

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION, )  
)  
Plaintiff, )  
)  
v. )  
)  
VITESSE SEMICONDUCTOR CORPORATION, )  
)  
Defendant. )

No. 10 Civ. 9239 (JSR)

**ORDER TO ESTABLISH A FAIR FUND, APPOINT A TAX ADMINISTRATOR AND  
APPOINT A DISTRIBUTION AGENT**

The Court, having reviewed the United States Securities and Exchange Commission’s (“SEC” or “Commission”) Notice of Motion, Motion to Establish a Fair Fund, Appoint Distribution Agent, Appoint Tax Administrator, and Memorandum of Law in Support (the “Motion”) and for good cause shown,

**IT IS HEREBY ORDERED:**

**FAIR FUND**

A Fair Fund is established pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 [15 U.S.C. § 7246(a)], from the funds paid to the SEC under the case name designation “SEC v. Vitesse Semiconductor Corporation” pursuant to the Final Judgment entered in this case (the “Fair Fund”).

**DISTRIBUTION AGENT**

1. Berdon Claims Administration LLC (“Berdon”) is appointed to serve as the Distribution Agent for the Fair Fund to assist in overseeing the administration and the distribution of the Fair Fund in coordination with Commission staff, pursuant to the terms of a Distribution Plan to be approved by this Court.
2. Berdon shall perform services described in the Motion in accordance with the pricing schedule and cost proposals submitted to Commission staff. Such services may include, but are not limited to, developing a distribution plan, determining the identities of harmed investors and amounts lost, fielding inquiries from investors and managing the ultimate distribution of the Fair Fund.
3. Berdon will coordinate with the Court appointed Tax Administrator, Damasco, to ensure that the Fair Fund complies with all related legal and regulatory requirements, including but not limited to satisfying any reporting or withholding requirements imposed on disbursements from the QSF.
4. The Distribution Agent will provide to Commission staff, who will file with the Court, a quarterly status report within forty-five (45) days of Court approval of the Distribution Plan, and will provide additional reports and quarterly account statements within thirty (30) days after the end of every quarter thereafter. Once the monies in the Fair Fund have been transferred to the Escrow Account, a quarterly account statement, in a format to be provided by the Commission staff, shall be submitted with the status report by the Distribution Agent. The status report and quarterly account statement will inform the Court and the staff of the Commission of the activities and status of the Fair

Fund during the relevant reporting period, and once funds are transferred to the Distribution Agent will specify, at a minimum:

- a. The location of the account(s) comprising the Fair Fund; and
  - b. An interim accounting of all monies in the Fair Fund as of the most recent month-end, including the value of the account(s), all monies earned or received into the account(s), funds distributed to eligible claimants under the Distribution Plan, and any monies expended from the Fair Fund to satisfy any fees, costs, taxes and other expenses incurred in the implementation of the Distribution Plan.
5. The Distribution Agent will prepare a final report and final accounting, in a format to be provided by the Commission staff, when the Fair Fund administration is complete. In compiling the final accounting, the Distribution Agent will coordinate with the Court appointed Tax Administrator. The Commission staff will file the final report and final accounting with the Court.
6. Berdon will be entitled to reimbursement and compensation from the Fair Fund for the reasonable costs, fees, and other expenses incurred in the performance of its duties, in accordance with the cost proposals it has submitted to the Commission staff. Berdon will provide a copy of its invoice for review and approval by the Commission staff on a quarterly basis, which shall include supporting documentation to justify the expenses or services rendered. The Commission staff is authorized to review, approve and pay all future fees and expenses of the Distribution Agent without further order of the Court.
7. Berdon may be removed *sua sponte* at any time by the Court or upon motion of the Commission and replaced with a successor. In the event Berdon decides to resign, it will first give written notice to the Court and to the Commission's counsel of such

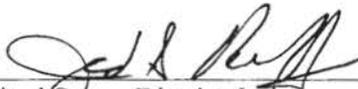
intention, and the resignation, if permitted, will not be effective until the Court appoints a successor.

### **TAX ADMINISTRATOR**

1. Damasco & Associates LLP (“Damasco”) is appointed as the Tax Administrator to execute all income tax reporting requirements, including the preparation and filing of tax returns, with respect to the Fair Fund.
2. Damasco shall be designated the Tax Administrator of the Fair Fund, a qualified settlement fund (“QSF”) pursuant to Section 468B(g) of the Internal Revenue Code (“IRC”), 26 U.S.C. § 468B(g) and related regulations, and shall satisfy the administrative requirements imposed by those regulations, including but not limited to (a) obtaining a taxpayer identification number, (b) filing applicable federal, state, and local tax returns and paying taxes reported thereon out of the Fair Fund, and (c) satisfying any information, reporting, or withholding requirements imposed on distributions from the Fair Fund. The Tax Administrator shall contemporaneously provide copies of all such filings to the Commission’s counsel of record.
3. The Tax Administrator shall, at such times as the Tax Administrator deems necessary to fulfill the tax obligations of the Fair Fund, submit a declaration of the amount of taxes due to Commission staff. Commission staff is authorized, after its review of supporting documentation, to approve and arrange payment of all tax obligations owed by the Fair Fund directly from the Fair Fund without further approval of this Court.
4. The Tax Administrator shall be entitled to charge reasonable fees for tax compliance services and related expenses in accordance with its agreement with the Commission. The Tax Administrator shall, at such times as the Tax Administrator deems appropriate,

submit a declaration of fees and expenses to Commission staff. Commission staff is authorized, after its review of supporting documentation, to approve and arrange payment of all fees and expenses owed by the Fair Fund directly from the Fair Fund without further approval of this Court.

1/8/16  
day of \_\_\_\_\_, 2015.

  
United States District Judge