

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION,	:	
	:	
<b>Plaintiff,</b>	:	
v.	:	Case No. 06 CV 2942 (RWS)
	:	
TYCO INTERNATIONAL, LTD.,	:	
	:	
<b>Defendant.</b>	:	
	:	

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**PLAINTIFF’S NOTICE OF MOTION, MOTION AND MEMORANDUM IN SUPPORT,  
FOR AN ORDER TO TRANSFER FUNDS  
TO THE FUND ADMINISTRATOR FOR DISBURSEMENT**

**NOTICE**

PLEASE TAKE NOTICE, that based upon the accompanying Affidavit of Stephen J. Cirami in Support of the Securities and Exchange Commission’s Motion for Distribution of Fair Fund executed on March 22, 2013, the Proposed Order submitted herewith, and all prior proceedings had herein, and pursuant to the Distribution Plan approved by this Court on November 24, 2010, Plaintiff Securities and Exchange Commission will move this Court, at a date and time to be determined by the Court, before the Honorable Robert W. Sweet, at the United States Courthouse for the Southern District of New York, 500 Pearl Street, New York, New York 10007, for an order:

1. Directing the Clerk of the Court to issue a check to the Fund Administrator, Garden City Group, Inc., from the Court Registry Investment System (“CRIS”) account number 06-cv-2942, under the case name designation “SEC v. Tyco International, Ltd.” for the entire amount on deposit in the CRIS, minus Court registry fees; and

2. Directing the Fund Administrator to:
  - a. Deposit these funds pursuant to Section 3.32 of the Distribution Plan;
  - b. Distribute these funds, less the \$150,000 held in reserve, to Eligible Claimants pursuant to the Final Payee List in accordance with the terms of the Distribution Plan; and
  - c. Pay any remaining taxes and Tax Administrator fees and expenses from these funds, upon written request by Commission staff, without further order from the Court.

### **MOTION**

In accordance with the Distribution Plan for the Tyco Fair Fund approved by this Court on November 24, 2010 (“Distribution Plan”), the Securities and Exchange Commission (“Commission”) respectfully requests that the Court enter an Order: 1) For the Clerk of the Court to transfer the entire amount on deposit with the Court Registry System (“CRIS”), minus Court registry fees, to The Garden City Group, Inc. (“Fund Administrator” or “GCG”); 2) For the Fund Administrator to deposit these funds in the Bank<sup>1</sup> pursuant to Section 3.32 of the Distribution Plan; 3) Authorizing the Fund Administrator to distribute these funds to Eligible Claimants pursuant to the Distribution Plan; and 4) Authorizing the Fund Administrator to pay remaining taxes and Tax Administrator fees and expenses from the funds it deposits in the Bank.

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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.

**MEMORANDUM**

**Procedural Background**

On April 17, 2006, the Commission filed its Complaint in this action. The Complaint alleged that from 1996 through 2002, Tyco engaged in various improper accounting practices that violated the federal securities laws by, among other things, overstating its reported financial results, improperly using reserve accounts to enhance and smooth reported financial results, engaging in improper acquisition accounting practices, and concealing from investors substantial amounts of senior executive compensation and a large number of related party transactions.

On May 1, 2006, this Court entered Final Judgment as to Defendant Tyco International, LTD. Pursuant to the Final Judgment, on or about May 10, 2006, the Defendant paid \$50,000,001.00 representing its obligation to pay disgorgement, penalties and prejudgment interest to the Clerk of this Court (the "Distribution Fund"). The Distribution Fund was deposited in an interest bearing account in the CRIS system under the case name designation "SEC v. Tyco International, Ltd, 06 CV 2942" ("Tyco CRIS Account").

The Commission subsequently filed a related case against three former Tyco officers and employees, alleging that they were involved in devising, implementing, or furthering certain of Tyco's improper accounting practices, including the Dealer Connection Fee transaction. *See SEC v. Richard D. Power, Edward Federman, and Richard J. "Skip" Heger*, No. 06-CV-15343 (RWS) (SDNY filed Dec. 21, 2006). Between 2006 and 2009, final judgments were entered against each of these defendants. Pursuant to the judgments, the defendants paid disgorgement and civil penalties totaling approximately \$3.6 million into the Tyco CRIS Account.

On August 5, 2009, the Commission moved the Court to create a Fair Fund under Section 308(a) of the Sarbanes-Oxley Act of 2002 for the purpose of distributing the money paid by Tyco and the three former Tyco officers. The Commission also requested that the Court appoint

GCG as the Fund Administrator. The Court granted the Commission's motion to establish the Fair Fund and appoint GCG as its Fund Administrator on August 19, 2009.

On October 28, 2010, the Commission filed a motion requesting the Court approve a distribution plan for the Tyco Fair Fund. The Court granted the motion and approved the Tyco Distribution Plan on November 24, 2010.

### **Disbursement of Fair Fund**

The current balance of the Fair Fund is approximately \$56.2 million and is held by the Court in an interest-bearing CRIS account. A reserve of \$150,000 is being held for anticipated future tax obligations of the Fair fund, the future fees and expenses of the Tax Administrator, post-judgment interest reserve,<sup>2</sup> and to accommodate any claim adjustments. After taking into consideration the amounts held in reserve, approximately \$56 million is available for distribution to Eligible Claimants.

Pursuant to the Distribution Plan, the Fund Administrator has prepared and submitted to the Commission a list of Eligible Claimants, the amount of the asserted claim of each Eligible Claimant, and the Approved Claim for each Eligible Claimant (the "Final Payee List").<sup>3</sup> Each Eligible Claimant will receive a *pro rata* share of the approximately \$56 million available for distribution, based upon the Eligible Loss Amount. The Fund Administrator has also submitted the Affidavit of Stephen J. Cirami in Support of the Securities and Exchange Commission's Motion for Distribution of Fair Fund, which provides a detailed explanation of the procedures the Fund Administrator used to develop the Final Payee List (the "Affidavit"), filed separately. The Final Payee List and the Affidavit have been reviewed by the undersigned Commission Counsel who has no objections.

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<sup>2</sup> Defendant Richard D. Power, paid \$3,132.88 in post-judgment interest. Pursuant to 31 U.S.C. 3302(b), this amount will be paid to the U.S. Treasury in addition to any final residual of the fund.

<sup>3</sup> The Final Payee List is over 900 pages long and will be provided to the Court upon request under seal.

**WHEREFORE**, for all the foregoing reasons, the Commission respectfully requests that this Court enter the proposed Order and grant such other relief as it deems just and proper.

Dated: April 18, 2013

Respectfully submitted,

/s/ Nichola L. Timmons  
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