

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

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SECURITIES AND EXCHANGE)	
COMMISSION)	
)	
Plaintiff,)	
)	
v.)	Case No. 3:21-CV-19313-ZNQ-TJB
)	
SWAPNIL J. REGE, SWAPSTAR)	
CAPITAL, LLC, REEMA REGE ,)	
)	
Defendants.)	
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**PLAINTIFF’S MOTION FOR AN ORDER ESTABLISHING A FAIR FUND,
APPOINTING A TAX ADMINISTRATOR, AND AUTHORIZING THE SEC TO
APPROVE PAYMENT OF THE TAX OBLIGATIONS OF THE FAIR FUND AND THE
RELATED FEES AND EXPENSES OF THE TAX ADMINISTRATOR WITHOUT
FURTHER COURT ORDER**

Plaintiff Securities and Exchange Commission (the “SEC” or the “Commission”) respectfully moves this Court for an Order (i) establishing a Fair Fund (the “Fair Fund”), pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended by the Dodd-Frank Act of 2010 [15 U.S.C. § 7246(a)], (ii) appointing Miller Kaplan Arase LLP (“Miller Kaplan”), a certified public accounting firm with an office in San Francisco, California, as Tax Administrator to execute all income tax reporting requirements, and (iii) authorizing payment of future taxes and the fees and expenses of the Tax Administrator from the Fair Fund without further Court Order, with respect to funds under this Court’s jurisdiction in this case. The SEC intends to apply to the Court for an Order approving a distribution of collected funds, and the establishment of a Fair Fund and appointment of the Tax Administrator are necessary to ensure that the funds are maintained and distributed in compliance with federal and state tax laws.

Background

1. On October 26, 2021, the SEC filed a Complaint against Swapnil J. Rege (“Mr. Rege”), SwapStar Capital, LLC, (“SwapStar”), and Reema Rege (“Ms. Rege”) (collectively, the “Defendants”). Dkt. 1 (the “Complaint”). In the Complaint, the SEC alleged that, from mid-2019 through October 2021, Mr. Rege, the sole owner of SwapStar since its inception, acted as investment adviser and continued to associate with an investment adviser in violation of the investment adviser bar imposed by the SEC on July 18, 2019. *In the Matter of Swapnil Rege*, Administrative Proc. File. No. 3-19257. Mr. Rege then failed to disclose his bar from acting as an investment advisor to his clients and misrepresented the nature of his being the subject of a Commission enforcement action. The SEC further alleged that Mr. Rege and SwapStar engaged in a scheme to misappropriate assets from clients they advised by instructing clients to deposit funds for investment into bank accounts associated with Mr. Rege or SwapStar, claiming the funds would then be transferred to brokerage accounts. According to the Complaint, Mr. Rege and SwapStar instead used a significant portion of the funds deposited by their advisory clients for Mr. Rege’s personal expenses. Finally, the SEC alleged that the only brokerage accounts to which Mr. Rege or SwapStar transferred client funds were two accounts held in the name of Ms. Rege, rendering her in possession of funds to which she had no legitimate claim and which were received because of Mr. Rege’s and SwapStar’s unlawful behavior.

2. On August 23, 2022, this Court entered Final Judgments against the Defendants. Dkt. 29 – 31. The Final Judgments concerning Mr. Rege and SwapStar ordered them to pay, jointly and severally, a total of \$5,469,926 in disgorgement, prejudgment interest, and civil penalties to the Commission. Dkt. 30 & 31. The Final Judgment against Ms. Rege ordered the transfer of certain frozen assets to the Commission. Dkt. 29. The Final Judgments additionally

ordered the Commission to hold all funds, together with interest and income earned thereon (collectively, the “Fund”) pending further order of the Court. The Final Judgments established that the Commission may propose a plan to distribute the Fund subject to the Court’s approval and that such a plan may provide for the Fund to be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002.

3. The SEC holds \$1,237,532.60 paid by the Defendants pursuant to the Final Judgments, plus accrued interest and earnings. The money is being held in an SEC-designated account with the United States Treasury’s Bureau of Fiscal Service and will be distributed to harmed investors pursuant to a distribution plan to be approved by this Court. Funds collected or paid in the future, as well as interest accrued will be added to the Fair Fund.

Establishment of a Fair Fund

4. The Commission now moves the Court to establish a Fair Fund for the \$1,237,532.60 paid by the Defendants to date, and any future funds collected from the Defendants, plus accrued interest and earnings, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, which provides in relevant part:

If, in any judicial or administrative action brought by the Commission under the securities laws, the Commission 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 Commission, be added to and become part of a disgorgement fund or other fund established for the benefit of the victims of such violation.

See 15 U.S.C. § 7246(a).

5. The Commission brought this action under the securities laws and the Defendants were ordered to pay disgorgement, prejudgment interest, and civil penalties pursuant to the Final Judgments of this Court. We request the Court establish a Fair Fund to facilitate ultimate

distribution of the funds paid by the Defendants and any funds collected in the future to investors harmed by the Defendants' conduct.

6. The creation of a Fair Fund is a precursor to creating a plan of distribution for Court approval and ultimately distributing funds to victims of the violations of the securities laws. The SEC intends to develop a distribution plan (the "Plan"), which may involve applying to the Court for the appointment of a distribution agent to assist with the development and administration of such Plan, and to then seek Court approval of the Plan.

Appointment of a Tax Administrator

7. The Fair Fund is a Qualified Settlement Fund ("QSF") under section 468B(g) of the Internal Revenue Code (IRC), 26 U.S.C. § 468B(g), and related regulations, 26 C.F.R. §§ 1.468B-1 through 1.468B-5. A Tax Administrator, on behalf of the Fair Fund, should be appointed and authorized to take all necessary steps to enable the Fair Fund to obtain and maintain the status of a taxable QSF, including the filing of all required elections and statements contemplated by those provisions. The Tax Administrator will cause the Fair Fund to pay taxes in a manner consistent with treatment of the Fair Fund as a QSF. The reasonable costs, fees, and other expenses incurred in the performance of the Tax Administrator's duties would be paid by the Fair Fund in accordance with the agreement between the SEC and the Tax Administrator.

8. The SEC recommends the appointment of Miller Kaplan¹, which is experienced in the taxation of QFSs and has agreed to reasonable fees for its services. In summary, the current agreement with Miller Kaplan provides for compensation for services and expenses as follows:

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 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 Miller Kaplan's engagement with the SEC, Miller Kaplan 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.

SERVICE	FIXED FEE
Income tax returns, including items a-f (below).	\$1,850
Income tax returns, including items a-f (below), for funds with assets of \$120,000 or less or that are open and closed within the same year.	\$925

Fixed fee tax compliance services include:

- a. Obtain a federal tax identification number for the QSF.
- b. Prepare and file federal and state income tax returns, as required.
- c. Where required, calculate quarterly estimated tax payments, and provide information to the SEC so that payments may be made timely.
- d. Make arrangements with the SEC or its agents to pay the tax liability of the QSF.
- e. 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.
- f. Determine and comply with information reporting obligations of the Fund for payments to vendors, if applicable; and
- g. 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.

9. Miller Kaplan has served as a tax administrator on numerous QSF's established by the Commission. The Commission 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 Fair Fund under this Court's jurisdiction.

**Authorization to Pay Future Tax Obligations and
Tax Administrator Fees and Expenses Without Further Court Order**

10. In an effort to meet tax payment deadlines, avoid the assessment of late payment penalties, and make timely payment to the Tax Administrator for services provided, the SEC

further requests that SEC staff be authorized to approve and arrange for the payment of all tax obligations of the QSF and reasonable related fees and expenses of the Tax Administrator from the Fair Fund without further Court order. The SEC staff follows a rigorous process for reviewing and approving invoices before payment is made. The SEC's Office of Distributions requires and reviews, in a multi-step process, detailed invoices from the Tax Administrator that describe the work performed, the billing rate, and the time expended on each task. If the Court authorizes the SEC staff to approve and arrange for the payment of taxes and related fees and expenses of the Tax Administrator without further Court order, the SEC staff will use its expertise in distributions and knowledge of this specific distribution to review all proposed charges. The SEC staff will approve and arrange for payment only of appropriate and properly documented taxes and related fees and expenses of the Tax Administrator. Authorizing such approval and arrangement of payment ensures timely and efficient payment of taxes reducing the risk of late tax payments and penalties and ensures timely payment of the related fees and expenses of the Tax Administrator. All tax payments and tax administration fees and expenses will be reported to this Court in the final accounting of the Fair Fund once all Court authorized distributions have been completed.

WHEREFORE, for all the foregoing reasons, the SEC respectfully requests that this Court enter the associated proposed Order and grant such other relief as the Court deems just and proper.

Respectfully submitted,

/s/ Sondra Panahi
Sondra Panahi
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Dated: January 11, 2024

DESIGNATION PURSUANT TO LOCAL CIVIL RULE 101.1(f)

Pursuant to Local Civil Rule 101.1(f), because the Securities and Exchange Commission (“Commission”) does not have an office in this district, the United States Attorney for the District of New Jersey is hereby designated as an eligible alternative to the Commission to receive service of all notices or papers in the action at the following address:

David Dauenheimer
Deputy Chief, Government Fraud Unit
Assistant U.S. Attorney
970 Broad Street
Newark, New Jersey 07102
Email: david.dauenheimer@usdoj.gov
(973) 645-2700

CERTIFICATE OF SERVICE

I, Sondra Panahi, hereby certify that, on January 11, 2024, I caused the foregoing document to be electronically filed with the clerk of the court for the U.S. District Court of the United States District Court for the District of New Jersey, using the Court's electronic case filing system. The electronic case filing system sent a "Notice of Electronic Filing" to all attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

/s/ Sondra Panahi
Sondra Panahi