

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

MURDOCH SECURITY & INVESTIGATIONS,
INC., ROBERT GOLDSTEIN, and WILLIAM
VASSELL,

Defendants.

Civil No. 11-cv-7076 (JGK)

DISTRIBUTION PLAN

Background

1. On February 17, 2012, the Commission filed an Amended Complaint,¹ alleging, *inter alia*, that:

- (a) Defendants Murdoch Security & Investigations, Inc. (“MSI”), Robert Goldstein (“Goldstein”), and William Vassell (“Vassell”) sold unregistered securities to investors in violation Section 5 of the Securities Act of 1933; and
- (b) Defendants MSI and Goldstein provided investors with a wide array of false and otherwise misleading information in an effort to sell both equity shares in MSI (“Equity Shares”) and MSI notes (“Notes”) in violation of the antifraud provisions of Section 17(a)

¹ The initial complaint was filed on October 7, 2011.

of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934, and Rule 10b-5 thereunder.

2. On November 15, 2012, the Court entered Final Judgments against Goldstein and Vassell (collectively, “Final Judgments”).² Goldstein was ordered to pay \$750,000 in disgorgement within 548 days to the New York County District Attorney’s Office (the “District Attorney’s Office”) pursuant to an order of forfeiture entered against Goldstein in a related criminal case.

3. Upon receipt of the payment, the District Attorney’s Office was ordered to remit the funds to the Clerk of this Court for deposit with the Court Registry Investment System (“CRIS”). These funds, totaling \$750,000, were deposited into the CRIS on October 10, 2013 (the “Distribution Fund”). Vassell was ordered to pay \$86,500 in disgorgement, \$1,000 in prejudgment interest and a \$20,000 civil penalty for a total of \$107,500 to the Clerk of this Court for deposit into the CRIS. Vassell has not made any payments to date, and the Commission is unlikely to collect any additional funds..

4. The Distribution Fund constitutes a Qualified Settlement Fund (“QSF”) under section 468B(g) of the Internal Revenue Code (IRC), 26 U.S.C. § 468B(g), and related regulations, 26 C.F.R. §§ 1.468B-1 through 1.468B-5.

5. On July 17, 2014, the Court appointed Damasco & Associates LLP as the Tax Administrator (“Tax Administrator”) to execute all the tax reporting and filing requirements for the Distribution Fund (Dkt. 56).

² A final judgment was not entered against MSI. Instead, the Commission voluntarily dismissed its claims on December 14, 2012 after MSI filed for bankruptcy pursuant to Chapter 7 of the U.S. Bankruptcy code.

6. On March 10, 2015, the Court appointed Kurtzman Carson Consultants LLC (“KCC”) as the distribution agent (“Distribution Agent”), to assist in overseeing the administration and distribution of the Distribution Fund in coordination with Commission staff, pursuant to the terms of the proposed distribution plan (“Distribution Plan”) (Dkt. 64).

Allocation of the Distribution Fund

7. The Distribution Agent recommends that the Distribution Fund be allocated to investors according to the losses incurred by investors equally between those investors who purchased Equity Shares between January 6, 2010³ through July 2011 and those who purchased Notes between October 2010 to August 2011. The Distribution Agent estimates that the funds available for distribution to injured investors is \$706,729.⁴

8. Because the Distribution Fund is not sufficient to permit payments for the total investment(s) of each investor, each investor will be paid the percentage of the Distribution Fund that each investor’s loss bears to the total of the losses of all investors. This represents the investor’s *pro rata* share of the Distribution Fund. To promote a fair and reasonable distribution, for investors who purchased Notes and previously received a coupon payment, those coupon payments are treated as an addition to the Distribution Fund for the purposes of calculating the Equity and Notes portion of the distribution amount, the sum of which will be allocated on a *pro rata* basis to both Equity Investors and Note Investors. In addition, for each investor who had purchased Notes, the amount

³ Commission staff selected January 6, 2010 as the start date for determining eligible purchases of Equity Shares to be included in a distribution because January 6, 2010 was the date that MSI issued a false press release concerning its overseas operations.

⁴ The Commission obtained \$750,000 in total from Defendants. A reserve of \$43,271 is set aside for expenses related to taxes and fees of the Tax Administrator and for fees and expenses of the Distribution Agent.

of that investor's *pro rata* distribution related to the Notes will then be subtracted by the value of any coupons previously paid to that investor as described in the Distribution Plan. Any portion of the reserve that remains unused after termination of this matter ("Undistributed Funds") will be paid to the Commission for transfer to the United States Department of the Treasury ("US Treasury").

Specification of Eligible Distribution Fund Recipients

9. The Distribution Agent shall distribute funds from the Distribution Fund to those injured investors identified by Commission staff during its investigation of the underlying securities violation.

10. To identify potential eligible distribution fund recipients, the Distribution Agent obtained and analyzed records provided by various parties including (a) the Commission; (b) MSI; (c) Robert Goldstein; and (d) William Vassell.

11. The Distribution Agent identified 92 injured investors who purchased Equity Shares between January 6, 2010⁵ through July 2011 and those who purchased Notes between October 2010 to August 2011. Those injured investors are eligible for a distribution from the distribution fund ("Eligible Distribution Fund Recipients"). Based on the records obtained including: (a) 72 investors invested in Equity Shares only ("Equity Investors"); (b) 11 investors invested in Notes only ("Notes Investors"); and (c) 9 investors invested in both Equity Shares and Notes.

Detailed Methodology for Allocating Distribution Fund

12. The Distribution Fund will be distributed evenly on a *pro rata* basis among Equity Investors and Notes Investors.

⁵ See footnote 3.

13. An investor's *pro rata* percentage ("Pro Rata Percentage") will be calculated by dividing each investor's total investment by the total amount invested by Equity Investors and Notes Investors.

14. Any prior Notes coupons paid to Notes Investors are treated as an addition to the Distribution Fund for the purposes of calculating the Equity Shares and Notes portion of the distribution amount, the sum of which will be allocated on a *pro rata* basis to both Equity Investors and Note Investors.

15. For each investor who had purchased Notes, the amount of that investor's *pro rata* distribution related to the Notes will be subtracted by the value of any coupons previously paid to that investor.

16. The *pro rata* share of the Distribution Fund distributed to an investor will be calculated as follows:

- (a) Calculating the Net Distribution Fund: Adding the Distribution Fund and the amount of note coupons previously paid out;
- (b) Calculating the Investor's Principal Amount: Adding the total dollar amount invested for each investor's Equity Shares ("Equity Principal") and Notes investments ("Notes Principal") to obtain the investor's total Principal Amount ("Investor's Total Principal Amount");
- (c) Calculating *Pro Rata* Percentage for Each Investor: Divide each Investor's Total Principal Amount by the sum of all investors' total principal amounts ("All Investors' Total Principal Amounts");

- (d) Calculating the Equity Portion of the Net Distribution Amount for Each Investor:
 - i. $(\text{Investor's Equity Principal} / \text{All Investors' Total Principal Amounts}) \times (\text{Net Distribution Fund})$.
- (e) Calculating the Notes Portion of the Distribution Amount for Each Investor:
 - i. $(\text{Investor's Notes Principal} / \text{All Investors' Total Principal Amounts}) \times (\text{Net Distribution Fund})$.
 - ii. Subtract any prior coupons received by that particular investor, if applicable, from (e)i directly above.
- (f) Determining the Total Distribution Amount for Each Investor:
 - i. Add 16d(i) above to 16(e)ii above.

No Claims Process.

17. On the basis of information obtained by Commission staff and based on a review and analysis of applicable records, the Distribution agent has identified 92 injured investors. This Distribution Fund is not being distributed according to a claims-made process, so the procedures for making and approving claims are not applicable.

18. The Distribution Agent and the Commission agree that treating Equity Shares and Notes equally is the most equitable way to determine the allocation distributed from the Distribution Fund to the investors.

Procedures for Locating and Notifying Eligible Investors and Opportunity to Object

19. On the basis of information obtained by the Commission staff and based on a review and analysis of applicable records, the Distribution Agent identified eligible investors as described in paragraphs 9-11 above.

20. Concurrently with the filing of the Motion for Order Approving Distribution Plan and the Distribution Plan, the Distribution Agent will provide notice and a copy of the proposed Distribution Plan to MSI investors that have complete addresses containing (a) instructions for serving on the Distribution Agent any objections to the Distribution Plan; and (b) notice of the time period allotted for the opportunity to object to the Distribution Plan. As additional addresses become available, the Distribution Agent will provide notice and a copy of the proposed Distribution Plan.

21. Investors will be directed to submit any objections to the Distribution Agent and instructed not to contact the Commission, the Court, or the Clerk of the Court. The Distribution Agent will notify the Commission immediately upon receipt of any objections so that such objections may be addressed timely and efficiently.

22. After the time period allotted for submitting objections has passed:
- (a) If objections were received, the Distribution Agent will work with the Commission to prepare and file with the Court a summary of said objections and recommendations with regard to the same.
 - (b) If no objections were received, Commission staff will notify the Court of the same.

23. Upon receipt of an Order signed by the Court, the Distribution Agent will coordinate the disbursement of funds to approved investors as described in the Distribution Plan.

24. To carry out the purposes of this Distribution Plan, the Distribution Agent is authorized to make non-material adjustments or clarifications to the Distribution Plan that are consistent with the purpose and scope of the Distribution Plan, if agreed upon by the Distribution Agent and the staff of the Commission. If a change is deemed material by Commission staff, Court approval is required prior to implementation by amending the Distribution Plan.

25. Defendants will not be eligible for a distribution from the Distribution Fund.

Administration of the Plan

Control of the Distribution Fund

26. In order to disburse the Distribution Fund, the Distribution Agent will compile and submit a list of payees (including payee names and addresses) and payment amounts to the Commission staff no later than sixty (60) days after the Distribution Agent has used its best efforts to make use of all reasonable commercially available resources and other reasonably appropriate means to locate all Eligible Distribution Fund Recipients, as defined in paragraph 11 above. The Distribution Agent shall provide the final payee list to the Commission staff, and upon receipt and acceptance, the Commission staff shall petition the Court to transfer all funds in the CRIS account to the Distribution Agent for distribution pursuant to the Distribution Plan.

27. Following the Court's approval of the Commission's petition for the authority to distribute the funds from the Distribution Fund as provided in the Distribution Plan, the Court may issue an order to the Clerk of the Court to transfer all funds in the CRIS account representing the Distribution Fund, less any expenses due the Court, to the account or accounts established by the Distribution Agent. The Distribution Agent shall commence the distributions to all Eligible Distribution Fund Recipients (as defined in paragraph 11) as promptly as possible following the transfer of the funds. In conjunction with the motion seeking transfer of funds in the CRIS account to the Distribution Agent for distribution, the final payee list shall, upon request, be made available to the Court under seal.

28. Upon receipt of the monies from the CRIS account in this matter, the Distribution Agent shall supply a copy of the receipt to counsel for the Commission in this matter within ten (10) business days of the receipt of the monies in a bank account as described below:

- (a) The bank account will be maintained at a United States commercial bank ("Bank") that is well-capitalized ("Well-Capitalized"), as defined by the Federal Reserve Act Subpart D, 12 C.F.R. 208.43, and is to be proposed by the Distribution Agent and not be unacceptable to the staff of the Commission. In the event that the Bank's Well-Capitalized status changes, the Distribution Agent will promptly inform the SEC staff of such change in status;
- (b) Pursuant to an escrow agreement (the "Escrow Agreement") to be provided by the staff of the Commission, the Distribution Agent shall

establish an escrow account (the “QSF Account”) in the name of SEC v. Murdoch Distribution Fund, and bearing the Employer Identification Number (“EIN”) of the Qualified Settlement Fund (“QSF”), as custodian for the distributees of the Distribution Fund. The name of the account shall be in the following form: QSF, SEC v. Murdoch Distribution Fund, bearing its EIN Number, as custodian for the benefit of investors allocated a distribution from the Murdoch Distribution Fund;

(c) The Distribution Agent shall also establish a separate deposit account (“Controlled Distribution Account”) for the purpose of funding checks to be distributed to investors by the Distribution Agent pursuant to the Distribution Plan. The Controlled Distribution Account shall bear the name of the QSF, SEC v. Murdoch Distribution Fund, bearing its EIN Number, as QSF, SEC v. Murdoch Distribution Fund, bearing its EIN Number, as custodian for the benefit of investors allocated a distribution from the Murdoch Distribution Fund;

(d) Any funds in the QSF Account, if invested, shall be invested in instruments backed by the full faith and credit of the United States Government, including a AAA-rated United States Treasury money market fund that directly invests 100% in short term United States Treasury securities and obligations, provided however, that the money market mutual funds’ investments in short term United States Treasury securities will not be made through repurchase agreements or other derivative products;

- (e) The Distribution Agent shall provide duplicate original bank and/or investment statements on any accounts established by the Distribution Agent to the Tax Administrator on a monthly basis and shall assist the Tax Administrator in obtaining mid-cycle statements, as necessary.

29. All Distribution Fund checks presented for payment or electronic transfers will be subject to “positive pay” controls before being honored by the Bank. The positive pay system provides protection against fraud arising from counterfeit or amount-altered checks. The positive pay system will require, at a minimum, confirmation by the Bank that all checks presented for payment match the identifiers and amounts on the payee list prior to payment of the presented obligation. In each instance, funds will be transferred from the QSF Account to the Distribution Account on the Bank’s confirmation that a presented check matches the relevant pay criteria.

30. The Distribution Agent shall use its best efforts to make use of all reasonable commercially available resources and other reasonably appropriate means to locate all Eligible Distribution Fund Recipients whose checks are returned to the Distribution Agent as undeliverable by the U.S. Postal Service. However, the Eligible Distribution Fund Recipient has the burden of providing the Distribution Agent with any changes to his or her mailing address.

31. All distribution payments shall be preceded or accompanied by a communication that includes, as appropriate:

- (a) A statement characterizing the distribution;

- (b) A statement that the tax treatment of the distribution is the responsibility of each recipient and that the recipient should consult his or her tax advisor for advice regarding the tax treatment of the distribution;
- (c) A statement that checks will be void after ninety (90) days after the date of issuance; and,
- (d) The name of a person or entity to contact, if the Eligible Distribution Fund Recipient has any questions regarding the distribution.

32. Any such communication shall be submitted to the staff of the Commission and the Tax Administrator for review and approval. The Distribution Fund checks, on their face or the accompanying mailing, shall clearly indicate that the money is being distributed from a Distribution Fund established by the Commission to compensate investors for harm as a result of securities law violations by defendants.

33. Under no circumstances shall the Distribution Agent, its employees or its agents incur any liability to any person in connection with a distribution made in accordance with the list of all Eligible Distribution Fund Recipients and their eligible distribution amount as approved by the Court, and all persons are enjoined from taking any action in contravention of this provision. Upon receipt and acceptance by an Eligible Distribution Fund Recipient of a distribution from the Distribution Fund, such Eligible Distribution Fund Recipient shall be deemed to have released all claims that such Eligible Distribution Fund Recipient may have against the Distribution Agent, its employees, agents, and attorneys in connection with the Distribution Plan and the administration of the Distribution Fund, and shall be deemed enjoined from prosecuting or asserting any such claims.

Wind Down of Distribution

34. The Distribution Agent will maintain all documents, including documents in any media, for six (6) years after approval of the final accounting and thereafter will transfer the documents to the Commission, pursuant to Commission direction.

35. Once all of the distribution payments and payments for fees and costs have been cashed or voided, any Undistributed Funds will be paid to the Commission for transfer to the US Treasury.

36. The Distribution Fund will be eligible for termination, and the Distribution Agent eligible for discharge, after all of the following have occurred:

- (a) The final accounting has been submitted and approved by the Court;
- (b) All tax returns have been filed;
- (c) All taxes, fees and expenses have been paid; and
- (d) Any Undistributed Funds have been paid to the Commission for transfer to the US Treasury.

Taxes

37. The Distribution Fund is a QSF within the meaning of the regulations issued under Section 468B(g) of the Internal Revenue Code of 1986, as amended. The Tax Administrator is the administrator of the QSF, for purposes of Treas. Reg. § 1.468B-2(k)(3)(I), and shall satisfy the tax related administrative requirements imposed by Treas. Reg. § 1.468B-2.

38. The Distribution Agent shall cooperate with the Tax Administrator in providing any information necessary to ensure income tax compliance.

39. The Distribution Agent shall cooperate with the Tax Administrator in providing any information necessary to ensure income tax compliance.

Payment of Costs, Fees, and Taxes, and Filing of Reports

40. All taxes and the reasonable costs and fees of the Distribution Agent, Tax Administrator, third-party professionals, and service providers incurred in the performance of their duties, will be paid from the Distribution Fund, subject to the review and approval of the Court.

41. The Distribution Agent will provide Commission staff with a progress report within twenty (20) days after the end of each quarter and a final report with a final accounting once the distribution is complete. The final accounting will be submitted by Commission staff to the Court for approval.

42. Progress reports shall inform the Commission of the activities and status of the Distribution Fund during the requested reporting period, and shall specify, at a minimum, (a) the location of the account(s) comprising the Distribution Fund; (b) the value of those account(s); (c) all monies earned or received into the account(s); (d) all monies distributed to claimants under the Distribution Plan; and (e) any monies expended to satisfy fees, costs, taxes and other expenses incurred.

43. The final report shall include, among other things, a final accounting of all monies received, earned, spent, and distributed in connection with the administration of the Distribution Plan, and a request for approval of any unpaid fees and costs. The final accounting will be in a format provided by Commission staff.

44. The Clerk of the Court shall provide the Distribution Agent with any account information relating to funds held by the Court that may be required for the

progress and final reports, including providing copies of any account statements that the Distribution Agent may request.

Other Rights and Powers

45. The Distribution Agent is entitled to rely on all outstanding rules of law and court orders, and shall not be liable to anyone for any action taken or omitted by him in connection with this Distribution Plan, except upon a finding by this Court of misfeasance, gross negligence, or reckless disregard of duty under this Distribution Plan.

46. The Distribution Agent is authorized to enter into agreements with financial institutions (“Institutions”) as may be appropriate or necessary in the administration of the Distribution Fund, provided that such Institutions are not excluded pursuant to other provisions of this Distribution Plan. In connection with such agreements, the Institutions shall be deemed to be agents of the Distribution Agent under this Distribution Plan.

47. All proceedings with respect to the administration, processing, and determination of claims and the determination of all related controversies, shall be subject to the exclusive jurisdiction of this Court.

48. The Court reserves the right to amend this Distribution Plan from time to time, and retains jurisdiction over this matter for this purpose and for any and all other matters that may arise under or relate to this Distribution Plan.

Timeline

49. The Distribution Agent’s timeline for implementing the Distribution Plan and making final distributions is attached as Exhibit “A”. The timeline set forth at Exhibit “A” is based on the assumption that investor objections, if any, will not raise

extraordinary issues not contemplated by the Distribution Agent at this time and that the Court provides the requested approval as anticipated.

50. The Distribution Agent may change any procedural deadline contained in the Distribution Plan for good cause shown, if agreed upon by the staff of the Commission.

Material Changes to Distribution Plan

51. Any material changes to the Distribution Plan require approval by the Court.

EXHIBIT "A"***DISTRIBUTION FUND***

TIMELINE FOR APPROVAL AND
IMPLEMENTATION OF A PLAN OF
DISTRIBUTION

Description of Event	Anticipated Completion Date
Mailing of notice and a copy of the proposed Distribution Plan to investors with instructions for submitting objections and preferred method of payment	14 days after proposed Distribution Plan is filed.
Deadline for submitting objections to the Distribution Agent	60 days after above notice is mailed.
Filing of summary of objections and corresponding recommendations OR notice of no objections	20 days after deadline for submitting objections
Deadline to disburse funds to approved investors pursuant to the Distribution Plan	30 days after receipt of Order approving plan
Deadline to issue Distribution Agent's final report and final accounting to Commission	60 days from the stale date of the last re-issued check