

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

AAMER ABDULLAH,

Defendant.

Case No.: 10-cv-4957-LAK

**Notice of (unopposed) Motion and
Motion for an Order Establishing
a Fair Fund and Authorizing
Distribution of the Fair Fund
through a Related Action**

PLEASE TAKE NOTICE that, upon the accompanying unopposed Motion, Memorandum, and Proposed Order, and all other related papers and proceedings, Plaintiff, the Securities and Exchange Commission (the “SEC”) will move this Court for an Order establishing a Fair Fund pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, 5 U.S.C. §7246(a), and authorizing distribution of the Fair Fund through the related action before this Court captioned *SEC v. ICP Asset Management, LLC, et al.*, 10-cv-4791-LAK-JCF (S.D.N.Y.) (the “Related Action”) pursuant to the distribution plan approved by the Court in the Related Action, ECF No. 276.

MOTION

The SEC respectfully submits this Motion for an Order establishing a Fair Fund pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, 5 U.S.C. §7246(a) and authorizing distribution of the Fair Fund through the Related Action pursuant to the distribution plan approved by the Court in that action. The grounds for this motion are set forth in the accompanying Memorandum in Support.

The undersigned has conferred with counsel for Aamer Abdullah who has confirmed that his client does not object to the relief sought.

WHEREFORE, the SEC respectfully requests that the Court enter an Order substantially in the form submitted with this Motion.

Dated: June 22, 2023

Respectfully submitted,

s/Catherine E. Pappas
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CERTIFICATE OF SERVICE

I certify that on June 22, 2023, I caused a copy of the foregoing document to be filed with the Court's CM/ECF system, which will automatically send a copy of the document to all counsel of record and, additionally, sent as follows:

Via electronic mail to:

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s/Catherine E. Pappas
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

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Case No.: 10-cv-4957-LAK

Memorandum in Support of
Motion for an Order Establishing
a Fair Fund and Authorizing
Distribution of the Fair Fund
through a Related Action

I. Introduction

The plaintiff, the Securities and Exchange Commission (the “SEC”), respectfully submits this memorandum in support of its motion for an Order establishing a Fair Fund pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, 15 U.S.C. §7246(a) (“Section 308(a”). The SEC further seeks authorization to distribute the approximately \$307,000 collected from the defendant, plus accrued interest, through the related ICP Action before this Court captioned *SEC v. ICP Asset Management, LLC, et al.*, 10-cv-4791-LAK-JCF (S.D.N.Y.) (the “ICP Action”), pursuant to the Court-approved distribution plan in the ICP Action (the “Motion”).

The undersigned has conferred with counsel for Aamer Abdullah who has confirmed that his client does not object to the relief sought.

II. Background

A. SEC v. ICP (the “ICP Action”)

By Complaint filed on June 21, 2010, amended on June 30, 2011,¹ the SEC charged ICP Asset Management, LLC (“ICP”); ICP Securities, LLC (“ICPS”); Institutional Credit Partners, LLC (“ICP Holdco”); and Thomas C. Priore (“Priore”) (collectively, the “ICP Defendants”) with

¹ ICP Action, ECF Nos. 1, 54.

repeated violations of the federal securities laws. ICP Action, ECF No. 54. At relevant times, ICP was the asset manager of four multi-billion-dollar collateralized debt obligations (the “Triaxx CDOs”).² *Id.* ¶ 1. According to the Amended Complaint, beginning in 2007, as the mortgage markets deteriorated, the ICP Defendants engaged in improper transactions that defrauded the Triaxx CDOs of tens of millions of dollars and placed them at risk of substantial additional losses in the future. *Id.* Among other things, the SEC alleged that the ICP Defendants, to the detriment of the Triaxx CDOs, caused the Triaxx CDOs to participate in prohibited forward-purchase arrangements, *id.* ¶¶ 31-43; knowingly directed a purchase by the Triaxx CDOs through another client account to circumvent an express restriction in the CDO’s indentures, *id.* ¶¶ 43-45; and directed multiple “swaps” of bonds in a separate account to generate profits at the expense of the Triaxx CDOs and to evade the approval procedure sent forth in the CDOs indentures, *id.* ¶¶ 46-50. By early 2010, the bulk of the bonds held by the Triaxx CDOs had been downgraded to “junk bond” status, leaving investors with heavily impaired collateral. *Id.*

The SEC charged the ICP Defendants with, among other things, violations of the anti-fraud provisions of the Securities Act of 1933, the Securities Exchange Act of 1934, and the Investment Advisers Act of 1940. *See id.*, ¶¶ 7-9. In March 2010, upon learning of the SEC staff’s intent to charge him with fraud, Priore transferred assets into trusts that he had created during the SEC’s investigations. The SEC named the trustees of those trusts as relief defendants in the ICP Action. *Id.* ¶¶ 6, 142-144.

The ICP Action has since been resolved. By stipulation entered on September 6, 2012, the SEC dismissed its fraudulent conveyance claims (Counts X-XV of the Amended Complaint),

² Triaxx Prime CDO 2006-1, Triaxx Prime CDO 2006-2, Triaxx Prime CDO 2007-1, and Triaxx Funding High Grade I, Ltd.

thereby resolving the charges with respect to the relief defendants. ICP Action, ECF No. 225. By final judgment entered by consent on September 6, 2012, against the ICP Defendants (the “ICP Final Judgment”), the Court ordered, in relevant part, ICP Holdco and ICP, jointly and severally, to pay disgorgement of \$13,916,005 and prejudgment interest of \$3,709,028, and ICP to pay a civil penalty of \$650,000; ICPS to pay disgorgement of \$1,637,581, prejudgment interest of \$301,893, and a civil penalty of \$1,939,474; and Priore to pay disgorgement of \$797,337, prejudgment interest of \$215,045, and a civil penalty of \$487,618 pursuant to a payment schedule. ICP Action, ECF No. 226.

Pursuant to the Final Judgment, the SEC may propose a plan to distribute the funds subject to the Court’s approval. Since the Final Judgment, the SEC has collected approximately \$22 million of the approximately \$23.6 million ordered. By Order entered February 10, 2017, the Court established a Fair Fund so that collected civil penalties along with collected disgorgement and prejudgment interest, can be distributed to harmed investors (the “Fair Fund”). ICP Action, ECF No. 260.

On May 15, 2023, the SEC filed a motion for an Order Approving a Distribution Plan in the ICP Action in order to distribute over \$22 million in collections to harmed investors. The distribution plan in the ICP Action seeks to compensate investors in the Triaxx CDOs, and those who entered into credit default swaps with the issuers of the Triaxx CDOs, for harm suffered in those investments due to the conduct described in the ICP Action complaint. ICP Action, ECF No. 274. By Order entered May 31, 2023, the Court approved the proposed plan (the “ICP Plan”). ICP Action, ECF No. 276.

B. The Captioned Action (the “Abdullah Action”)

By Complaint filed on June 25, 2010, the SEC charged Aamer Abdullah (“Abdullah”), a portfolio manager at ICP, for his participation in the misconduct underlying the ICP Action. ECF No. 1, ¶ 1. Specifically, the SEC alleged that, starting in 2007, Abdullah, together with ICP, Priore, ICPS, and ICP Holdco, engaged in the improper transactions described in the ICP Action, defrauding the Triaxx CDOs of tens of millions of dollars and placing them at risk of substantial additional losses in the future. *Id.* By way of examples, as in the ICP Action, the SEC alleged in the Abdullah Action that, acting with the ICP Defendants, Abdullah, among other things, (1) caused the Triaxx CDOs to engage in prohibited forward-purchase arrangements, *id.* ¶¶ 19-25; directed a purchase by the Triaxx CDOs through another client account to circumvent an express restriction in the CDO’s indentures, *id.* ¶¶ 26-27; and directed multiple “swaps” of bonds in a separate account to generate profits at the expense of the Triaxx CDOs and to evade the approval procedure set forth in the CDOs indentures, *id.* ¶¶ 28-30.

The SEC charged Abdullah with, among other things, violations of the anti-fraud provisions of the Securities Act of 1933, the Securities Exchange Act of 1934, and the Investment Advisers Act of 1940. *Id.* ¶ 2. By final judgment entered by consent on November 5, 2012, the Court, in relevant part, ordered Abdullah to disgorge \$175,000 and to pay prejudgment interest of \$32,320 and a civil penalty of \$100,000, for a total amount of \$307,320 (the “Abdullah Final Judgment”). ECF No. 10. Abdullah has paid in full.

In accordance with the Abdullah Final Judgment, the SEC holds approximately \$315,000, comprised of Abdullah’s payment of disgorgement, prejudgment interest, and civil penalty, plus accrued interest, in an interest-bearing account at the U.S. Treasury.

III. Discussion

By this Motion, the SEC seeks a Fair Fund pursuant Section 308(a) so that it can combine the civil penalty paid by Abdullah with the disgorgement and prejudgment interest that he paid, so that the entirety can be distributed to harmed investors. The SEC further seeks to distribute these funds to harmed investors through the ICP Plan because the misconduct addressed is the same in both actions, and the investors harmed by Abdullah's misconduct are the same as those being compensated in the ICP Action.

A. The Court Must Establish a Fair Fund in Order to Distribute Collected Civil Penalty.

In order to include a civil penalty in any distribution, the Court must establish a Fair Fund pursuant to Section 308(a) in the Abdullah Action. Section 308(a) provides, in relevant part:

If in any judicial or administrative action brought by the [SEC] under the securities laws, the [SEC] obtains a civil penalty against any person for a violation of such laws, or such person agrees, in settlement of any such action, to such civil penalty, the amount of such civil penalty shall, on the motion or at the direction of the [SEC], be added to and become part of a disgorgement fund or other fund established for the benefit of the victims of such violation.

15 U.S.C. § 7246(a).

The Abdullah Final Judgment satisfies the criteria set forth in Section 308(a). The SEC brought the Abdullah Action under the federal securities laws and the Court ordered Abdullah to pay a civil penalty of \$100,000, which Abdullah has paid in full. The creation of a Fair Fund in this case for the benefit of harmed investors is appropriate so that the \$100,000 in paid civil penalty can be distributed to harmed investors along with the paid disgorgement and prejudgment interest.

B. The Fair Fund Should be Distributed to Harmed Investors Pursuant to the ICP Plan.

A district court has broad discretion in approving a plan of distribution, and that determination is reviewed for abuse of discretion. *Official Comm. Of Unsecured Creditors of WorldCom, Inc. v. SEC*, 467 F.3d 73, 84 (2d Cir. 2006). *See also SEC v. Loewenson*, 290 F.3d 80, 84 (2d Cir. 2002) (in the context of approval of a plan presented by a receiver). District courts review distribution plans proposed by the SEC to determine whether the plan fairly and reasonably distributes limited funds among the potential claimants. *See WorldCom*, 467 F.3d at 81-82, 84; *SEC v. Wang*, 944 F.2d 80, 85 (2d Cir. 1991); *SEC v. CR Intrinsic Investors, LLC*, 164 F. Supp. 3d 433, 435-36 (S.D.N.Y. 2016). *See also SEC v. Amerindo Inv. Advisors*, 639 F. App'x 752, 755 (2d Cir. 2016) (quoting *Wang*, finding adequate the district court's finding that the receiver's proposed distribution was fair and reasonable).

The SEC's proposal to direct the funds paid in this case to the ICP Action for distribution is fair and reasonable. As is evident from the descriptions of the two actions above, Abdullah was charged in the present action for his participation in the fraud perpetrated by the ICP Defendants as described in the ICP Action. In sum, the SEC alleged that, since 2007, Abdullah, together with ICP, Priore, ICPS, and ICP Holdco, engaged in the improper transactions described in the ICP Action, defrauding the Triaxx CDOs of tens of millions of dollars and placing them at risk of substantial additional losses in the future. As alleged, his participation spanned the duration of the fraud. Thus, there is complete overlap in the allegations of harm and the victims of the two actions and it is appropriate to send the funds paid by Abdullah to the ICP Action for distribution. Including the funds collected in this action with those collected in the ICP Action and conducting one distribution will increase the amount available to compensate victims of the misconduct described in both complaints. Accordingly,

SEC respectfully requests an Order authorizing that the approximately \$314,000 held by the SEC in this action be distributed pursuant to the ICP Action Plan to harmed investors.

IV. Conclusion

For the reasons set forth above, the SEC respectfully requests that the Court grant the requested relief and enter the proposed Order submitted with the Motion.

Dated: June 22, 2023

Respectfully submitted,

s/Catherine E. Pappas
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SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

AAMER ABDULLAH,

Defendant.

Case No.: 10-cv-4957-LAK

(Proposed) Order Establishing
Fair Fund and Authorizing
Distribution of the Fair Fund
through a Related Action

THE COURT having reviewed the unopposed motion of the plaintiff, the Securities and Exchange Commission (the “SEC”), for an Order establishing a Fair Fund and Authorizing Distribution of the Fair Fund through the related action before this Court captioned *SEC v. ICP Asset Management, LLC, et al.*, 10-cv-4791-LAK-JCF (S.D.N.Y.) (the “Related Action”) pursuant to the distribution plan approved by the Court in the Related Action, ECF No. 276 (the “Motion”),

AND the proposed Fair Fund being comprised of the disgorgement, prejudgment interest, and civil penalty ordered by Final Judgment in this action (ECF No. 10), which the parties agree Abdullah has paid in full;

AND for good cause shown:

IT IS HEREBY ORDERED that:

1. The Motion is **GRANTED**;
2. A Fair Fund is established pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, 15 U.S.C. §7246(a), for all funds under the Court’s jurisdiction in the captioned matter, including any accrued interest (the “Abdullah Fair Fund”); and

3. The SEC is authorized to distribute the Abdullah Fair Fund to harmed investors pursuant to the distribution plan approved in the Related Action.

Dated: _____, 2023

By: _____
The Honorable Lewis A. Kaplan
U.S. District Judge