

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

UNITED STATES SECURITIES AND
EXCHANGE COMMISSION,

Plaintiff,

v.

JAMES E. GANSMAN ET AL.,

Defendants.

Case No. 1:08-CV-04918

**PLAINTIFF SECURITIES AND EXCHANGE COMMISSION’S MOTION TO APPOINT
FUND ADMINISTRATOR, APPROVE DISTRIBUTION PLAN, AUTHORIZE PAYMENT
OF FUTURE TAXES, FEES, AND EXPENSES OF THE TAX ADMINISTRATOR, AND
TRANSFER FUNDS**

1. Plaintiff Securities and Exchange Commission (the “Commission” or “SEC”) moves the Court to: 1) appoint Michael Shueyee Lim as fund administrator (the “Fund Administrator”); 2) approve the Commission’s proposed plan to distribute funds paid by Defendants to two harmed investors (the “Distribution Plan”); 3) authorize the payment of future taxes, fees and expenses of the Tax Administrator; and 4) approve the transfer of all funds in the Court Registry Investment System (“CRIS”) account for this case, less Court Registry fees, to the Commission for distribution to harmed investors, payment of taxes, fees, and expenses of the Tax Administrator, and transfer of any remaining funds to the general fund of the U.S. Treasury subject to Section 21F(g)(3) of the Exchange Act of 1934.

PROCEDURAL BACKGROUND

On May 29, 2008, the SEC filed a complaint against James E. Gansman (“Gansman”), Donna B. Murdoch (“Murdoch”), and Gerald L. Brodsky (“Brodsky”) (collectively, the

“Defendants”). The complaint alleged that, from at least the summer of 2006 through the fall of 2007, a partner at a Big Four accounting firm tipped his friend concerning the identities of at least seven different acquisition targets of clients who sought valuation services from the partner's firm in connection with those acquisitions. According to the complaint, knowing the confidential nature of this information, the friend used the information to trade in the securities of the target companies, and made recommendations to others who traded as well, resulting in total illegal trading profits of \$596,000.00.

The complaint alleged that Gansman, a lawyer and a former partner in Ernst & Young LLP's ("E&Y's") Transaction Advisory Services department in New York, learned of each of the pending acquisitions, and the identity of the target companies, through his work at E&Y advising the acquirers. According to the complaint, on numerous occasions, in breach of a duty of confidentiality he owed to E&Y and the firm's clients, Gansman misappropriated the information about pending acquisitions by tipping Murdoch. Murdoch was a registered securities professional and Managing Director of a Philadelphia-based broker-dealer and investment banking firm. The complaint alleged that Gansman provided Murdoch material, nonpublic information, including information concerning the identities of target companies and the existence of acquisition talks involving those companies.

According to the Complaint, Murdoch used the material, nonpublic information Gansman provided to her, by (i) trading in the securities of at least seven companies that were acquisition targets of E&Y's clients, realizing illegal profits totaling at least \$392,035.00; (ii) tipping her father, Brodsky, concerning one of the pending acquisitions—that of Freescale Semiconductor, Inc. (“Freescale”); Brodsky, in turn, traded on this information through a nominee account, and

realized illegal profits totaling \$63,400.00; and (iv) recommended trading in the securities of two of the target companies-Freescale and ATI Technologies, Inc.-to other persons, who likewise traded, for profits that totaled an additional \$140,760.00.

On May 22, 2009, the Court entered a final judgment as to Brodsky. The final judgment permanently enjoined Brodsky from violating Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 thereunder, and required him to pay a total of \$265,924.00 in disgorgement, prejudgment interest, and penalties.

On August 16, 2010, pursuant to her consent and without admitting or denying the allegations against her, the Court entered a final judgment as to Murdoch. The final judgment permanently enjoined Murdoch from violating Sections 10(b) and 14(e) of the Exchange Act, and Rules 10b-5 and 14e-3 thereunder, and required her to pay a total of \$404,053.52 in disgorgement and prejudgment interest. Based upon Murdoch's sworn representations in her Statement of Financial Condition dated April 10, 2010, and supporting documents and information submitted to the Commission, the Court did not order Murdoch to pay a civil penalty and payment of all \$404,053.52 in disgorgement and prejudgment interest was waived.

Also on August 16, 2010, pursuant to his consent and without admitting or denying the allegations against him, the Court entered a final judgment as to Gansman. The final judgment permanently enjoined him from violating Sections 10(b) and 14(e) of the Exchange Act, and Rules 10b-5 and 14e-3 thereunder, and required him to pay a total of \$250,000.00 in disgorgement, prejudgment interest, and post-judgment interest.

On February 17, 2017, the Court appointed Miller Kaplan Arase LLP as the Tax Administrator to fulfill the tax obligations of the Fund.

To date, the Defendants have paid a total of \$250,095.50.

THE COURT SHOULD APPOINT A FUND ADMINISTRATOR

The Court should appoint Michael S. Lim, a Commission employee in the Office of Distributions, as Fund Administrator to administer and implement the proposed Distribution Plan, as described below. As a Commission employee, the Fund Administrator shall receive no compensation, other than his regular salary as a Commission employee, for his services in administering the Distribution Fund. As the harmed investors are few in number and known, the appointment of a Commission employee will expedite the distribution process and avoid the costs and expenses that would ordinarily be incurred by appointing a third party administrator, thus maximizing investor return.

THE COURT SHOULD APPROVE THE DISTRIBUTION PLAN

The Commission seeks approval of its proposed Distribution Plan to distribute the funds already collected from Defendants. The Distribution Plan provides for a distribution to two individuals (the “Eligible Claimants”) who were harmed by the Defendants’ illegally tipping others to trade certain securities. The Distribution Plan contemplates that a total of approximately \$982 will be distributed to Eligible Claimants for the actual harm created by Defendants’ conduct. Thus, pursuant to the methodology detailed below, one of the two Eligible Claimants will receive a distribution of \$715, while the other will receive \$267. Also, taxes, fees, and expenses of the Tax Administrator will be paid from the Fund. Any remaining funds in the CRIS account will be transferred to the general fund of the United States Treasury, subject to Section 21F(g)(3) of the Exchange Act of 1934.

THE PROPOSED DISTRIBUTION PLAN

1. Commission staff have analyzed the options trades purchased on inside information, and identified two individual customers who were identified as being harmed (“Eligible Recipients”): a customer who had a TD Ameritrade account and a customer who had a Charles Schwab account. The TD Ameritrade customer should receive \$671 in disgorgement and \$44 of the prejudgment interest, for a total of \$715, and the Charles Schwab customer should receive \$249 in disgorgement and \$18 of the prejudgment interest, for a total of \$267.
2. Pursuant to the disbursement order, the Plan Administrator will provide the SEC’s Office of Financial Management with a file containing the names, addresses and amounts to be disbursed to Eligible Recipients. The SEC’s Office of Financial Management shall promptly thereafter cause checks to be issued to the Eligible Recipients in the amounts of their *pro rata* distribution. Each check issued to the Eligible Recipients will state on the face of the check that it is valid for one year. After one year from the date on the distribution check, the SEC’s Office of Financial Management will notify the Plan Administrator of the amount of all uncashed checks. The amount of all uncashed checks shall be placed in the Distribution Fund as a residual and sent to the transferred to the general fund of the United States Treasury, subject to Section 21F(g)(3) of the Exchange Act of 1934.
3. Forty-five days after the remittance of the checks, the Plan Administrator shall obtain information from the SEC’s Office of Financial Management concerning checks that

- have not been negotiated. The Plan Administrator shall then undertake good faith efforts for thirty (30) days to locate and contact the intended recipients of the uncashed checks to ensure that the Eligible Recipients have a reasonable opportunity to participate in the distribution.
4. The Plan Administrator will submit a final report to the Court prior to termination of the Distribution Fund. The report shall include a final accounting of all monies received, earned, spent, and distributed in connection with the administration of the Distribution Plan. The SEC's Office of Financial Management shall provide the Plan Administrator and the Tax Administrator with any information relating to the funds held in the Distribution Fund that may be required for the final accounting, including providing copies of any account statements that the Plan Administrator or Tax Administrator may request.
 5. The Distribution Fund shall be eligible for termination after all of the following have occurred: (1) the final accounting has been submitted and approved by the Court; (2) all taxes and fees and expenses have been paid; and (3) all remaining funds or any residual have been paid to the SEC for transfer to the U.S. Treasury. When the Court has approved the final accounting, the staff shall seek an order from the Court to terminate the Distribution Fund and to discharge the Plan Administrator.

ARGUMENT

Generally, courts have broad discretion to approve plans to distribute funds collected in SEC enforcement actions. *SEC v. Wang*, 944 F.2d 80, 84 (2d Cir. 1991). In evaluating a proposed distribution plan, the court should “decide whether, in the aggregate, the plan is equitable and reasonable.” *Id.* “Unless the consent decree specifically provides otherwise, once the District Court

satisfies itself that the distribution of proceeds in a proposed Commission disgorgement plan is fair and reasonable, its review is at an end.” *Id.* at 85. The Commission believes that the proposed Distribution Plan for the Distribution Fund should be approved as fair and reasonable.

THE COURT SHOULD AUTHORIZE THE PAYMENT OF FUTURE TAXES, FEES, AND EXPENSES OF THE TAX ADMINISTRATOR

In an effort to meet future tax payment deadlines, avoid the assessment of late payment penalties, and make timely payment to the Tax Administrator for services provided, the Commission further requests that Commission staff be authorized to approve and arrange payment of all future tax obligations and Tax Administrator fees and expenses from the Distribution Fund without prior Court approval. Authorizing Commission staff to approve and pay future tax obligation and tax administrator fees and expenses from the Distribution Fund without prior Court Approval will expedite the payment process, reducing the risk of late tax payments and penalties. All tax payments and tax administrator fees will be reported to this Court in the final accounting of the Distribution Fund once the distribution is complete.

THE COURT SHOULD TRANSFER FUNDS TO THE COMMISSION

As of September 6, 2016, the total amount held with the Clerk of Court is \$250,715.51. The staff respectfully requests that the Court transfer all funds held in the Court’s registry, and any accrued interest, less Court registry fees, to the Commission for distribution to harmed investors pursuant to the Distribution Plan, payment of taxes, fees, and expenses of the Tax Administrator, and transfer of the remaining funds to the general fund of the United States Treasury, subject to Section 21F(g)(3) of the Exchange Act of 1934.

CONCLUSION

For the reasons stated above, the Commission hereby moves the Court to: 1) appoint Michael Shueyee Lim as fund administrator (the “Fund Administrator”); 2) approve the Commission’s proposed plan to distribute funds paid by Defendants to two harmed investors (the “Distribution Plan”); 3) authorize the payment of future taxes, fees and expenses of the Tax Administrator; and 4) approve the transfer of all funds in the Court Registry Investment System (“CRIS”) account for this case, less Court Registry fees, to the Commission for distribution to harmed investors, payment of taxes, fees, and expenses of the Tax Administrator, and transfer of any remaining funds to the general fund of the U.S. Treasury subject to Section 21F(g)(3) of the Exchange Act of 1934.

Dated: March 24, 2017

Respectfully submitted,

/s/ Michael Shueyee Lim
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