

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

**SECURITIES AND EXCHANGE COMMISSION,**

**Plaintiff,**

**v.**

**MACQUARIE CAPITAL (USA) INC., ET AL.**

**Defendants.**

**No. 15-cv-02304(DLC)**

**PLAINTIFF UNITED STATES SECURITIES AND EXCHANGE COMMISSION'S  
MOTION FOR AN ORDER TO TRANSFER FUNDS FOR DISTRIBUTION**

**NOTICE**

**PLEASE TAKE NOTICE**, that based upon the accompanying declaration of Alexander Villanova in Support of the Securities and Exchange Commission's (the "Commission") Motion for an Order to Transfer Funds for Distribution, executed on April 21, 2017, the Proposed Order submitted herewith, and all other prior proceedings and papers herein, and pursuant to the Distribution Plan approved by this Court on February 19, 2016, the Commission will move this Court, at a date and time to be determined by the Court, before the Honorable Denise L. Cote, at the United States Courthouse for the Southern District of New York, 500 Pearl Street, New York, New York 10007, for an Order to Transfer Funds for Distribution so that injured investors may be compensated for their losses.

**MOTION**

In accordance with the Distribution Plan for the Macquarie Capital Fair Fund approved by this Court on February 19, 2016 ("Distribution Plan"), the Securities and Exchange Commission ("Commission") respectfully requests that the Court enter an Order: (1) Directing

the Commission to issue a check to the distribution agent, Epiq Class Action & Claims Solutions, Inc. (“Distribution Agent”<sup>1</sup> or “Epiq”) under the case name designation “SEC v. Macquarie Capital (USA) Inc., et al.” for \$4,371,360.77; (2) directing the Distribution Agent to deposit these funds in an escrow account established at a U.S. Commercial bank (“Bank”) pursuant to Paragraph 2.24 of the Distribution Plan; and (3) Authorizing the Distribution Agent to distribute these funds to Eligible Claimants pursuant to the Distribution Plan.

## **MEMORANDUM**

### **I. BACKGROUND**

On March 27, 2015, the Commission filed a complaint against Macquarie Capital (USA) Inc. (“Macquarie”), and two investment bankers formerly affiliated with Macquarie<sup>2</sup> (collectively “Defendants”), alleging that Defendants proceeded to underwrite and market a \$108 million follow-on public offering by Puda Coal, Inc. (“Puda”) (the “Secondary Offering”), a U.S. issuer that purported to own a coal company located in the People’s Republic of China (“PRC” or “China”), despite due diligence efforts that uncovered the fact that Puda no longer owned the Chinese coal company, Puda’s principal asset and sole source of revenue.

Pursuant to Final Judgments entered against Defendants on April 1, 2015, the Defendants consented to and were permanently restrained and enjoined from violating Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)]. Defendant Macquarie was further ordered to pay to the Commission a total of \$12 million in disgorgement and prejudgment interest, consisting of \$10,728,525 in disgorgement and \$1,271,475 in prejudgment interest thereon, and a civil penalty in the amount of \$3,000,000 pursuant to Section 20(d) of the

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<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Distribution Plan approved by the Court.

<sup>2</sup> Aaron Black (“Black”) and William Fang (“Fang”).

Securities Act [15 U.S.C. § 77t(d)].<sup>3</sup> On or about April 1, 2015, \$15,000,000 was paid to the Commission and deposited into an interest-bearing account with the Bureau of Fiscal Services.

On August 12, 2015, a Fair Fund (“Fair Fund” or “Macquarie Capital Fair Fund”) was established by the Court to compensate investor victims of the fraud and a Tax Administrator, Damasco & Associates LLP, was appointed to handle the tax obligations of the Fund. On October 20, 2015, the Court entered an order appointing Epiq as the Distribution Agent for the Fair Fund to assist in overseeing the administration of the distribution of the Fair Fund in consultation with Commission staff, pursuant to the terms of this Distribution Plan. On February 19, 2016, the Court approved the Distribution Plan for the Macquarie Capital Fair Fund.

## **II. DISBURSEMENT OF THE FAIR FUND**

The current balance of the Fair Fund is approximately \$15,091,462.17 and is held by the Commission, which has invested the funds with the Bureau of Fiscal Services in an interest-bearing account.

Pursuant to the Distribution Plan, the Distribution Agent has prepared and submitted to the Commission staff a list of Eligible Claimants, and the Approved Claim for each Eligible Claimant (the “Final Payee List”).<sup>4</sup> As the amount of the Fair Fund is greater than the aggregate Eligible Loss Amounts, all of the Eligible Claimants’ Loss Amounts will be fully compensated. The Distribution Agent has also submitted the Distribution Payment File Declaration of Alexander Villanova (“Declaration”) in support of this Motion, which provides a detailed explanation of the procedures the Distribution Agent used to develop the Final Payee List, filed

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<sup>3</sup> Defendant Black was ordered to pay \$97,500 in disgorgement and prejudgment interest in the amount of \$13,211, and a civil penalty in the amount of \$100,000 to the Commission and Defendant Fang was ordered to pay a civil penalty in the amount of \$35,000 to the Commission, both pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)]. The funds received from Black and Fang were designated to be paid to the Commission for transfer to the United States Department of the Treasury.

<sup>4</sup> The Final Payee List was provided to the Commission staff for its review and acceptance and will be provided to the Court upon request under seal.

herewith as Exhibit A. The Final Payee List and the Declaration have been reviewed by the undersigned Commission Counsel who has no objections. The Final Payee List shall, upon request, be made available to the Court under seal.

**WHEREFORE**, for all the foregoing reasons, the Plaintiff Securities and Exchange Commission respectfully requests that this Court grant its Motion for an Order to Transfer Funds for Distribution and grant such other relief as it deems necessary and proper.

Dated: May\_\_\_\_, 2017

Respectfully submitted,

/s/Nichola L. Timmons

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