

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

SECURITIES AND EXCHANGE)
 COMMISSION)
)
 Plaintiff,)
)
 v.)
)
 WESTPORT CAPITAL MARKETS,)
 LLC, AND CHRISTOPHER E.)
 MCCLURE,)
)
 Defendants.)

Case No. 3:17-cv-2064-JAM

**PLAINTIFF’S MOTION FOR AN ORDER APPOINTING A
TAX ADMINISTRATOR AND AUTHORIZING THE SEC TO APPROVE PAYMENT
OF FUTURE TAX OBLIGATIONS AND TAX RELATED FEES AND EXPENSES
WITHOUT FURTHER COURT ORDER**

Plaintiff Securities and Exchange Commission (the “SEC”) respectfully moves this Court for an Order with respect to funds under the Court’s jurisdiction in this case: (i) appointing Heffler, Radetich & Saitta LLP (“HRS”), a certified public accounting firm with an office in Philadelphia, PA, as Tax Administrator to execute all income tax reporting requirements; and (ii) authorizing the SEC to approve payment of future tax obligations, and related fees and expenses of the Tax Administrator, without further Court Order. The SEC intends to apply to the Court for an Order approving a distribution of collected funds, and the appointment of the Tax Administrator is necessary to ensure that the funds are maintained and distributed in compliance with federal and state tax laws.

Background

1. On December 11, 2017, the SEC filed a Complaint against Westport Capital Markets, LLC (“Westport”), and Christopher E. McClure (“McClure,” and collectively with Westport, the “Defendants”). The SEC alleged that Westport and McClure were investment advisers who had a fiduciary duty to their investment advisory clients and were obligated to manage their clients’ investments in the clients’ best interests. (ECF No. 1) The SEC alleged that, instead, McClure, through his firm Westport, defrauded his clients over multiple years by regularly misusing client accounts to enrich himself. (ECF Nos. 1, 47-1).

2. In particular, the SEC alleged that, beginning in 2011 and lasting into mid-2015, Westport, acting through McClure, repeatedly bought newly issued securities from underwriters at the discounted price paid by securities dealers, and then turned around and sold them from his firm’s account to clients at a higher price, pocketing the difference. (ECF No. 47-1). The SEC further alleged that Westport and McClure received ongoing 12b-1 fees from client mutual fund holdings, which reduced client mutual fund holdings and were paid to Westport because of its role as broker-dealer.

3. The SEC alleged that the Defendants’ failure to disclose to clients their financial interest in recommending securities and managing client accounts violated Sections 206(1) and (2) of the Investment Advisers Act of 1940 (the “Advisers Act”), 15 U.S.C. §§ 80b-6(1), (2); their failure to obtain consent from their clients for Westport to act as principal in connection with certain transactions directly and indirectly violated Section 206(3) of the Advisers Act, 15 U.S.C. § 80b-6(3); and their false claim that Westport did not engage in principal transactions and failure to disclose conflicts relating to 12b-1 fees violated Section 207 of the Advisers Act, 15 U.S.C. § 80b-7. (ECF Nos. 1, 47-1).

4. On July 6, 2021, the Court entered final judgments against the Defendants (the “Final Judgments”) finding them jointly and severally liable for disgorgement and prejudgment interest of \$820,761.00, and ordering Westport and McClure to pay civil penalties of \$500,000 and \$200,000, respectively. (ECF Nos. 186-1, 186-2) The Final Judgments provide that the SEC may propose a plan to distribute collected funds subject to the Court’s approval. *Id.*

5. To date, the SEC holds approximately \$121,000 collected from the Defendants pursuant to the Final Judgments (the “Distribution Fund”). The money is in an SEC-designated account with the United States Treasury’s Bureau of Fiscal Service and any accrued interest and earnings will be added to the Distribution Fund. The Distribution Fund will be distributed to harmed investors pursuant to a distribution plan to be approved by this Court. Any additional collections will be added to the Distribution Fund.

Appointment of a Tax Administrator

6. The Distribution Fund is 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. A Tax Administrator, on behalf of the Distribution Fund, should be appointed and authorized to take all necessary steps to enable the Distribution Fund to obtain and maintain the status of a taxable QSF. The Tax Administrator will cause the Distribution Fund to pay tax obligations in a manner consistent with treatment of the Distribution Fund as a QSF, including all required periodic reporting. The reasonable costs, fees, and other expenses incurred in the performance of the Tax Administrator’s duties would be paid by the Distribution Fund in accordance with the 2022-2024 Omnibus Letter agreement between the SEC and the Tax Administrator.¹

¹ See Omnibus Order Directing the Engagement of Two Tax Administrators for Appointment on a Case-

7. The SEC recommends the appointment of HRS as Tax Administrator for the QSF. HRS is experienced in the taxation of QSFs and has agreed to reasonable fees for its services. In summary, the current agreement with HRS provides for the provision of the following services for a fixed fee of \$2,000, or \$900 if the QSF holds \$120,000 or less or is opened and closed in the same year:

- (a) obtain a federal employer tax identification number for each QSF;
- (b) prepare and file federal and state income tax returns, as required;
- (c) when required, calculate quarterly estimated tax payments, and provide information to the SEC so that payments may be made timely;
- (d) make arrangements with the SEC staff to pay the tax liabilities of the QSF;
- (e) calculate and recommend retention of a reserve for penalties and interest to be assessed as a result of any late filing of tax returns and/or late payment of taxes;
- (f) determine and comply with information reporting obligations of the QSF for payments to vendors; and
- (g) all administrative tasks necessary to the foregoing services.

Additional tax compliance services would be provided at the SEC's request and billed in accordance with HRS's agreement with the SEC.

8. HRS has served as a tax administrator in numerous cases involving IRC §468B(g). The SEC staff respectfully requests that the Court appoint HRS as Tax Administrator to execute all income tax reporting requirements, including the preparation and filing of tax returns, with respect to the Distribution Fund under this Court's jurisdiction.

by-Case Basis in Administrative Proceedings that Establish Distribution Funds, Exchange Act Rel. No. 94845 (May 4, 2022).

**Authorization to Pay Future Tax Obligations and
Tax Administrator Fees and Expenses**

9. 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 SEC further requests that SEC staff be authorized to approve and arrange payment of all future tax obligations and Tax Administrator fees and expenses from the Distribution Fund without further Court approval. The SEC staff follows a rigorous process for reviewing and approving invoices before payment is made. The SEC's Office of Distributions requires and reviews, in a multi-step process, detailed invoices from the Tax Administrator that describe the work performed, the billing rate, and the time expended on each task. If the Court authorizes the SEC staff to approve future invoices for payment without further order, the SEC staff will use its expertise in distributions and knowledge of this specific distribution to review all proposed charges and approve only appropriate and properly documented taxes, fees, and expenses for payment. Authorizing such approval ensures timely and efficient payment of taxes, fees, and expenses, reducing the risk of late tax payments and penalties. All tax payments and tax administration fees will be reported to this Court in the final accounting of the Distribution Fund once all court-authorized distributions are completed.

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

Respectfully submitted,

/s/Catherine E. Pappas
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Dated: June 29, 2022

CERTIFICATE OF SERVICE

I hereby certify that on July 29, 2022, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF and accordingly, the document will be sent electronically to all participants registered to receive electronic notice in this case.

/s/ Catherine E. Pappas

Catherine E. Pappas