction in the captioned matter; and
2. Approve the SEC’s proposal to combine approximately \$300,000 in disgorgement, prejudgment interest, and civil penalty collected from the defendants in this action, plus any accrued interest and future collections, with the Fair Fund established in the related action before this Court, *SEC v. Longfin, et al.*, 18-cv-2977-DLC (the “Related Action”), for distribution to harmed investors pursuant to the Court-approved distribution plan in that action (the “Related Action Plan”).

MOTION

Plaintiff, the SEC, respectfully submits this Motion for an Order to Show Cause why the Court should not: (i) establish a Fair Fund pursuant to Section 308(a) for all funds under the Court's jurisdiction in the captioned matter; and (ii) approve the SEC's proposal to combine the approximately \$300,000 in collections in this action, plus any accrued interest and future collections, with the Fair Fund established in the Related Action for distribution to harmed investors pursuant to the Related Action Plan. A proposed Order to Show Cause is being filed simultaneously, and the details of the proposed disposition of collections in this matter is described more fully in the accompanying memorandum (the "Memorandum").

Also accompanying this Motion is a Declaration under Local Rule 6.1(d) setting forth the reasons for the issuance of the proposed Order to Show Cause. Upon the completion of the steps set forth in the Order to Show Cause, the SEC will file a notice so informing the Court and responding to any objections, and provide a proposed Order approving the SEC's proposal or an amended proposal, as appropriate.

WHEREFORE, the SEC respectfully requests that the Court enter an Order to Show Cause substantially in the form attached as Exhibit 1 to this Motion.

Date: August 13, 2020

Respectfully submitted,

s/ _____
Catherine E. Pappas
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Philadelphia, Pa. 19103
Tel: (215) 597-0657
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*Attorney for Plaintiff Securities and
Exchange Commission*

CERTIFICATE OF SERVICE

I, Catherine E. Pappas, hereby certify that, on August 13, 2020, I caused the foregoing motion and accompanying documents to be electronically filed with the clerk of the court for the U.S. District Court of Southern District of New York, using the electronic case filing system of the court. The electronic case filing system sent a “Notice of Electronic Filing” to all attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

In addition, I will send the foregoing filing by UPS to (i) Legalinc Corporate Services, Inc., 651 North Broad Street, Suite 206, Middletown, DE 19709 (Longfin’s registered agent); and (ii) McManimon, Scotland & Baumann, LLC, 75 Livingston Avenue, Suite 201, Roseland, NJ 07068, Attn: Michele M. Dudas (Longfin’s Assignee for the Benefit of Creditors in Monmouth County, New Jersey).

s/ Catherine E. Pappas
Catherine E. Pappas
Counsel for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE
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LONGFIN CORP. and
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Defendants.

Case No.: 19-cv-5296-DLC

(Proposed) Order to Show Cause

Plaintiff Securities and Exchange Commission (the “SEC”) having filed a Motion for an Order to Show Cause why the Court should not: (i) establish a Fair Fund pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002 (“Section 308(a)”) for all funds under the Court’s jurisdiction in the captioned matter; and (ii) approve the SEC’s proposal (the “SEC Proposal”) to combine the approximately \$300,000 in disgorgement, prejudgment interest, and civil penalty collected from the defendants in this action, plus any accrued interest and future collections, with the Fair Fund established in the related action before this Court, *SEC v. Longfin, et al.*, 18-cv-2977-DLC (the “Related Action”), for distribution to harmed investors pursuant to the Court-approved distribution plan in that action (the “Motion”);

And for good cause shown;

IT IS HEREBY ORDERED that the Motion is **GRANTED**.

I.

IT IS FURTHER ORDERED THAT, within two business days of the issuance of this Order:

- a) Epiq Class Action & Claims Solutions, Inc. (“Epiq”), the Court-appointed distribution agent for the Fair Fund in the Related Action, shall publish this Order on the website established in the Related Action (www.longfinfairfund.com) (the “Fair Fund Website”), along with a copy of the accompanying Memorandum describing the SEC Proposal in detail (the “Memorandum”), and a copy of the Court-approved Plan in the Related Action (the “Plan”); and
- b) The SEC shall publish this Order on the SEC’s public webpage for this action (<https://www.sec.gov/divisions/enforce/claims/longfin-meonavalli.htm>), as well as on the SEC public webpage for the Related Action, (<https://www.sec.gov/divisions/enforce/claims/longfin.htm>), collectively, the “SEC Webpages”), along with a copy of the Memorandum and the Plan.

Publication as described, along with the publication of this Order through the Court’s ECF system, shall constitute and suffice as notice of the SEC Proposal and the opportunity to object to interested parties.

II.

IT IS FURTHER ORDERED THAT individuals and entities who purchased Longfin Class A common stock traded on the NASDAQ under the trading symbol LFIN (the “Security”) from June 16, 2017 through the present, inclusive (“Potential Claimants”), or other interested parties, within thirty (30) days from the entry of this Order (the “Objection Due Date”), shall show cause, if there is any, why this Court should not enter an Order approving the SEC Proposal. Objections shall be made by correspondence received by Epiq no later than 11:59 p.m. on the Objection Due Date at the following electronic mail address:

objections@longfinfairfund.com

The correspondence must clearly state that the submitting entity is a Potential Claimant as defined above, or otherwise state fully and clearly the entity's interest in this matter, and the entity's objection(s) to the SEC Proposal. The submitting entity must include all documentation necessary to support the objection. Any and all factual assertions must be concluded with the following declaration, if true, followed by the submitting person's signature and the date of signature:

I declare pursuant to 28 U.S.C. §1746, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct.

All correspondence must include current contact information for the submitting person, including, if available, an email address and mobile telephone number. Objections will be publicly filed by the SEC with the Court, as further set forth below in Section IV.

To the extent a submitting entity seeks to include in their submission sensitive information such as a social security number, financial account number, or home address, they should encrypt the submission prior to sending, sending the password in a separate email, or submit it pursuant to the next paragraph.

If a submitting entity is unable to submit their objection by email, they may send it addressed as set forth below. The submission must be received by Epiq no later than the Objection Due Date.

SEC v. Longfin Fair Fund
Objections, Civil Action 19-cv-5296-DLC
c/o Epiq
P.O. Box 6006
Portland, OR 97228-6006

Failure to timely submit an objection in accordance with this Section II. will result in the objection being waived. Proof of timely receipt by Epiq will be the burden of the submitting entity.

III.

IT IS FURTHER ORDERED that, if no objections to the SEC Proposal are timely submitted, the SEC shall:

- a) File a notice so advising the Court (the “Notice”), accompanied by a copy of the Memorandum, as well as a proposed Order approving the SEC Proposal.
- b) Post a copy of the Notice, Memorandum, and proposed Order on the SEC Webpages.

Epiq also shall post a copy of the Notice, Memorandum, and proposed Order on the Fair Fund Website. Upon receipt of such Notice from the SEC, the Court may enter an Order approving the SEC Proposal without further notice or passage of time.

IV.

IT IS FURTHER ORDERED THAT, if objections are timely received pursuant to this Order, the SEC shall file them, with sensitive information redacted, together with its response, within 50 days of the entry of this Order, with copies of its response served by electronic, First Class, or Overnight Mail upon any objecting party. The SEC may revise the SEC Proposal if and as appropriate. If the SEC revises the SEC Proposal, the revised proposal, and any accompanying filings, will be made available to all Potential Claimants and interested parties through the SEC Webpages and the Fair Fund Website. Such publication, along with the publication through the Court’s ECF system, shall constitute and suffice as notice of the amended plan. No further objection period will be provided unless expressly ordered by the Court.

If the Court deems it necessary or appropriate, the Court may conduct a hearing before approving the SEC (or revised) Proposal. Notice of a hearing shall be provided through the Court Docket, the SEC Webpages, and the Fair Fund Website, and if and as otherwise ordered by the Court.

SO ORDERED, this ___ date of _____, 2020,

DENISE L. COTE
U.S. District Court Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

**LONGFIN CORP. and
VENKATA S. MEENAVALLI,**

Defendants.

Case No.: 19-cv-5296-DLC

**Declaration of Catherine E. Pappas
Under Local Rule 6.1(d)**

I, Catherine E. Pappas, pursuant to 28 U.S.C. §1746, declare as follows:

1. I am a member in good standing of the bars of the State of New Jersey and the Commonwealth of Pennsylvania and appear in this case *pro hac vice* (ECF No. 51). I am employed by Plaintiff Securities and Exchange Commission (the “SEC”) as a Senior Adviser. I make this declaration pursuant to Local Rule 6.1(d) to show that good and sufficient reason exists to issue an Order to Show Cause in connection with the approval of the SEC’s proposal (the “SEC’s Proposal”) to establish a Fair Fund pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002 for all collections in this matter, and to combine those collections with the Fair Fund established in the related action, *SEC v. Longfin, et al.*, 18-cv-2977-DLC (the “Related Action”), for distribution in accordance with the distribution plan approved by this Court in that action.
2. No previous application for the relief requested herein or any similar relief has been made.
3. The SEC seeks an order to show cause to provide to harmed investors the opportunity to object to the SEC’s Proposal insofar as a small group of investors potentially harmed by the

conduct in the captioned action may not be eligible to file claims under the plan approved in the Related Action. The SEC does not know the identity of those investors and has no practical means by which to directly inform potentially harmed investors of its application to the Court to approve the SEC's Proposal. The SEC believes the best alternative to individual notice in this situation is the entry of the proposed Order to Show Cause, by which potentially harmed investors will have the opportunity to communicate objections, if any, to the SEC's Proposal.

4. If the Court grants the Motion and enters the proposed Order to Show Cause, upon the completion of the steps set forth in the Order to Show Cause, the SEC will file a notice with the Court, so notifying the Court and responding to any objections; and provide to the Court a proposed Order approving the SEC's Proposal or an amended proposal, as appropriate.

I declare, under penalty of perjury that the foregoing is true and correct.

Executed on: August 13, 2020

s/Catherine E. Pappas
Catherine E. Pappas

CERTIFICATE OF SERVICE

I, Catherine E. Pappas, hereby certify that, on August 13, 2020, I caused the foregoing motion and accompanying documents to be electronically filed with the clerk of the court for the U.S. District Court of Southern District of New York, using the electronic case filing system of the court. The electronic case filing system sent a “Notice of Electronic Filing” to all attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

In addition, I will send the foregoing filing by UPS to (i) Legalinc Corporate Services, Inc., 651 North Broad Street, Suite 206, Middletown, DE 19709 (Longfin’s registered agent); and (ii) McManimon, Scotland & Baumann, LLC, 75 Livingston Avenue, Suite 201, Roseland, NJ 07068, Attn: Michele M. Dudas (Longfin’s Assignee for the Benefit of Creditors in Monmouth County, New Jersey).

s/ Catherine E. Pappas
Catherine E. Pappas
Counsel for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

**SECURITIES AND EXCHANGE
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Defendants.

Case No.: 19-cv-5296-DLC

**MEMORANDUM IN SUPPORT OF
MOTION FOR AN ORDER
ESTABLISHING A FAIR FUND
AND AUTHORIZING
DISTRIBUTION OF COLLECTED
FUNDS THROUGH A RELATED
ACTION**

I. INTRODUCTION

Plaintiff, the Securities and Exchange Commission (the “SEC”), respectfully submits this memorandum in support of: (i) establishing a Fair Fund pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002 (“Section 308(a)”) for all funds under the Court’s jurisdiction in the captioned matter (the “Present Action”); and (ii) combining those funds, currently comprised of approximately \$300,000 in disgorgement, prejudgment interest, and civil penalty collected from the defendants in the Present Action, plus accrued interest, with the Fair Fund established in the related action before this Court, *SEC v. Longfin, et al.*, 18-cv-2977-DLC (the “Related Action”), for distribution to harmed investors pursuant to the Court-approved distribution plan¹ in that case.

The SEC is simultaneously seeking, by the accompanying motion (the “Motion”), the entry of an Order to Show Cause so that interested parties have the opportunity to object to this

¹ 18-CV-2977, ECF No. 134.

proposal for the disposition of collections in the Present Action (the “SEC Proposal”). If the Court grants the Motion and enters the proposed Order to Show Cause, upon the completion of the steps set forth in the Order to Show Cause, the SEC will file a notice (the “Notice”) and/or a response, so notifying the Court and responding to any objections, and provide a proposed Order approving the SEC Proposal or an amended proposal, as appropriate.

By this memorandum, and subject to the Notice, the SEC provides to the Court the factual and legal basis for approving the SEC Proposal. A Fair Fund is a prerequisite to including in any distribution the collected civil penalties with the remainder of collections in the Present Action. Combining the funds collected in the Present Action with the Fair Fund established in the Related Action (the “2018 Fair Fund”) is appropriate for several reasons. First, there is significant overlap between the harm being addressed in the two cases. Second, there are insufficient collections in the Present Action to make a stand-alone distribution feasible. Third, combining the collections in the two actions will ensure that the collections in the Present Action are used to benefit investors.

II. RELEVANT BACKGROUND

A. The Present Action

The SEC filed the Present Action on June 5, 2019, alleging that defendants Longfin Corp. (“Longfin”) and Venkata S. Meenavalli (“Meenavalli”) (collectively, the “Defendants”) engaged in a scheme to obtain a Nasdaq listing through a fraudulent public offering under Regulation A+ of the JOBS Act. ECF No. 1. The SEC further alleged that, during 2017 and 2018, Longfin and Meenavalli perpetrated an accounting fraud by reporting fictitious revenue from commodity transactions that resulted in a materially false annual report filed April 2, 2018 on Form 10-K for the year ended December 31, 2017 (the “Annual Report”), and a materially false quarterly report

filed August 13, 2018 on Form 10-Q for the quarter ended March 31, 2018 (the “Quarterly Report”).

The Court has since entered final judgments against Longfin and Meenavalli, ordering them to pay combined disgorgement and prejudgment interest of \$3,532,235 and \$168,000, respectively; and civil penalties of \$3,243,613 and \$232,000, respectively. *See* ECF Nos. 36, 46. Of this amount, the SEC has collected approximately \$300,000 from Meenavalli, held in an interest bearing account at the U.S. Treasury’s Bureau of Fiscal Service (“BFS”). Each of the final judgments provides that the SEC may propose a plan to distribute the collected funds that may provide for the distribution pursuant to the Fair Fund provisions of Section 308(a). *Id.*

B. The Related Action

By action instituted on April 4, 2018, unsealed on April 6, 2018, the SEC charged Longfin, Meenavalli, Amro Izzelden Altahwi, Suresh Tammineedi, and Dorababu Penumarthi, with distributing over \$26 million in Longfin securities in violation of the registration requirements of Section 5 of the Securities Act of 1933, 15 U.S.C. § 77(e).² The Court has since entered final judgments against all of the defendants, ordering them, in the aggregate, to pay disgorgement of \$22,862,377.23 and civil penalties of \$3,582,941.97, for a total monetary liability of \$26,445,319.20.³ Of this amount, the defendants have paid, approximately, \$26.1 million, held in an interest-bearing account at BFS.

On April 15, 2020, this Court established the 2018 Fair Fund so that civil penalties can be distributed to harmed investors; appointed Miller Kaplan Arase LLP as the tax administrator for

² *See* Related Action, ECF Nos. 1-6.

³ *See* Related Action, ECF Nos. 100-102, 117-18.

the 2018 Fair Fund; and appointed Epiq Class Action & Claims Solutions, Inc. as distribution agent to oversee the administration of the 2018 Fair Fund pursuant to the terms of a court-approved distribution plan and related Court Orders.⁴

By Order entered June 30, 2020, after completion of procedures set forth in an Order to Show Cause, the Court approved a proposed plan for the distribution of the 2018 Fair Fund to harmed investors (the “Related Action Plan”).⁵

C. The Related Action Plan

The goal of the Related Action Plan is to compensate those investors harmed by the unregistered offering of Longfin common stock. Under the Related Action Plan, the Recovery Period⁶ -- June 16, 2017 through April 6, 2018, inclusive -- begins on the day that Longfin common stock was first offered to the public under SEC Regulation A⁷ and goes through the date that the SEC complaint against Longfin was made public and trading was temporarily halted.⁸ In order to be considered for distribution eligibility under the Related Action Plan, investors must have invested in Longfin common stock during the Recovery Period.⁹

⁴ Related Action, ECF No. 125.

⁵ Related Action, ECF No. 134.

⁶ Related Action Plan, ¶5.s. Capitalized terms not otherwise defined in this memorandum have the meanings ascribed to them in the Related Action Plan. The Related Action Plan is available at <https://longfinfairfund.com/>.

⁷ Regulation A – Conditional Small Issues Exemption, 17 C.F. R. §§ 230.241-263.

⁸ See, e.g., <https://www.marketwatch.com/story/longfins-stock-halted-for-additional-information-as-sec-freezes-stock-sales-2018-04-06>. The Recovery Period is appropriate in the context of the Related Action. Specifically, after the SEC’s complaint in that action and the temporary trading halt, investors were on notice of unregistered nature of the common stock. The Related Action does not include the fraud allegations related to the quarterly filings and, accordingly, collections in that case should not be distributed to compensate investors for the unalleged misconduct.

⁹ Related Action Plan, ¶5.q.

The SEC now proposes to distribute the collections in the Present Action through the Related Action Plan because there is significant, albeit incomplete, overlap between the investors harmed in the Present Action and the Related Action; an independent distribution of the approximately \$300,000 in collections in the Present Action would not be feasible; and combining the collections in the two actions will ensure that the collections in the Present Action are used to benefit investors.

D. The Overlap of the Pools of Harmed Investors in the Two Actions.

There is a substantial, although incomplete, overlap in the allegations of the Present Action and the Related Action, and those harmed investors that are common to both actions will be eligible to file claims under the Related Action Plan. In sum, most of the investors potentially harmed by the violations alleged in the Present Action are eligible to file claims under the Related Action Plan.

1. Investors in Both Actions Potentially Harmed by the Alleged Registration Violations Coincide and Will Be Eligible to File Claims Under the Related Action Plan.

In both the Present Action and the Related Action, the SEC has asserted claims against Longfin and its agents for violation of registration requirements of federal securities laws in connection with its offering of over \$27 million in Longfin securities. All those who purchased the unregistered securities during the Recovery Period – which ends upon the date of filing of the Related Action and the imposition of a temporary trading halt – would be eligible to file a claim under the Related Action Plan. Thus, there is complete coincidence between those potentially harmed by the registration violations in the Related Action and those potentially harmed by those same violations in the Present Action.

2. Most of the Investors Potentially Harmed by the Fraud Allegations in the Present Action Will Be Eligible to File Claims Under the Related Action Plan.

The Present Action includes not only charges based on registration violations but also includes fraud charges for the filing of the fraudulent Annual Report and Quarterly Report on April 2, 2018 and August 13, 2018, respectively. But the inclusion of those fraud charges in the Present Action does not result in a significant number of additional harmed investors.

Those investors potentially harmed by the fraudulent April 2, 2018 Annual Report largely coincide with those harmed by the registration violations and will be eligible to file claims under the Related Action Plan. Specifically, because of the trading suspension beginning on April 6, 2018, and continuing through May 24, 2018, most, if not all, investors potentially influenced by the April 2, 2018 Annual Report would have purchased Longfin common stock on or before April 6, 2018, thus falling with the Recovery Period.

In contrast, those affected (only) by the fraudulent August 13, 2018 Quarterly Report will be ineligible to file claims under the Related Action Plan.¹⁰ This subset of investors represents a small percentage of purchasers of Longfin common stock; records indicate relatively few shares were purchased after that report.¹¹ Moreover, some of the investors who purchased after the

¹⁰ Investors who, despite the SEC's enforcement action and the temporary trading halt of the trading in Longfin common stock, purchased that stock after the August 13, 2018 publication of the Quarterly Report, and who do not otherwise fall within the parameters described in D.1., above, will fall outside of the Recovery Period and will be ineligible to file a claim under the Related Action Plan.

¹¹ The aggregate number of shares of Longfin common stock affected by the August 13, 2018 Quarterly Report is likely to be a small percentage of the number of shares affected by the remainder of the misconduct, for which investors will be eligible to file claims. Specifically, whereas the average daily volume of trading in Longfin common stock was 1.2 million shares from the time it began trading on the public market through April 6, 2018, the average daily trading after the filing of the Quarterly Report on August 13, 2018 through the November 21, 2018 filing of an 8-K report referencing an orderly liquidation of assets was just under 28,000 shares—approximately 2% of the trading volume on the public market through April 6, 2018.

August 13, 2018 Quarterly Report may also have holdings in Longfin common stock acquired on or before April 6, 2018, for which they will be eligible to seek compensation under the Related Action Plan.

In short, the universe of investors potentially harmed by the violations covered by the Present Action and those potentially harmed by the violations covered by the Related Action would be largely the same.

III. DISCUSSION OF THE RELIEF REQUESTED

A. The Court Must Establish a Fair Fund in Order to Distribute the Collected Civil Penalty.

The SEC has collected approximately \$300,000 from Meenavalli, of which approximately \$131,000 is collected civil penalty. In order to include the civil penalty in any distribution, including a transfer to the Related Action for distribution to harmed investors through the Related Action Plan, a Fair Fund pursuant to Section 308(a) must be established.

Section 308(a) provides, in relevant part:

If in any judicial or administrative action brought by the [SEC] under the securities laws, the [SEC] obtains a civil penalty against any person for a violation of such laws, or such person agrees, in settlement of any such action, to such civil penalty, the amount of such civil penalty shall, on the motion or at the direction of the [SEC], be added to and become part of a disgorgement fund or other fund established for the benefit of the victims of such violation.

15 U.S.C. § 7246(a).

The SEC brought the Present Action under the federal securities laws and, in relevant part, this Court has ordered Meenavalli to pay a \$232,000 civil penalty in addition to disgorgement and prejudgment interest. Of that amount, the SEC has collected approximately \$131,000 of the ordered civil penalty. Section 308(a)'s requirements have thus been satisfied

and the creation of a Fair Fund for the benefit of harmed investors is appropriate so that the entirety of the collections in this case can benefit harmed investors.

B. Combining the \$300,000 paid by Meenavalli with the Fair Fund in the Related Action for Distribution Pursuant to the Related Action Plan is Fair and Reasonable.

A district court has broad discretion in approving a plan of distribution, and that determination is reviewed for abuse of discretion. *Official Comm. Of Unsecured Creditors of WorldCom, Inc. v. SEC*, 467 F.3d 73, 84 (2d Cir. 2006). *See also SEC v. Loewenson*, 290 F.3d 80, 84 (2d Cir. 2002) (in the context of approval of a plan presented by a receiver). District courts review distribution plans proposed by the SEC to determine whether the plan fairly and reasonably distributes limited funds among the potential claimants. *See WorldCom*, 467 F.3d at 81-82, 84; *SEC v. Wang*, 944 F.2d 80, 85 (2d Cir. 1991); *SEC v. CR Intrinsic Investors, LLC*, 164 F. Supp. 3d 433, 435-36 (S.D.N.Y. 2016). *See also SEC v. Amerindo Inv. Advisors*, 639 F. App'x 752, 755 (2d Cir. 2016) (quoting *Wang*, finding adequate the district court's finding that the receiver's proposed distribution was fair and reasonable).

Nearly every plan to distribute funds obtained in an SEC enforcement action requires choices to be made regarding the allocation of funds between and among potential claimants within the parameters of the amounts recovered. As the Court of Appeals for the Second Circuit has explained, “[t]his kind of line-drawing – which inevitably leaves out some potential claimants – is . . . appropriately left to the experience and expertise of the SEC in the first instance.” *See Wang*, 944 F.2d at 88.

Under the SEC Proposal, collections in this matter will be aggregated with other funds that will be used to compensate most of the investors harmed by the conduct underlying the Present Action. Although not a perfect solution, the execution of a separate plan by which

unknown investors could be compensated is not feasible with a fund of approximately \$300,000. Even assuming the sharing of costs with the Related Action, the administrative costs would leave little, if anything, for distribution. Accordingly, the SEC respectfully submits that the SEC Proposal is both fair and reasonable and should be approved. It is the best way to ensure that the collections in this case are used for the benefit of investors.

II. Conclusion

For all of the foregoing reasons, the SEC respectfully requests that the Court establish a Fair Fund pursuant to Section 308(a) for all funds under the Court's jurisdiction in the Present Action; approve the SEC Proposal by which the Fair Fund will be combined with the 2018 Fair Fund for distribution to harmed investors pursuant to the Related Action Plan; and grant such other relief as the Court deems appropriate.

Dated: August 13, 2020

Respectfully submitted,

s/ Catherine E. Pappas
Catherine E. Pappas
Admitted *Pro Hac Vice*, ECF No. 51
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*Attorney for Plaintiff Securities and
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