

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

<hr/>)
SECURITIES AND EXCHANGE)
COMMISSION)
)
Plaintiff,)
)
v.)
	Civil Action No. 1:19-cv-10785)
)
ERIC D. LYONS,)
SYNCHRONY CAPITAL GP, LLC,)
SYNCHRONY GROUP, LLC, AND)
SYNCHRONY CAPITAL GROUP,)
)
Defendants.)
)
and)
)
SYNCHRONY GLOBAL MACRO,)
LP,)
)
Relief Defendant.)
<hr/>)

**PLAINTIFF’S MEMORANDUM OF LAW IN SUPPORT OF ITS OMNIBUS MOTION
TO APPOINT A TAX ADMINISTRATOR, APPOINT A DISTRIBUTION AGENT,
APPROVE THE DISTRIBUTION PLAN, AND AUTHORIZE PAYMENT OF TAXES
AND THE FEES AND EXPENSES OF THE TAX ADMINISTRATOR WITHOUT
FURTHER COURT ORDER**

I. Introduction

Plaintiff Securities and Exchange Commission (the “Commission” or the “SEC”) respectfully submits this Memorandum of Law in Support of its motion requesting an Order authorizing the appointment of a tax administrator and a distribution agent for the funds under this Court’s jurisdiction (the “Distribution Fund”); approving the proposed distribution plan (the “Distribution Plan” or the “Plan”) for distributing the funds collected to the investors harmed by the Defendants’ violations of the federal securities laws; and authorizing the Distribution

Agent to pay the tax obligations of the Distribution Fund, and the fees and expenses of the Tax Administrator from the Distribution Fund without further order from the Court. All such payments will be reflected in a final accounting submitted to the Court for approval. The requested relief is necessary to begin the process of distributing approximately \$137,556.54 collected in this matter to harmed investors.

II. Background: The Commission's Allegations

On April 22, 2019, the SEC filed a Complaint against Eric D. Lyons (“Lyons”), his investment adviser companies, Synchrony Capital GP, LLC, Synchrony Group, LLC, and Synchrony Capital Group (the “Synchrony Adviser Entities” and together with Lyons, the “Defendants”), and Synchrony Global Macro LP (“Relief Defendant”), a hedge fund Lyons promoted and managed through the Synchrony Adviser Entities, as a relief defendant. [Dkt. No. 1]. The SEC alleged that, in 2017 and 2018, Lyons and the Synchrony Adviser Entities that he controlled, misappropriated approximately \$570,000 from the hedge funds that they managed. *Id.* According to the Complaint, the Defendants misappropriated these funds to pay for Lyons’ personal expenses. *Id.* The SEC also alleged that Lyons and the Synchrony Adviser Entities replaced some of the misappropriated money by engaging in a fraudulent offering of securities, in which Lyons obtained \$300,000 from an investor based on false and misleading statements about receiving a purported large-sale investment offer and a hundred million dollar business valuation. *Id.* In the Complaint, the SEC alleged that, based on their conduct, the Defendants’ violated Sections 206(1), 206(2), and 206(4) of the Investment Advisers Act of 1940 and Rule 206(4)-8 thereunder; Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder; and Section 17(a) of the Securities Act of 1933. *Id.*

Among other relief, the SEC sought to freeze the assets of the Defendants and the Relief

Defendant. On April 22, 2019, the Court entered a Temporary Restraining Order, Order Freezing Assets and Order for Other Equitable Relief (the “Order”). [Dkt. No. 13]. In the Order, the Court directed that all banks, brokerage and other financial institutions and other person or entities holding any funds or other assets in the name, for the direct or indirect benefit, or under the direct or indirect control of the Defendants or the Relief Defendant hold these assets, and that such funds and assets be frozen.

On February 28, 2020, and April 7, 2020, in separate consent judgments (collectively, the “Final Judgments”), the Court ordered the Defendants to jointly and severally pay \$796,171 in disgorgement and prejudgment interest, and Lyons was further ordered to pay a \$189,427 civil penalty for a total of \$985,598 to the Commission. [Dkt. Nos. 26, 33-35]. On February 28, 2020, the Court entered a Final Judgment against the Relief Defendant, ordering that the entire balance of a bank account maintained by the Relief Defendant at Bank of America, and frozen pursuant to the Order, be transferred to the Commission. [Dkt. No. 28].

The Final Judgments ordered the Commission to hold all funds, together with any interest and income earned thereon, pending further order of the Court (the “Distribution Fund”). [Dkt. Nos. 26, 33-35]. The Final Judgments also provided that the Commission may propose a plan to distribute the collected funds subject to the Court’s approval. [Dkt. Nos. 26, 33-35]. To date, the Commission has collected \$123,752.15 from the Defendants and the Relief Defendant, pursuant to their respective Final Judgments, which is being held in an SEC-designated account with the United States Department of the Treasury. Any interest accrued will be added to the Distribution Fund for distribution to harmed investors.

III. Discussion of Relief Requested

The SEC now seeks the following relief so that it can distribute the funds it collected to the

six harmed investors in this case.

A. Appoint a Tax Administrator

The SEC respectfully seeks the appointment of Miller Kaplan Arase LLP (“Miller Kaplan”), a certified public accounting firm, 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 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 required elections and statements those provisions contemplate. The reasonable costs, fees, and other expenses incurred in the performance of the tax administrator’s duties should be paid from the Distribution Fund.

The Tax Administrator would cause the Distribution Fund to pay taxes in a manner consistent with the treatment of the Distribution Fund as a QSF and satisfy any information, reporting, or withholding requirements imposed on distributions from the Distribution Fund, 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. Make arrangements with the SEC or its agents to pay 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.

The reasonable costs, fees, and other expenses incurred in the performance of the Tax Administrator's duties would be paid by the Distribution Fund.

The SEC recommends the appointment of Miller Kaplan as Tax Administrator for the QSF. Miller Kaplan is experienced in the taxation of QSFs and has agreed to reasonable fees for its services.¹ In summary, Miller Kaplan will provide the following services for a fixed fee of \$2,000, or \$1,000 if the QSF holds \$120,000 or less or is opened and closed in the same year:

1. obtain a federal employer tax identification number for each QSF;
2. prepare and file federal and state income tax returns, as required;
3. when required, calculate quarterly estimated tax payments, and provide information to the SEC so that payments may be made timely;
4. make arrangements with the SEC staff to pay the tax liability of the QSF;
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/or late payment of taxes;

¹ Miller Kaplan 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 year 2025 at agreed upon rates. *See* Omnibus Order Extending 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. 101986 (Dec. 19, 2024). As part of Miller Kaplan's engagement with the SEC, Miller Kaplan has agreed to render those same services at the agreed upon rates for calendar year 2025, 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.

6. determine and comply with information reporting obligations of the QSF for payments to vendors; and
7. all administrative tasks necessary to the foregoing services.

Additional tax compliance services would be provided at the SEC's request and billed in accordance with Miller Kaplan's agreement with the SEC.

Miller Kaplan has served as a tax administrator for numerous QSFs requiring compliance similar to the Distribution Fund. Therefore, the SEC staff respectfully requests that the Court appoint Miller Kaplan as Tax Administrator to execute all income tax reporting requirements, including the preparation and filing of tax returns, with respect to the Distribution Fund under this Court's jurisdiction.

If appointed, Miller Kaplan may be removed *sua sponte* by the Court or upon motion of the SEC and replaced with a successor, and, in the event it decides to resign as Tax Administrator, it must first give written notice to the Court and to the SEC's counsel 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 Miller Kaplan as Tax Administrator to execute all income tax reporting requirements, including the preparation and filing of tax returns, with respect to the Distribution Fund under this Court's jurisdiction.

B. Appoint an SEC Employee as Distribution Agent

The SEC respectfully also asks the Court to appoint Sondra Panahi, a Commission employee, as the Distribution Agent to administer and implement the 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. Coordinate with the Tax Administrator to prepare accountings and to ensure that the Distribution Fund complies with all related legal and regulatory requirements; and
4. 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 distribution process and avoid the costs and expenses that would ordinarily be incurred by appointing a third party as Distribution Agent, thus allowing the maximum return to investors.

C. Approve the Proposed Distribution Plan

The Commission seeks approval of a proposed Distribution Plan (filed contemporaneously herewith) to distribute the funds collected from the Defendants. As calculated using the methodology described in the Plan of Allocation,² attached as Exhibit A to the Distribution Plan, investors will be compensated for their losses, due to the Defendants' misconduct, in connection with Lyons' misuse and misappropriation of funds while acting as an investment adviser during the period from January 1, 2017, through March 31, 2019, both dates inclusive ("The Relevant Period"). The Distribution Plan contemplates that \$137,556.54 in funds available (less a reserve for taxes, fees, and expenses of the Tax Administrator) will be distributed to Eligible Claimants on a *pro rata* basis for the harm caused by the Defendants' misconduct. Using information obtained during and after its investigation and litigation, the Commission staff has identified the Preliminary Claimants who are eligible to participate in the distribution. Preliminary Claimants are limited to only those Persons identified by the Commission staff.

² All capitalized terms used herein have the same meanings as defined in the Plan.

Prior to distributing the payments, the Distribution Agent will send each Preliminary Claimant a notice (“Notice”) setting forth each Preliminary Claimant’s calculated Recognized Loss amount. The Distribution Agent (assisted by the Commission staff) will send a Notice to each Preliminary Claimant, along with a copy of the Court-approved Distribution Plan.

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. *SEC v. Fischbach Corp.*, 133 F.3d 170, 175 (2d Cir. 1997). The Court’s review of a 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 Proposed Distribution Plan for the Distribution Fund constitutes a fair and reasonable allocation of the funds available for distribution and should be approved.

D. Authorize the Commission Staff to Pay the Taxes of the Distribution Fund and the Fees and Expenses of the Tax Administrator Without Further Order of the Court

To expedite the administration and the subsequent termination of the Distribution Fund, the Commission requests that the Court authorize the Commission staff to approve and arrange for

the payment of the tax obligations of the Distribution Fund, and the fees and expenses of the Tax Administrator without further order of the Court. Authorizing the Commission staff to approve and pay future tax obligations and tax administration fees and expenses from the Distribution Fund without further Court approval will expedite the payment process, reducing the risk of late tax payments and penalties. All tax payments and tax administration fees will be reported to this Court in the final accounting of the Distribution Fund once the distribution is complete.

IV. CONCLUSION

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

Dated: March 7, 2025

Respectfully submitted,

By: /s/ Sondra Panahi

Sondra Panahi

Senior Trial Counsel

Bar No. 4172664 (NY)

Division of Enforcement, Office of Distributions

U.S. Securities and Exchange Commission

801 Brickell Avenue

Miami, Florida 33131

Tel # (305) 982-6337

panahis@sec.gov

Christine Neal

Supervisory Trial Counsel

Bar No. 6229937 (Illinois)

Division of Enforcement, Office of Distributions

U.S. Securities & Exchange Commission

100 F. Street, NE

Washington, DC 20549-5650

Tel. # (202) 551-4920

Attorneys for Plaintiff Securities and
Exchange Commission

