

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

STEVEN F. MUNTIN,

Defendant.

**Case No. 5:21-CV-
12607**

Honorable Judith E. Levy

**OMNIBUS MOTION TO APPOINT A DISTRIBUTION AGENT, APPOINT
A TAX ADMINISTRATOR, APPROVE THE DISTRIBUTION PLAN, AND
AUTHORIZE PAYMENT OF TAXES, FEES, AND EXPENSES**

Plaintiff Securities and Exchange Commission (the “SEC”) respectfully moves the Court to (1) appoint Allison J.P. Moon, Trial Counsel for the SEC, as Distribution Agent of the distribution fund that is under this Court’s jurisdiction in this case (the “Distribution Fund” or “Fund”); (2) appoint Heffler, Radetich & Saitta LLP (“HRS”), a certified public accounting firm, as Tax Administrator of the Distribution Fund; (3) approve the SEC’s proposed plan (“Distribution Plan” or “Plan”) for distributing the Fund to the single investor who was harmed by Steven F. Muntin’s (“Defendant”) violations of the federal securities laws; (4) authorize the Distribution Agent to approve and direct the payment of tax obligations, and the fees and expenses of the Tax Administrator from the Distribution Fund without

further order from the Court; and (5) order such other relief as the Court may find just and proper.

I. BACKGROUND

On November 5, 2021, the SEC filed a Complaint under seal seeking injunctive relief, disgorgement, prejudgment interest, and civil penalties. In its Complaint, the SEC alleges that between January 2016 and February 2020, Defendant misappropriated over \$305,000 from one of his investment advisory clients (“Client A”) and overcharged Client A at least \$9,000 in assets under management fees. Defendant told Client A that he would invest her money in securities. From March 2016 to February 2020, Client A wrote checks totaling over \$305,750 to Defendant’s company, Executive Asset Management, for investment in securities. However, Defendant did not invest any of Client A’s money, and instead he spent all of it for his own benefit, including for payments towards his real estate taxes, health insurance, boat loan, car loan, and credit card bills. The SEC charged Defendant with violating Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934, and Rule 10-b5 thereunder, and Sections 206(1) and 206(2) of the Investment Advisers Act of 1940, and sought a permanent injunction, disgorgement, prejudgment interest thereon, and civil penalties.

Defendant agreed to settle the SEC's claims without admitting or denying the SEC's allegations, and he consented to a Final Judgment. On May 5, 2022, the Court entered a Final Judgment enjoining Defendant from violating Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 and Rule 10-b5 thereunder, and Sections 206(1) and 206(2) of the Investment Advisers Act of 1940, and ordering him to pay disgorgement of \$314,799, representing the Defendant's net profits, together with prejudgment interest of \$46,121, and a civil penalty of \$258,557. The Final Judgment provides that the SEC may propose a plan to distribute the collected funds, subject to the Court's approval.¹

The SEC previously filed this Motion on May 8, 2023, and on May 9, 2023, the court struck the Motion for failing to comply with Eastern District of Michigan Local Rules 5.1(a)(3) and 7.1(a). LR 5.1(a)(3) requires "type size of all text and footnotes must be no smaller than 10-1/2 characters per inch (non-proportional) or 14 point (proportional)." The SEC has increased the type size here to 14 point proportional. LR 7.1(a) requires that a movant must confer with the interest parties to a motion to "reach[] agreement on the matter or those aspects of the matter that

¹ Dkt. No. 12, p. 6.

can be resolved without court intervention.” The SEC has conferred with Defendant’s counsel, David A. Nacht, who stipulated to this motion.

To date, the SEC has collected a total of \$75,008.36, which is being held in an SEC-designated account at the United States Department of the Treasury. The SEC proposes to distribute these funds to the harmed investor pursuant to the Distribution Plan that is filed herewith.²

II. ARGUMENT

The SEC now seeks the (a) appointment of Allison J.P. Moon as Distribution Agent of the Distribution Fund; (b) appointment of Heffler, Radetich & Saitta LLP (“HRS”) as Tax Administrator of the Distribution Fund; (c) approval of the Distribution Plan appended to the proposed Order filed herewith; and (d) authorization for the Distribution Agent to approve and direct the payment of tax obligations, and the fees and expenses of the Tax Administrator from the Distribution Fund without further order from the Court.

A. The Court should appoint Allison J.P. Moon as the Distribution Agent

The SEC respectfully asks this Court to appoint Allison J.P. Moon, Trial Counsel for the SEC, as the Distribution Agent to administer and implement the

² The Distribution Plan is appended to the proposed Order that is filed with this Motion.

Distribution Plan. The Distribution Agent will, among other things, provide the following services:

1. Implement a Court-approved Distribution Plan;
2. Oversee the administration of the Distribution Fund;
3. Establish a reasonable reserve to pay the tax obligations and expenses of the Distribution Fund;
4. Approve and direct the payment of tax obligations, and the fees and expenses of the Tax Administrator;
5. Coordinate with the Tax Administrator to prepare accountings and to ensure that the Distribution Fund complies with all related legal and regulatory requirements; and
6. Maintain accurate records concerning the Distribution Fund.

The Distribution Agent shall receive no compensation for her services in administering the Distribution Fund other than her regular salary as an SEC employee. In carrying out her duties, the Distribution Agent may be assisted by other SEC staff acting under her supervision. The appointment of an SEC employee as Distribution Agent will enable a more cost-effective and expedient distribution process, and will avoid the costs and expenses that would ordinarily be incurred by a third-party Distribution Agent, thus ensuring the maximum return to the investor.

B. The Court should appoint HRS as the Tax Administrator

The SEC respectfully requests the appointment of HRS, a certified public accounting firm with an office in Philadelphia, Pennsylvania, as Tax Administrator

to execute all income tax reporting requirements, including preparing and filing tax returns, with respect to funds under this Court's jurisdiction in this case. The appointment of a Tax Administrator is necessary to ensure that the funds are maintained and distributed in compliance with federal and state tax laws.

The Distribution Fund constitutes a Qualified Settlement Fund ("QSF") under Section 468B(g) of the Internal Revenue Code, 26 U.S.C. § 468B(g), and related regulations 26 C.F.R. §§ 1.468B-1 through 1.468B-5. A Tax Administrator should be appointed on behalf of the Distribution Fund, and should be authorized to take all necessary steps to enable the Distribution Fund to obtain and maintain the status of a taxable QSF, including filing all the required elections and statements that those provisions contemplate. The Tax Administrator would cause the Distribution Fund to pay taxes in a manner consistent with treatment of the Distribution Fund as a QSF, and would satisfy any information, reporting, or withholding requirements imposed on distributions from a QSF, including, but not limited to, the Foreign Account Tax Compliance Act. In addition, the Tax Administrator shall provide copies of any filings to the SEC's counsel of record upon request. Among other things, the Tax Administrator will provide the following services:

1. Obtain a federal tax identification number for the QSF;
2. Prepare and file federal and state income tax returns, as required;

3. Where required, calculate quarterly estimated tax payments and provide information to the SEC so that payments may be made timely;
4. Advise the Distribution Agent to approve and direct the payment of tax liabilities;
5. Calculate and recommend retention of a reserve for penalties and interest to be assessed as a result of any late filing of tax returns and late payment of taxes;
6. Determine and comply with tax reporting obligations of the QSF relating to distributions or payments to vendors, if applicable.

If appointed, HRS would provide additional tax compliance services at the SEC's request, and would bill in accordance with its fee agreement with the SEC. The reasonable costs, fees, and other expenses incurred in the performance of the Tax Administrator's duties should be paid from the Distribution Fund.

HRS has served as a tax administrator for numerous QSFs requiring compliance similar to the Distribution Fund, and has agreed to reasonable fees for its services.³ If appointed, HRS may be removed *sua sponte* by the Court, or upon

³ HRS is one of the firms that the SEC has engaged to render tax consulting services on its behalf for QSFs established in administrative proceedings for calendar years 2022 through 2024 at agreed upon rates. See Omnibus Order Directing the Engagement of Two Tax Administrators for Appointment on a Case-by-Case Basis in Administrative Proceedings that Establish Distribution Funds, Exchange Act Rel. No. 94845 (May 4, 2022). As part of HRS's engagement with the SEC, HRS has agreed to render those same services at the agreed upon rates for calendar years 2022 through 2024, for any QSF it is appointed to serve as the tax administrator, including appointments made by a Court in civil actions brought by the SEC in federal district court.

motion of the SEC, and replaced by a successor. In the event HRS decides to resign as Tax Administrator, it must first give written notice to the Court and to the Distribution Agent of such intention, and the resignation, if permitted, will not be effective until the Court appoints a successor.

The SEC respectfully requests that the Court appoint HRS as Tax Administrator to execute all income tax reporting requirements, including the preparation and filing of tax returns, with respect to the Distribution Fund.

C. The Court should approve the SEC’s proposed Distribution Plan

1. The applicable standard is that a distribution plan must be fair and reasonable.

The Court enjoys broad equitable discretion in fashioning a plan of distribution. *See SEC v. Forex Asset Mgmt. LLC*, 242 F.3d 325, 331 (5th Cir.2001) (affirming distribution plan because it was “a logical way to divide the money”) (internal quotation marks omitted) (approval of distribution plan reviewed for abuse of discretion); *United States v. Durham*, 86 F.3d 70, 73 (5th Cir.1996) (same). Courts have also generally deferred to the SEC’s decision regarding whether and how to distribute disgorgement and prejudgment interest. The Court’s review of a proposed distribution plan should focus on whether the plan is fair and reasonable. *SEC v. Basic Energy & Affiliated Res., Inc.*, 273 F.3d 657, 670 (6th Cir. 2001) (quoting *SEC v. Forex Asset Mgmt. LLC*, 242 F.3d 325, 331 (5th Cir. 2001) (“[T]he district court determined . . . that a pro rata

distribution would provide a fair and equitable remedy.”)); *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 (“Unless 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.”)). For the reasons stated below, the SEC submits that the Distribution Plan constitutes a fair and reasonable allocation of the funds, and that it should therefore be approved.

2. The Distribution Plan provides a fair and reasonable allocation of the Distribution Fund

The SEC’s principal goal in fashioning a distribution plan is to develop a methodology that will allocate the available funds equitably between the harmed investors, and that will compensate investors in an amount that is proportional to the harm caused by the defendants’ conduct. Here, there is a single investor who will receive the entire distribution. The investor’s total losses are equal to the profits Defendant received, and a distribution of all collected disgorgement funds to the harmed investor would therefore be proportional to the harm. Based on records collected during its investigation, the SEC staff calculated the amount of the Defendant’s profits from his violations, and the investor’s losses, to be \$314,799. The SEC proposes to distribute \$73,580.22 to the sole harmed investor to compensate her/him/it, to the extent possible, for the losses she/he/it suffered as

a result of the Defendant's violations. This amount is equal to \$76,680.22, the Distribution Fund balance as of April 28, 2023, less a reserve of \$3,100 for taxes and Tax Administrator fees and costs.

D. The Court should authorize the Distribution Agent to pay the Distribution Fund's tax obligations and related fees and expenses without further Court order.

As a QSF, the Distribution Fund may incur tax liabilities, and fees and expenses related to its administration and the distribution of the Fund. The SEC's Office of Distributions follows a rigorous process for reviewing and approving invoices. It requires the Tax Administrator to provide detailed invoices that describe the work performed, the billing rate, and the time expended on each task. The Office of Distributions reviews the Tax Administrator's invoices, verifies that the billed-for work was done, and compares the billing rates to the agreed-upon rates in the Tax Administrator's fee agreement with the SEC, to ensure that the rates billed are consistent with the agreement. The Distribution Agent will only approve and direct the payment of Tax Administrator invoices that meet these rigorous requirements. After completing the distribution, the SEC will report all tax payments and Tax Administrator's fees and expenses to this Court in the final accounting of the Distribution Fund, as required by the Plan.

To maximize the harmed investor's recovery and avoid waste, the SEC must meet tax payment deadlines, avoid the assessment of late payment penalties, and

make timely payment to the Tax Administrator for services provided. To this end, the SEC asks this Court to authorize the Distribution Agent to approve and direct the payment of all tax obligations of the QSF, and the Tax Administrator's reasonable fees and expenses, from the Distribution Fund without further Court order.

III. CONCLUSION

For the reasons stated above, the SEC respectfully requests that this Court grant its Motion, issue the attached Proposed Order, and grant such other relief as the Court deems just and proper.

Dated May 8, 2023.

Respectfully submitted,



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