

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

WILLIAM J. BOWSER, et al.

Defendants.

Case No. 2:20-CV-918 TS

**PLAINTIFF’S MOTION AND
MEMORANDUM FOR AN
ORDER APPROVING A
DISTRIBUTION PLAN**

MOTION

Plaintiff United States Securities and Exchange Commission (the “SEC” or “Commission”) respectfully moves the Court to approve a Plan of Distribution (the “Plan”); and order such other relief as the Court may deem just and proper.

The court-appointed Distribution Agent, in consultation with the third-party administrator, Analytics, LLC (“Analytics”), third-party economic experts, Berkeley Research Group, LLC (“BRG”), and the Commission staff, has developed the proposed Plan and now moves the Court for approval of the Plan.

MEMORANDUM

I. Background

On December 30, 2020, the Commission filed a Complaint (Dkt. No. 1) against Defendants William J. Bowser (“Bowser”), Christopher J. Ashby (“Ashby”), Scott W. Beynon (“Beynon”), and Jordan S. Nelson (“Nelson”) (Collectively “Defendants”) alleging violations of federal securities laws in connection with an offering fraud related to Noah Corporation (“Noah”), the operator of commercial event centers, and Rockwell Debt Free Properties, Inc.

(“Rockwell”), a seller of securities in Noah. According to the Complaint, between January 2017 and February 2019, Defendants made material misrepresentations and omissions convincing investors to purchase over \$35.9 million in securities. The Commission charged Defendants variously, with violations of Sections 17(a)(1), (2) and (3) of the Securities Act of 1933 [15 U.S.C. § 77q(a)(1), (2) and (3)] and Section 10(b) and 15(a) of the Exchange Act of 1934 Act [15 U.S.C. § 78j(b) and § 78o(a)] and Rule 10b-5(a) and (c) thereunder [17 C.F.R. § 240.10b-5(a) and (c)].

On December 30, 2020, the Court entered final judgments against Defendants (the “Final Judgments”), ordering Bowser to pay a total of \$246,967.03 in disgorgement, prejudgment interest, and civil penalties; Ashby to pay a total of \$691,539.57 in disgorgement, prejudgment interest, and civil penalties; Beynon to pay a total of \$728,539.65 in disgorgement, prejudgment interest, and civil penalties; and Nelson to pay \$400,108.66 in disgorgement, prejudgment interest, and civil penalties. (Dkt. Nos. 7-10).

On November 22, 2021, the Court entered an Order appointing Miller Kaplan Arase, LLP as Tax Administrator and establishing a Fair Fund. (Dkt. No. 13). The Fair Fund currently consists of \$1,648,264.55 of the \$2,067,154.91 ordered by the Court. On August 17, 2023, the Court entered an Order appointing Adriene Mixon, a Commission employee with the position of Trial Counsel, as the Distribution Agent of the Fair Fund. (Dkt. No. 15).

The Fair Fund is being held in an SEC-designated interest-bearing account at the Bureau of Fiscal Service of the U.S. Treasury Department. Accrued interest has been and will continue to be added to the collected funds. The Final Judgments provide that the Commission may propose a plan to distribute the collected funds to harmed investors pursuant to a distribution plan to be approved by this Court.

II. The Court Should Approve the Distribution Plan

A. Applicable Standard

Nearly every plan to distribute funds obtained in a Commission enforcement action requires choices to be made regarding the allocation of funds between and among potential claimants within the parameters of the amounts recovered. In recognition of the difficulty of this task, Courts historically have given the Commission significant discretion to design and set the parameters of a distribution plan. *See SEC v. Wang*, 944 F.2d 80, 83–84 (2d Cir. 1991); *SEC v. Levine*, 881 F.2d 1165, 1182 (2d Cir. 1989). Courts have historically deferred to the Commission’s decision regarding whether and how to distribute disgorgement and prejudgment interest. *See SEC v. Fischbach Corp.*, 133 F.3d 170, 175 (2d Cir. 1997). The Court’s review of the proposed distribution plan focuses on whether the plan is fair and reasonable. *See Official Committee of Unsecured Creditors of WorldCom, Inc. v. SEC*, 467 F.3d 73, 81 (2d Cir. 2006) (citing *Wang*, 944 F.2d at 85 (“[u]nless the consent decree specifically provides otherwise[,] once the district court satisfies itself that the distribution of proceeds in a proposed SEC disgorgement plan is fair and reasonable, its review is at an end.”)). The Commission submits that the Distribution Plan for the Fair Fund constitutes a fair and reasonable allocation of the funds available for distribution and should be approved.

B. The Commission’s Distribution Plan Proposes a Fair and Reasonable Allocation of the Fair Fund

The Commission seeks approval of the Plan developed by the Distribution Agent, Analytics, BRG, and the Commission staff (attached hereto as Exhibit A) to distribute the funds collected from the Defendants, including any additional funds collected, plus any accrued

interest, less taxes and administrative costs (the “Net Available Fair Fund”). The Distribution Plan seeks to compensate investors who suffered a loss, as a result of the Defendants’ conduct alleged in the Complaint, as calculated using the methodology detailed in the Plan of Allocation, attached to the Distribution Plan as Exhibit A, in connection with their investments in Noah between January 2017 and February 2019. All Eligible Claimants¹ whose distribution amount is equal to or greater than \$10.00, as calculated in accordance with the Plan of Allocation, will be deemed a Payee and receive a Distribution Payment. The Distribution Plan contemplates that if the Net Available Fair Fund is less than the investment losses of all Eligible Claimants, it will be distributed on a *pro rata* basis.

CONCLUSION

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

Dated: February 28, 2025

Respectfully Submitted,

s/Adriene Mixon
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¹ All capitalized terms used herein but not defined shall have the same meanings ascribed to them in the Distribution Plan.

CERTIFICATE OF SERVICE

I, Adriene Mixon, Counsel for Plaintiff, Securities and Exchange Commission, hereby certify that on this 28th day of February 2025, I caused 4 copies of the Motion and Memorandum for an Order to Approve a Distribution Plan and its accompanying Proposed Order to be served by 1st class mail on the following counsel:

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Respectfully Submitted,
s/ Adriene Mixon