

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

A CHICAGO CONVENTION CENTER, LLC,

et al.

Defendants.

Civil No. 13-cv-00982

Hon. Amy J. St. Eve

**SECURITIES AND EXCHANGE COMMISSION'S MEMORANDUM IN SUPPORT OF
ITS MOTION FOR AN ORDER APPROVING A DISTRIBUTION PLAN**

The Securities and Exchange Commission (the "SEC") respectfully submits this Memorandum in support of its motion to approve the proposed Distribution Plan attached as Exhibit A (the "Plan"). By the Plan the SEC proposes to fairly and reasonably distribute to injured investors approximately \$1.47 million collected on the Final Judgment entered in this matter. Dkt. No. 188.

I. BACKGROUND

A. The Civil Action

On February 6, 2013, the SEC filed the Complaint in this action, alleging that Anshoo R. Sethi ("Sethi"), A Chicago Convention Center, LLC ("ACCC"), and Intercontinental Regional Center Trust of Chicago ("IRCTC") (collectively, the "Defendants") exploited the EB-5 federal visa program as a means to defraud investors seeking monetary returns and a legal path to U.S. residency. As part of the fraud, investors were required to invest \$500,000 in ACCC (the "Investment") and pay \$41,500 to the Defendants in administrative fees (the "Administrative Fees"). Defendants collected over \$145 million in Investments and \$12 million in

Administrative Fees from more than 250 investors primarily located in China (the “Investors”). Dkt. No. 3.

Simultaneous with the filing of the Complaint, the SEC successfully sought a temporary restraining order, asset freeze, and other emergency relief against the Defendants. Dkt. Nos. 7, 13, 14. On February 20, 2013, the Court entered a preliminary injunction and asset freeze that, in relevant part, froze all funds and other assets of Defendants (the “Asset Freeze”), including over \$147.1 million in Investment proceeds held at SunTrust Bank (“SunTrust”). Dkt. Nos. 27, 71. On April 19, 2013, the Court modified the Asset Freeze to permit SunTrust to return to the Investors “all Subscription Proceeds” received from the Investors (the “April 19 Order”). Dkt. No. 71. Pursuant to the April 19 Order, SunTrust returned over \$147 million to Investors, thereby returning to each Investor the entirety of their Investments, and in a handful of cases, some or all of the Administrative Fees paid. More than \$11 million in Administrative Fees paid by the Investors remain uncompensated.

On March 17, 2014, the Court entered a Final Judgment against the Defendants (the “Final Judgment”). Dkt. No. 188. The Court ordered the Defendants, jointly and severally, to pay disgorgement and prejudgment interest of \$11,693,314.74. In addition, Defendants ACCC and IRCTC were each ordered to pay a civil penalty of \$1,450,000.00, and Defendant Sethi was ordered to pay a civil penalty of \$1,000,000.00. The Final Judgment provides that the SEC may propose a plan to distribute the monetary relief collected. Dkt. No. 188, pp.7-8. Of the over \$15.5 million ordered by the Court in disgorgement, prejudgment interest, and civil penalties, the Defendants have collectively paid approximately \$1.47 million to the SEC.

B. The Distribution Fund and its Administration

The SEC currently holds approximately \$1.47 million in an interest-bearing account at the United States Treasury's Bureau of the Fiscal Service ("BFS"). The "Distribution Fund," as used herein and in the Plan, is comprised of all funds in the BFS account, including accrued interest, and will include future collections. The "Net Distribution Fund," defined as the Distribution Fund less Plan Costs,¹ is the amount of the Distribution Fund available for distribution to Eligible Investors in accordance with the Plan. By Order entered December 7, 2016, the Court appointed Miller Kaplan Arase LLP as the Tax Administrator to fulfill the tax obligations of the Distribution Fund, and authorized the SEC to pay tax obligations and tax administration fees and expenses from the Distribution Fund without further Order of the Court. Dkt. No. 210. On January 13, 2018, the Court appointed Analytics Consulting LLC to serve as the distribution agent of the Distribution Fund (the "Distribution Agent"), pursuant to the terms of a distribution plan to be approved by the Court. Dkt. No. 216.

II. THE PROPOSED DISTRIBUTION

A. The Plan

The Plan proposes a *pro rata* distribution of the Net Distribution Fund to Eligible Investors based on their "Net Loss Amount," defined as the difference between the Administrative Fees that they paid and the amount in excess of their Investments that they received from SunTrust or otherwise (the "Administrative Fee Offset"). Plan ¶ 13. For example, in a hypothetical pool of two Investors, each of whom made one Investment, their respective *pro rata* apportionment of the fund would be determined as follows:

¹ Capitalized terms in this memorandum that are not defined herein are as defined in the Plan.

	Investor 1	Investor 2
Administrative Fees Paid	\$41,500	\$41,500
Amount Received from SunTrust	\$500,000	\$510,000
Administrative Fee Offset	0	\$10,000
Net Loss Amount	\$41,500	\$31,500
Pro Rata Share of Fund	57%	43%

Investors have been identified from the records obtained by the SEC in connection with the investigation and litigation of this action and, accordingly, the Plan does not include a claims process. Investors will, however, be provided with an opportunity, through the Plan Notice process, to dispute the Distribution Agent’s determination of eligibility for a distribution under the Plan, as well as its preliminary calculation of that Investor’s Administrative Fees and Administrative Fee Offset. Plan ¶¶ 18, 22. Moreover, Investors will have access to the Distribution Agent through both a toll-free telephone line number and a Distribution Fund website, both available in both English and Chinese. Plan ¶¶ 14-16.

After completion of the dispute process, the Distribution Agent will compile a final payee list that includes the name, address, and Distribution Payment of each finally determined Eligible Investor. At that time, the SEC staff will move the Court for an Order directing the SEC to disburse the Net Distribution Fund to an escrow account established by the Distribution Agent at a U.S. commercial bank (the “Escrow Account”). Plan ¶¶ 32-33. The Net Distribution Fund will be maintained in the Escrow Account, separate from other assets of the bank, until the presentation of checks. Plan ¶ 28. Moreover, checks and electronic transfers issued against the Net Distribution Fund will be subject to “positive pay” controls, providing protection against

fraud. *Id.* Uncashed and/or undeliverable checks will be reissued if the Distribution Agent is able to contact the Eligible Investor or find, through reasonable efforts, a new address for that Eligible Investor. Plan ¶¶ 38-40.

III. THIS COURT SHOULD GRANT THE RELIEF REQUESTED

A district court has broad discretion in approving an SEC plan of distribution, and that determination is reviewed for abuse of discretion. *See SEC v. Quan*, 870 F.3d 754, 762 (8th Cir. 2017); *SEC v. Malek*, 397 Fed. Appx. 711, 715 (2d Cir. 2010), *citing SEC v. Loewenson*, 290 F.3d 80, 87 (2d Cir. 2002); *WorldCom, Inc. v. SEC*, 467 F.3d 73, 84 (2d Cir. 2006). *See also SEC v. ISC, Inc.*, Civ. Act. No. 15-45 (JDP), 2016 WL 6124499, *3, 2016 U.S. Dist. LEXIS 145349, *8 (W.D. Wis. Oct. 20, 2016) (Courts have broad discretion in supervising an equitable distribution of assets in SEC enforcement actions). The job of the district court is to ensure that a proposed plan of distribution is fair and reasonable. *See Quan*, 870 F.3d at 762; *SEC v. J. P. Morgan Sec. LLC*, 266 F. Supp. 3d 225, 227, 230 (D.D.C. Jul. 20, 2017); *SEC v. CR Intrinsic Investors, LLC*, 164 F. Supp. 3d 433, 435 (S.D.N.Y. 2016); *WorldCom*, 467 F.3d at 83-85 (because the SEC is fulfilling a statutory role in determining how to distribute recovered funds to investors, it is entitled to the deference of a “fair and reasonable” standard—that the plan fairly and reasonably distributes limited funds among the potential claimants); *ISC, Inc.*, 2016 WL 6124499, *3, 2016 U.S. Dist. LEXIS 145349, *8. *Cf. SEC v. Wealth Management LLC*, 628 F.3d 323, 333 (7th Cir. 2010) (in supervising an equitable receivership, the primary job of the district court is to ensure that the distribution plan is fair and reasonable).

The Plan proposes an equitable distribution of limited assets to Eligible Investors, provides an opportunity for all Investors to participate in the determination of eligibility and quantification of Net Loss Amount, protects assets, and requires the Distribution Agent to take

reasonable steps with respect to uncashed and undelivered checks to maximize the amount successfully distributed to Eligible Investors. First, because the amount available for distribution (approximately) \$1.47 million is far less than the (approximately) \$11.5 million in Administrative Fees that remain uncompensated in this case, the SEC proposes a *pro rata* distribution. Distribution of assets on a *pro rata* basis under these circumstances “ensures that investors with substantively similar claims to repayment receive proportionately equal distributions.” *Wealth Management*, 628 F.3d at 333 (and the cases cited therein). Moreover, although Investors are being identified without a claims process, Investors will have the opportunity to dispute the Distribution Agent’s determinations of eligibility, as well as the numbers underlying the calculation of Net Loss Amount, thereby giving Investors a voice in the process. Finally, the Plan includes mechanisms for the protection of the Distribution Fund, including the use of an Escrow Account and positive pay controls, and seeks to maximize the amount of money successfully distributed to Eligible Investors by providing for reasonable outreach efforts by the Distribution Agent on undelivered and uncashed checks. In sum, the Plan, as proposed, will fairly and reasonably distribute the limited funds to Eligible Investors and, accordingly, should be approved.

IV. CONCLUSION

For the reasons set forth above, the SEC respectfully requests that the Court grant the requested relief.

Dated: December 21, 2018

Respectfully submitted,

/s/ Michael Shueyee Lim
Michael Shueyee Lim
Securities and Exchange Commission
100 F Street, N.E., Mail Stop 5876
Washington, D.C. 20549-5631
Phone: (202) 551-4659

Fax: (202) 772-9363
E-mail: limm@sec.gov
Attorney for Plaintiff

Exhibit A: Proposed Plan

CERTIFICATE OF SERVICE

I hereby certify that on December 21, 2018, I caused the foregoing document to be electronically filed with the clerk of the court for the U.S. District Court, Northern District of Illinois, Eastern Division, 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.

/s/ Michael Shueyee Lim
Michael Shueyee Lim