

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

06 Civ. 6153 (LDW / ETB)

Plaintiff,

- against -

SPIRO GERMENIS, ORACLE SERVICES INC., and
ORACLE EVOLUTION, LLC,

Defendants,

ORACLE E FUND, LP, ORACLE J FUND, LP, and
ORACLE EVOLUTION CAPITAL, LLC,

Relief Defendants.

[PROPOSED] DISTRIBUTION PLAN

I. INTRODUCTION

1. This Distribution Plan sets forth the method and procedures for distributing the Distribution Fund in the above-captioned action. Pursuant to the Amended Final Judgment entered by the Court on October 2, 2008, and the Order Approving Distribution Plan, Appointing Fund Administrator, and Directing Distribution, the amounts paid in disgorgement, prejudgment interest, and any accumulated interest earned on such amounts, less appropriate expenses, may be distributed in accordance with this plan.

II. BACKGROUND

A. Summary

2. The Commission brought this action on November 16, 2006, against the defendants Spiro Germenis (“Germenis”), Oracle Services Inc. (“Services”), and Oracle Evolution, LLC (“Evolution”) (collectively the “Defendants”) and relief defendants Oracle E

Fund, L.P. (“E Fund”), Oracle J Fund, LP (“J Fund”), and Oracle Evolution Capital, LLC (“Capital”) (collectively the “Relief Defendants”). Complaint (Dkt. No. 1). In the Complaint, the Commission alleged that the Defendants violated various provisions of the federal securities laws: (1) Section 17(a) of the Securities Act of 1933 (“Securities Act”), 15 U.S.C. § 77q(a); (2) Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5; and (3) Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 (“Advisers Act”), 15 U.S.C. §§ 80b-6(1) and 80b-6(2).

3. On October 2, 2008, the Court entered an Amended Final Judgment by Default (the “Final Judgment”) (Dkt. No. 58). The Final Judgment, in part, ordered the Defendants and the Relief Defendants, jointly and severally, to disgorge the amount of \$6,500,000 in ill-gotten gains and \$1,205,249.83 in prejudgment interest, for a total of \$7,705,249.83. The Final Judgment further required that these amounts be deposited in the Court Registry Investment System (“CRIS”). The Final Judgment further imposed a civil penalty of \$480,000 each on Germenis and Evolution, and a civil penalty of \$240,000 on Services, which civil penalties were also to be deposited in the CRIS.

4. To date, the Commission has collected approximately \$229,000 from the Defendants and the Relief Defendants which has been deposited in the CRIS (the “Fund”). The Commission is unlikely to collect any additional amounts from the Defendants or from the Relief Defendants. The current balance in the CRIS account, including interest earned, less payments to the Tax Administrator, is approximately \$242,500. The Commission will reserve \$5,000 from this amount for future payments to the Tax Administrator.

5. This document serves as the proposed Plan of Distribution (“Distribution Plan” or the “Plan”) for the Fund. The Fund is established to provide for the ultimate distribution of all

monies collected to investors injured by the fraudulent acts of the Defendants. The Distribution Plan is subject to the approval of the Court.

B. Nature of the Conduct

6. In October 2006, Germenis, the principal of Services, a New York State registered investment advisor, disappeared. The Commission's investigation revealed that, over a period of years, Germenis had raised at least \$9,083,295 from at least 27 investors. Germenis accepted investments in the E Fund, and the J Fund, and managed individual accounts for clients through Services. Twenty-seven known investors suffered losses of approximately \$6.5 million from amounts they handed over to the Defendants and/or Relief Defendants for investment purposes. The Commission has recovered \$229,000 from accounts formerly controlled by the Defendants and the Relief Defendants.

II. DEFINED TERMS.

7. *Commission.* "Commission" means the United States Securities and Exchange Commission.

8. *Court.* "Court" means the United States District Court for the Eastern District of New York.

9. *Distribution Fund.* "Distribution Fund" means all amounts paid into any court account established in this action, including without limitation, the CRIS account, including monies recovered from accounts that Germenis controlled, those monies being credited towards disgorgement payments ordered by the Court, and any accumulated interest earned on such amounts, less costs, fees and other expenses such as tax payments and CRIS fees incurred or to be incurred.

10. *Distribution Plan.* “Distribution Plan” means the Distribution Plan as approved by the Court.

11. *Eligible Investor.* Those investors who invested in the E Fund or J Fund or in individual accounts managed by Germenis, as described in the Complaint (individually, “Eligible Investor,” and collectively, “Eligible Investors”).

12. *Fund Administrator.* Todd Brody, Senior Trial Counsel in the Commission’s New York Regional Office, is proposed to act as the Fund Administrator for the Plan (the “Fund Administrator”). 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 Fund. In accordance with Rule 1105(c), no bond is required since the Fund Administrator is a Commission employee.

13. *Tax Administrator.* The Court has appointed Damasco & Associates as the Tax Administrator (“Tax Administrator”) of the Fund. (Dkt. No. 65, granting Motion to Appoint Tax Administrator (Dkt. No. 64) on February 23, 2010). The Fund Administrator will ensure that all required information shall be made available to the Tax Administrator and will cooperate with the Tax Administrator in providing information necessary to accomplish the income tax compliance, ruling, and advice work assigned to the Tax Administrator by the Commission. The Tax Administrator shall be compensated by the Fund.

III. DISTRIBUTION PROCESS

14. *No Claims-Made Process.* This Fund is not being distributed according to a claims-made process, so the procedures for providing notice and for making and approving claims are not applicable. However, any investor other than the 27 known investors may request that the Fund Administrator include that investor as an Eligible Investor in any distribution

before this Plan is approved by the Court. The determination as to whether an investor should be included as an Eligible Investor is in the discretion of the Fund Administrator, subject to approval by the Court.

15. *Methodology for Determining Distribution Amounts.* The Eligible Investors claims and the proposed amount to be distributed to each Eligible Investor are shown on Schedule A annexed to this Plan. (The name, street address, and other personal identification information concerning each Eligible Investor have been redacted.) The proposed amount to be distributed to the Eligible Investors as a class has been determined by deducting from the amount now in the CRIS account the amounts paid or expected to be paid on account of taxes on the Fund or to the Tax Administrator as its fees and expenses. The proposed amount to be distributed to each Eligible Investor has been determined by applying a pro rata percentage to the amount available for distribution based on the amount of each Eligible Investor's net losses compared to the amount of all Eligible Investors' net losses. All distribution amounts have been rounded down to the next \$10. In the event that additional investors are deemed to be Eligible Investors by the Fund Administrator, or in the event that the amount of the claim of any Eligible Investor is adjusted by the Fund Administrator, the Fund Administrator will notify the Court.

16. *Procedures for Locating and Notifying Eligible Investors*

(a) On the basis of information obtained by the staff of the Commission, the Fund Administrator has identified the Eligible Investors. Within thirty (30) days of the approval of this Plan, the Fund Administrator will send each Eligible Investor a notice by certified mail, return receipt requested regarding the Court's approval of the Plan, a statement characterizing the distribution, a description of the tax information reporting and other related tax matters, and the procedure for distribution. The Fund Administrator will request information from each Eligible

Investor sufficient to accomplish the distribution in accordance with applicable tax requirements and in consultation with the Tax Administrator.

(b) If the certified mailing is returned as undelivered or if an Eligible Investor fails to respond within thirty (30) days from the mailing of the notice, the Fund Administrator shall then attempt to locate the Eligible Investor and to provide notice to the Eligible Investor. Such attempts shall include making a search for any more current address for the Eligible Investor, sending notice to the Eligible Investor by first class mail, return receipt requested, and, if known, making an attempt to contact the Eligible Investor by telephone or through e-mail. The Fund Administrator shall make such attempts within sixty (60) days from the initial mailing of the notice.

(c) If an Eligible Investor fails to respond to the Fund Administrator's contact attempts as described in this paragraph within ninety (90) days from the initial mailing of the notice, the allocated distribution amount to such Eligible Investor shall be considered an undistributed asset.

17. *Procedure for Distribution of the Fund.* The Fund Administrator shall within one hundred twenty (120) days from the approval of the Distribution Plan provide information to the Court for the distribution of the amounts held in the CRIS to those Eligible Investors who have responded to the Fund Administrator as provided in paragraph 18.

IV. ADMINISTRATIVE PROVISIONS

18. *Qualified Settlement Fund.* The Distribution Fund constitutes a Qualified Settlement Fund ("QSF") under Section 468B(g) of the Internal Revenue Code, 26 U.S.C. §468B(g), and related regulations, 26 C.F.R. §§1.468B-1 through 1.468B-5.

19. *Expenses of Administration.* Fees and other expenses of administering the Distribution Plan shall be paid first from the interest earned in the Distribution Fund, and, if the interest is not sufficient, then from the corpus.

20. *Information Mailing to Accompany Payments.* All payments shall be preceded or accompanied by a communication that includes, as appropriate: (a) a statement characterizing the distribution; (b) a description of the tax information reporting and other related tax matters; (c) a statement that checks will be void after six months; and (d) the names of the Fund Administrator and appropriate Commission staff to contact in the event of any questions regarding the distribution. Distribution checks, on their face, or in the accompanying mailing will clearly indicate that the money is being distributed from the Distribution Fund established by the Court.

21. *Accountings.* The Fund Administrator will submit a final accounting for approval of the Court prior to termination of the Distribution Fund and discharge of the Fund Administrator. Since the Distribution Fund is being held in the CRIS, and a Tax Administrator has been appointed, no interim accountings will be conducted.

22. *Amendment.* The Fund Administrator may move the Court to amend the Distribution Plan on notice to the Eligible Investors.

23. *Termination of the Fund and Undistributed Amounts.* Upon distribution of the funds, and after allowing for the appropriate time for any distributions in the form of a paper check, the Fund Administrator shall make arrangements for the final payment of taxes and Tax Administrator fees and shall make a final accounting to the Court. The Distribution Fund shall be eligible for termination after all of the following have occurred: (1) the final accounting by the Fund Administrator has been submitted and approved by the Court, (2) all taxes and fees have been paid and (3) all remaining funds or any residual have been transferred to the

