

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SECURITIES AND EXCHANGE
COMMISSION

Plaintiff,

v.

DANIEL FERNANDES ROJO
FILHO, ET AL.

Defendants.

Civil Action No. 15-CV-12857-PBS

**Order Appointing a Tax Administrator and a Distribution Agent,
and Authorizing the SEC to Approve Payment of the Tax Obligations and
Administrative Fees and Expenses of the Distribution Fund Without Further Court Order**

The Court, having reviewed the Motion of the Plaintiff Securities and Exchange Commission (“SEC”) to: (1) appoint Miller Kaplan Arase LLP (“Miller Kaplan”) as the tax administrator for the funds under the Court’s jurisdiction in this action (the “Distribution Fund”); (2) appoint Guidehouse Inc., Baker & Hostetler LLP, and PACE Claims Services LLC (“GBP”) as the distribution agent for the Distribution Fund; and (3) authorize the SEC to approve and arrange for payment of tax obligations and administrative fees and expenses from the Distribution Fund without further Court Order, and for good cause shown,

IT IS HEREBY ORDERED:

1. The Motion is **GRANTED**.

Tax Administrator

2. Miller Kaplan is appointed as the tax administrator (the “Tax Administrator”) to execute all income tax reporting requirements, including the preparation and filing of tax returns, for the Distribution Fund.

3. Miller Kaplan shall be designated the Tax Administrator of the Distribution Fund, 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 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.

4. The Tax Administrator shall, at such times as the Tax Administrator deems necessary to fulfill the tax obligations of the Distribution Fund, submit a request to the SEC's counsel of record for payment from the Distribution Fund of any tax obligations of the Distribution Fund.

5. 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 Distribution Fund.

6. The SEC is authorized to approve and arrange payment 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 of this Court. All payments for taxes and the fees and expenses of the Tax Administrator shall be reported to the Court in a final accounting.

Distribution Agent

7. GBP is appointed as the distribution agent (the "Distribution Agent") for the

Distribution Fund, to oversee the administration and distribution of the Distribution Fund in coordination with the SEC's counsel of record pursuant to the terms of a distribution plan (the "Plan") to be approved by this Court. The Distribution Agent will, among other things:

- a) Perform services in accordance with the pricing schedule and cost proposal submitted by the Distribution Agent to the SEC;
- b) Work with the SEC's counsel of record to develop a distribution plan to be approved by the Court;
- c) Determine the identities and locations of harmed investors;
- d) Quantify losses and distribution amounts of investors eligible for a distribution under a Court-approved Plan;
- e) Respond to investor and distribution related inquiries;
- f) With the Tax Administrator, calculate a reserve for fees, expenses, and taxes (the "Reserve") and perform all activities necessary for the distribution of Distribution Fund net the Reserve in accordance with the Plan;
- g) Coordinate with the Tax Administrator to ensure timely compliance with all tax related obligations;
- h) File with the Court or provide to the SEC's counsel of record to file with the Court, a quarterly status report within forty-five (45) days of Court approval of the Plan, and provide additional reports within thirty (30) days after the end of every quarter thereafter. Upon establishing an escrow account into which the monies in the Distribution Fund are transferred, the Distribution Agent will include a quarterly accounting report in the status report, in a format to be provided by the SEC. The status report will inform the Court and the SEC of the activities

of the Distribution Agent during the relevant reporting period and the quarterly accounting report will specify, at a minimum:

- i) The location of the account(s) comprising the subset of the Distribution Fund held under an Escrow Agreement with a bank pursuant to the Plan (the “Escrow Funds”); and
- ii) An interim accounting of the Escrow Funds 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 Plan, and any monies expended from the Distribution Fund in the implementation of the Plan.

i) Comply with the Plan and all Court orders;

j) Be entitled to charge reasonable fees and related expenses incurred in the performance of its duties, in accordance with the cost proposal submitted to the SEC’s counsel of record. The SEC is authorized to approve and arrange payment of the fees and expenses of the Distribution Agent directly from the Distribution Fund without further order of this Court. The Distribution Agent will submit invoices of all fees and expenses incurred in connection with their respective duties to the SEC’s counsel of record for review and, as appropriate, payment. All payments of such fees and expenses shall be reported in the final accounting.

Additional Provisions

8. Upon completing its duties as set forth herein, the Distribution Agent, in consultation with the Tax Administrator, will jointly provide to the SEC’s counsel of record a final accounting of the Distribution Fund in a form provided by the SEC’s counsel of record; a final report providing statistics related to the distribution, including amounts disbursed to investors;


amounts returned and/or not delivered or negotiated; outreach efforts on unnegotiated or undelivered payments, and the costs and results of the same; and statistics concerning payments made to individuals and entities; and an affidavit in a format acceptable to the SEC's counsel of record summarizing its activities as Distribution Agent.

9. The Distribution Agent and/or the Tax Administrator may be removed *sua sponte* at any time by the Court or upon motion of the SEC and replaced with a successor. In the event Distribution Agent and/or the Tax Administrator decide to resign, the resigning entity must first give written notice to the SEC's counsel of record and the Court of its intention, and resignation, if permitted, will not be effective until the Court has appointed a successor. The resigning entity will then follow instructions from the Court or a successor for relinquishing its duties, including all records related to Distribution Fund monies and property. Unless otherwise ordered, the resigning entity will within 30 days of the notice of resignation or removal, file with the Court a final accounting of the Distribution Fund and a report of its activities while engaged in this action, and provide any other information requested by the SEC, the Court, or the successor.

10. The Court will retain exclusive jurisdiction over the distribution, including, but not limited to, claims against the Distribution Agent and/or Tax Administrator asserting liability for violation of any duty imposed by the Plan or other Court order.

IT IS SO ORDERED.

Dated: 8/3, 2023


The Honorable Patti B. Saris
United States District Court Judge