

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)

MOTION FOR ORDER APPROVING PROPOSED DISTRIBUTION PLAN

Plaintiff United States Securities and Exchange Commission (“SEC” or “Commission”), respectfully moves the Court for an order approving the Commission’s proposed plan to distribute approximately \$706,729¹ to injured investors who purchased: i) equity shares of Murdoch Security & Investigations, Inc. (“MSI”) between January 6, 2010 through July 2011; and ii) notes of MSI between October 2010 to August 2011 from MSI, Robert Goldstein (“Goldstein”), and William Vassell (“Vassell”) (collectively, “Defendants”).

I. BACKGROUND

On February 17, 2012, the Commission filed an Amended Complaint,² alleging, *inter alia*, that (1) Defendants MSI, Goldstein, and Vassell sold unregistered securities to investors in violation of Section 5 of the Securities Act of 1933; and (2) Defendants MSI and Goldstein

¹ 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.

² The initial complaint was filed on October 7, 2011.

provided investors with a wide array of false and otherwise misleading information in an effort to sell both MSI equity shares (“Equity Shares”) and notes (“Notes”) in violation of the antifraud provisions of Sections 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934, and Rule 10b-5 thereunder.

On November 15, 2012, the Court entered Final Judgments against Goldstein and Vassell (collectively, “Final Judgments”).³ 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.

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 were deposited into the CRIS on October 10, 2013 (the “Distribution Fund”).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, and the Commission is unlikely to collect any additional funds.

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

On March 10, 2015, the Court appointed Kurtzman Carson Consultants LLC (“KCC”) as the Distribution Agent to assist in overseeing the administration and distribution of the

³ 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.

⁴ 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.

Distribution Fund in coordination with Commission staff, pursuant to the terms of the proposed distribution plan (“Distribution Plan”) (Dkt. 64). The Commission now respectfully moves the Court for an order approving the proposed Distribution Plan.

II. ARGUMENT

A. The Applicable Standard

Nearly every plan to distribute funds obtained in a Commission enforcement action requires choices to be made regarding the allocation of funds between and among potential claimants within the parameters of the amounts recovered. In recognition of the difficulty of this task, Courts historically have given the Commission significant discretion to design and set the parameters of a distribution plan. *See, e.g., SEC v. Wang*, 944 F.2d 80, 83-84 (2d Cir. 1991); *SEC v. Levine*, 881 F.2d 1165, 1182 (2d Cir. 1989).

The Court’s review of a proposed distribution plan focuses on whether the plan is fair and reasonable. *See Official Committee of Unsecured Creditors of Worldcom, Inc. v. SEC*, 467 F.3d 73, 81 (2d Cir. 2006) (“[u]nless 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”), citing *Wang*, 944 F.2d at 85.⁵

For the reasons articulated below, the Commission submits that the proposed Distribution Plan constitutes a fair and reasonable allocation of the funds available for distribution and should be approved.

⁵ Courts have historically deferred to the Commission’s decisions regarding whether and how to distribute disgorgement and prejudgment interest. *SEC v. Fischbach Corp.*, 133 F.3d 170, 175 (2d Cir. 1997). Courts have also 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).

B. The Commission's Proposed Distribution Plan Provides a Fair and Reasonable Allocation

The Commission's goal in fashioning a Distribution Plan is to identify a methodology that would allocate the available funds fairly and reasonably, in a manner proportional to the economic harm that investors in MSI Equity Shares and Notes suffered as a result of Defendants' actions. The Commission's complaint alleged that Defendants sold unregistered securities to investors and provided false and misleading information to investors regarding payments and returns on their investment in the notes. Accordingly, the proposed Distribution Plan would equitably distribute the Distribution Fund to investors who purchased MSI Equity Shares between January 6, 2010 through July 2011 and those who purchased notes of MSI between October 2010 to August 2011. Payments to eligible investors of MSI Equity Shares and Notes will be calculated on a *pro rata* basis based on the total invested by the investor as a percentage of the total amount invested by all investors as described in the proposed Distribution Plan. 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 as described in the Distribution Plan.

WHEREFORE, the Commission respectfully requests that the Court enter an order:

- (1) approving the Commission's proposed Distribution Plan to distribute approximately \$706,729 to injured investors who purchased: i) unregistered securities through the sale of MSI Equity Shares between January 6, 2010 through July 2011; and ii) Notes of MSI between October 2010 to August 2011; and
- (2) establishing notice procedures as proposed in the SEC's proposed Distribution Plan.

Dated: December 14, 2015

Respectfully submitted,

/s/ Michael S. Lim

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