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Subject: Activity in Case 3:23-cv-00125-OAW United States Securities and Exchange Commission v. Lee et al Order on Motion for Miscellaneous Relief
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U.S. District Court

District of Connecticut

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Case Name: United States Securities and Exchange Commission v. Lee et al

Case Number: [3:23-cv-00125-OAW](#)

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Docket Text:

ORDER granting [72] Plaintiff's Motion for an Order Appointing a Tax Administrator and Authorizing the SEC to Approve Payment of Tax Obligations Without Further Court Order. The Securities and Exchange Commission ("SEC") files this motion, seeking (1) to appoint a tax administrator for the Distribution Fund, and (2) to approve tax obligations (including fees and expenses for the Tax Administrator) and to arrange for their payment from the Distribution Fund, without additional approval from this court.

First, the court agrees with the SEC that the Distribution Fund is a Qualified Settlement Fund ("QSF"). "[A]n account is eligible as a QSF if it is established by order of the United States, subject to the continuing jurisdiction of the United States, established to resolve a claim for liability arising out of a violation of law, and segregated from the assets of the person who transferred the money into the account." *S.E.C. v. Gangavarapu*, No.1:09-cv-231, 2010 WL 3941429, at *1 (E.D. Tenn. Sept. 10, 2010) (citing to 26 C.F.R. § 1.468B-1(a), (c), (d)(1), and (g)). The Distribution Fund was established pursuant this court's (Arterton, J.) final judgments of default. See Order, ECF No. [57]; Final Judgment by Default, ECF No. 57-1. The Distribution Fund is held separately in

an account with the U.S. Department of Treasury and will be distributed to investors who were harmed through Defendants' unlawful conduct. See ECF No. [72].

Second, the court grants Plaintiff's motion to appoint tax administrator. In order to obtain and maintain its status as a taxable QSF, taxes must be paid from the Distribution Fund in compliance with the relevant provisions of the Internal Revenue Code. See 26 C.F.R. § 1.4687B-2(a). This court may designate a tax administrator for the purpose of ensuring compliance. See 26 C.F.R. § 1.468B-2(k)(3)(i); see also *Gangavarapu*, 2010 WL 3941429, at *1 (referring to the same authority to similarly designate a tax administrator). The SEC recommends the appointment of Miller Kaplan as the tax administrator for this purpose. The court grants the unopposed motion for such an appointment, noting Miller Kaplan's role in other, similar matters across various jurisdictions. See, e.g., *S.E.C. v. AR Cap., LLC*, No. 19 Civ. 6603 (AT), 2021 WL 1988084 (S.D.N.Y. May 18, 2021); *S.E.C. v. Blackbird Cap. Partners, LLC*, No. 2:16-cv-1199-TC, 2020 WL 4365539 (D. Utah July 30, 2020); *S.E.C. v. Clovis Oncology, Inc.*, No. 18-cv-2381-CMA, 2019 WL 13277297 (D. Colo. Dec. 2, 2019).

Finally, the court also grants the SEC's motion to approve payments of tax obligations, including fees and expenses for the Tax Administrator, from the Distribution Fund. Tax administrators are entitled to charge reasonable fees for tax compliance services and related expenses in accordance with any agreements with the SEC. See *S.E.C. v. Bear, Stearns & Co., Inc.*, 2005 WL 2108670, at *7 (S.D.N.Y. Sept. 2, 2005). Such fees may be taken from the QSF itself. See *AR Cap., LLC*, 2021 WL 1988084, at *19.

For the reasons stated above, the Commission's motion is granted. It is further ordered that:

- 1) Miller Kaplan shall be the Tax Administrator to execute all income tax reporting requirements, including the preparing and filing of tax returns, for the entirety of the Distribution Fund.
- 2) As the Tax Administrator, Miller Kaplan shall satisfy the administrative requirements as outlined in the Internal Revenue Code, see 26 U.S.C. § 468B(g), and related regulations, see 26 C.F.R. §§ 1.468B-1 to -5. Such requirements include but are 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 Distribution Fund, and (c) satisfying any information, reporting, or withholding requirements imposed on distributions from the Distribution Fund. Upon request, the Tax Administrator shall provide copies of any filings to the SEC's counsel of record.
- 3) The Tax Administrator shall, as necessary, submit requests to the SEC's counsel of record for payment from the Distribution Fund, any tax obligations of the Distribution Fund.
- 4) The Tax Administrator shall be entitled to charge reasonable fees for its services in accordance with its agreement with the SEC for the Tax Years 2022 through 2024. The Tax Administrator shall, as deemed necessary, submit a request to the SEC's counsel of record for payment of fees and expenses from

the Distribution Fund.

5) The SEC is authorized to approve and arrange payments of all tax obligations owed by the Distribution Fund and the fees and expenses of the Tax Administrator directly from the Distribution Fund without further approval from this court. All payments for taxes and the fees and expenses of the Tax Administrator shall be reported to the court in a separate filing which reflects the final accounting.

Signed by Judge Omar A. Williams on 01/25/2024. (Kim, Hyo June)