

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

MAY 01 2006

NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

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 SECURITIES AND EXCHANGE COMMISSION,)
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 Plaintiff,)
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 CIBC MELLON TRUST COMPANY,)
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 Defendant.)
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Civil Action No. 1:05CV333 (PLF)

~~PROPOSED~~ **ORDER APPOINTING DISTRIBUTION
AGENT AND APPROVAL OF A DISTRIBUTION PLAN**

On application of Plaintiff United States Securities and Exchange Commission

("Commission"), it is hereby:

ORDERED that Richard Weissman is appointed Distribution Agent (the "Distribution Agent") in this matter, with the particular powers and duties set forth below, over the distribution fund arising out the related matters of *SEC v. CIBC Mellon Trust Company*, 1:05CV333 (PLF); *SEC v. Daryl Desjardins*, 1:03CV1992 (PLF); *SEC v. Sean Nevett*, 1:03CV1994 (PLF); and *SEC v. Warren J. Soloski*, 1:03CV1993 (PLF) (the "Fund");

ORDERED that the Distribution Agent shall have the following powers and duties:

1. With respect to any funds placed in control of the Distribution Agent, the Distribution Agent shall invest and reinvest the Fund with a view first toward preserving the principal and second toward maximizing investment return. Accordingly, the Distribution Agent shall invest and reinvest the Fund only in the following investments: (a) direct obligations of the United States; (b) obligations whose principal and interest are unconditionally guaranteed by the

United States; and/or (3) money market funds authorized to invest and reinvest solely in direct obligations of the United States. The Distribution Agent, pending investment of any portion of the Fund in the manner identified above, shall place the Fund, or any portion thereof, in a custodial account established by the Distribution Agent at a federally insured bank.

2. The Distribution Agent may retain attorneys, accountants and other persons to assist in carrying out this Order. The Distribution Agent shall, at such times as may be appropriate, submit bills for the Distribution Agent's own services, and the services of persons the Distribution Agent retains, plus expenses, to the Court for approval before payment. The Distribution Agent, and his employees, will be entitled to seek compensation at the following rates: (i) the Distribution Agent, \$200 per hour for duties performed as Distribution Agent or \$295 per hour when rendering legal services on behalf of the Fund or the distribution of the proceeds of the Fund; (ii) administrative employees, \$65-\$95 per hour; (iii) bookkeeping employees, \$55-\$95 per hour; and (iv) clerical employees, \$30-\$65 per hour. Compensation of other professionals, if any, that the Distribution Agent should require to retain will be subject to approval of a fee application to the Court.

3. The Distribution Agent shall, as provided below, take appropriate and reasonable steps to distribute the Fund to persons who purchased shares of Pay Pop, Inc. during the relevant time period alleged in the complaint in this matter and in the matter captioned *SEC v. Desjardins, et al.*, 1:03CV1992 (PLF). Where the Distribution Agent deems necessary, after consultation with the Commission, the Distribution Agent may modify the distribution procedure to effectuate the general purposes of this Order.

a. The Distribution Agent shall, with the assistance of the Commission staff, review a spreadsheet created by the Commission from business records

provided to the Commission during its investigation of this matter to identify potential claimants for the Fund (i.e., investors in Pay Pop) ("Claimants"). The Distribution Agent shall attempt to verify the contact information for those Claimants whose contact information that Commission's staff has been unable to verify to date.

- b. The Distribution Agent shall provide the potential claimants who have been individually identified with written notice by certified mail of the right to submit a claim. The notice shall include a copy of this order, a proof of claim form prepared by the Distribution Agent and of the deadline for the filing of claims.
- c. In addition, the Distribution Agent, in conjunction with the staff of the Commission, shall publish notice to potential claimants through the Commission's website at www.sec.gov. The Notice shall include the contact information of the Distribution Agent, a copy of this order, a proof of claim form, and the deadline for the filing of claims.
- d. All claims submitted to the Distribution Agent must be post marked within 180 days from the date of publication of notice on the Commission's website. The publication on the Commission website will include a bar date by which a proof of claim must be received. Any claim postmarked after the bar date may be rejected by the Distribution Agent. Each claimant must submit a proof of claim form prepared by the Distribution Agent, and each claimant must certify the existence of and amount of any such claim under

penalty of perjury and submit any records that the Distribution Agent may require to substantiate the existence or amount of said claim.

- e. The Distribution Agent shall determine the amount to be paid to each Claimant by comparing the amount each Claimant invested with the total amount invested by all of the Claimants, and then calculating each Claimant's share of the Fund relative to other Claimants' shares. The Distribution Agent shall not make distributions to any Claimant that was a defendant, a nominee of a defendant or otherwise affiliated with a defendant, in the proceedings captioned *SEC v. CIBC Mellon Trust Company*, 1:05CV333 (PLF); *SEC v. Daryl Desjardins*, 1:03CV1992 (PLF); *SEC v. Sean Nevett*, 1:03CV1994 (PLF); and *SEC v. Warren J. Soloski*, 1:03CV1993 (PLF) .
- f. The Distribution Agent shall notify all Claimants as to the amount that has been calculated to be that Claimant's pro rata share of the Fund.
- g. Where the Distribution Agent denies a claim, the Distribution Agent shall so notify the Claimant and shall advise the Claimant that he or she has 15 days to request reconsideration and provide additional documentation for the claim.
- h. Except as otherwise provided herein, the filing of a proof of claim with the Distribution Agent shall constitute consent to and a grant by the claimant of jurisdiction to the Court supervising the distribution of the Fund to adjudicated said claims and all aspects of the claims process.

i. Further, by filing a proof of claim, each claimant also shall be consenting as follows:

- (I) Any disapproval or dispute by the Distribution Agent of a claim shall be submitted by the Distribution Agent to the Court for review and approval or disapproval, upon noticed motion, with notice to each such disapproved claimant. The failure of claimant to submit to the Distribution Agent sufficient proof of claim shall constitute grounds upon which the Distribution Agent may base his denial or objection to the proof of claim, independently from an untimely filed claim.
- (ii) Any opposition by a Claimant to the Distribution Agent's denial or objection to a claim shall be filed and served by the claimant on the Distribution Agent and counsel for the Commission, as required by the Federal Rules of Civil Procedure and the local rules of this Court, and accompanied by any evidence to be presented by the claimant, which shall be submitted by written declaration under penalty of perjury as to the accuracy, veracity and authenticity of such evidence. Any reply by the Distribution Agent and/or the Commission shall be in accordance with said Federal and local rules of procedure.
- (iii) All of the claims and distribution issues shall be heard and adjudicated by the Court without a jury.

- h. The Distribution Agent shall set aside a portion of the Fund to pay taxes on its income and the fees and expenses incurred or likely to be incurred in carrying out this Order (the "Reserves").
- i. The Distribution Agent shall then allocate the balance of the Fund, minus Reserves, among eligible Claimants pro rata, based on the amounts of their claims as allowed by the Distribution Agent.
- j. The Distribution Agent shall, prior to paying any claims, file an application with the Court seeking express approval of his proposed payment plan ("Plan").
- k. Upon Court approval of the Plan, the Distribution Agent shall pay all outstanding taxes payable by the Fund, pay all remaining fees and expenses incurred in carrying out this Order, and distribute the Fund according to the allocations provided for above.
- l. If any money remains in the Fund after all distributions to Claimants and all payments of taxes, fees and expenses have been made, the Distribution Agent shall pay the balance remaining in the Fund (including any distribution checks that remain uncashed for more than six months) to the United States Treasury.

4. The Distribution Agent shall give the Commission at least 15 days notice of all applications to the Court under this Order and shall regularly report to the Commission on the status of the Distribution Agent's activities in executing this Order.

5. The Distribution Agent and his or her designees, agents, and assistants are excused from any requirement to post a bond or other undertaking and shall not be liable to any person for

their actions hereunder, except on a finding of malfeasance, reckless disregard of duty, or gross negligence.

\$ 111,720

ORDERED, the Clerk of the Court is directed to disburse from the CRIS account for the matter captioned *SEC v. CIBC Mellon Trust Company*, 1:05CV333 (PLF) the amount of \$ 111,720 to cover administrative fees and expenses necessary for the Distribution Agent to carry out the claims processing under the Plan set forth in this Order (the "Administrative Disbursal"). The Distribution Agent is authorized to pay administrative expenses from the Administrative Disbursal as incurred. Administrative fees may be paid monthly following the Distribution Agent's submission of a monthly report to the Commission and the Court of the administrative fees and expenses incurred by and paid from, or to be paid from the Administrative Disbursal. Any payments from the Administrative Disbursal shall be expressly subject to review and confirmation by the Court. In the event the incurred administrative fees and expenses exceed the balance of the Administrative Disbursal then held by the Distribution Agent, an application may be made to the Court for replenishment thereof. If, in the Court's judgment, any of the administrative fees and expenses paid from the Administrative Disbursal were not fair and reasonable, the Court may require that such amounts be offset against administrative fees and expenses subsequently incurred.

ORDERED, all professional fees incurred by, or at the direction of the Distribution Agent, including his professional fees herein, shall require application to the Court for approval. Interim applications may be made from time to time as warranted.

DATED: May 1, 2006


HON. PAUL L. FRIEDMAN
UNITED STATES DISTRICT JUDGE