

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
CASE NO. 19-24713-CV-WILLIAMS

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

NEIL BURKHOLZ, *et al.*,

Defendants.

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**ORDER TO ESTABLISH A FAIR FUND, APPOINT A TAX ADMINISTRATOR,  
APPOINT A DISTRIBUTION AGENT, APPROVE THE DISTRIBUTION PLAN, AND  
AUTHORIZE THE PAYMENT OF TAXES, THE TAX ADMINISTRATOR'S FEES AND  
EXPENSES, AND ADMINISTRATIVE COSTS**


**THIS MATTER** is before the Court on the Motion to Establish a Fair Fund, Appoint a Tax Administrator, Appoint a Distribution Agent, Approve the Distribution Plan, and Authorize the Payment of Taxes and the Tax Administrator's Fees and Expenses and Administrative Cost (DE 78) ("**Motion**") filed by Plaintiff Securities and Exchange Commission ("**SEC**" or "**Commission**"). In the Motion, the Commission requests the Court establish a Fair Fund ("**Fair Fund**") pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, 15 U.S.C. § 7246(a); appoint Miller Kaplan Arase LLP ("**Miller Kaplan**") as Tax Administrator; appoint Adriene Mixon, a Commission employee with the position of Trial Counsel in the Commission's Office of Distributions, as Distribution Agent of the Fair Fund; approve the Commission's Distribution Plan for the Fair Fund ("**Distribution Plan**"); and authorize the Commission to pay tax obligations, the Tax Administrator's fees and expenses, and Administrative Costs from the Fair Fund without further order from the Court.

Upon review of the Motion, the record, and applicable law, it is **ORDERED AND ADJUDGED** that:

1. Plaintiff SEC's Motion (DE 78) is **GRANTED**;
2. The Fair Fund is established pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, 15 U.S.C. § 7246, for the funds collected in the captioned matter, which shall consist of the total amount currently held by the Commission at the U.S. Department of Treasury under the case name designation "SEC v. Burkholz, et al." Any accrued interest and any additional amounts which are collected or otherwise received by the Commission in connection with this matter will be added to the Fair Fund;
3. Miller Kaplan is appointed as the Tax Administrator to execute all income tax reporting requirements, including the preparation and filing of tax returns, for all funds under the Court's jurisdiction in this case;
4. Miller Kaplan shall be designated the Tax Administrator of the Fair Fund, pursuant to Section 468B(g) of the Internal Revenue Code, 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, including but not limited to the Foreign Account Tax Compliance Act. Upon request, the Tax Administrator shall provide copies of any filings to the SEC's counsel of record;

5. The Tax Administrator shall, at such times as the Tax Administrator deems necessary to fulfill the tax obligations of the Fair Fund, submit a request to the SEC's counsel of record for payment from the Fair Fund of any tax obligations of the Fair Fund;
6. The Tax Administrator shall be entitled to charge reasonable fees for tax compliance services and related expenses in accordance with its agreement with the SEC for the Tax Years 2022 through 2024. The Tax Administrator shall, at such times as the Tax Administrator deems appropriate, submit a request to the SEC's counsel of record for payment of fees and expenses from the Fair Fund;
7. Adriene Mixon, a Commission employee with the position of Trial Counsel, is hereby appointed as the Distribution Agent of the Fair Fund. As a Commission employee, the Distribution Agent shall receive no compensation from the Fair Fund for her services in administering the Fair Fund. The Distribution Agent will, among other things, implement the Court-approved Distribution Plan; oversee the administration of the Fair Fund; coordinate with the Tax Administrator in order to prepare accountings and to ensure that the Fair Fund complies with all related legal and regulatory requirements; and maintain accurate records concerning the Fair Fund;
8. The Commission's Distribution Plan annexed to Plaintiff's Motion is **APPROVED**. The Distribution Plan shall govern the administration and distribution of the Fair Fund;
9. The SEC is authorized to approve and arrange payment of appropriate and properly documented taxes, the related Tax Administrator's fees and expenses, and any other Administrative Costs of the Fair Fund directly from the Fair Fund without further order of this Court. All payments for taxes, the fees and expenses of the Tax Administrator, and Administrative Costs shall be reported to the Court in a final accounting.

**DONE AND ORDERED** in Chambers in Miami, Florida, this 17th day of January, 2024.

  
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KATHLEEN M. WILLIAMS  
UNITED STATES DISTRICT JUDGE