

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

**SECURITIES AND EXCHANGE
COMMISSION**

Plaintiff,

v.

**SWAPNIL J. REGE, SWAPSTAR
CAPITAL, LLC, AND REEMA
REGE,**

Defendants.

Case No. 3:21-CV-19313-ZNQ-TJB

**PLAINTIFF’S MOTION AND MEMORANDUM OF LAW IN SUPPORT
OF AN ORDER APPROVING THE PLAN OF DISTRIBUTION FOR THE FAIR FUND**

Plaintiff Securities and Exchange Commission (the “Commission” or “SEC”) respectfully moves this Court for an Order (i) approving the Proposed Plan of Distribution for the Fair Fund (“Distribution Plan”) (Exhibit A to this Motion); and (ii) ordering such other and further relief as the Court may deem just and proper.

Background

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”) alleging that, from mid-2019 through October 2021, Mr. Rege, the sole owner of SwapStar since its inception, acted as an 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. According to the Complaint, Mr. Rege then failed to disclose his bar from acting as an investment advisor to his

clients and misrepresented the nature of the Commission enforcement action filed against him. 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 she received because of Mr. Rege's and SwapStar's unlawful behavior.

On August 23, 2022, the Court entered Final Judgments against the Defendants. Dkt. 29 – 31 (the "Final Judgments"). The Final Judgments against 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.

On August 25, 2022, by consent, the SEC issued a second Order barring Mr. Rege from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization. *In the Matter of*

Swapnil Rege, Admin. Proc. File No. 3-21007, Investment Advisers Act Rel. No. 6097 (Aug. 25, 2022).

On January 17, 2024, this Court entered an Order establishing a Fair Fund (the “Fair Fund”), appointing Miller Kaplan Arase LLP as tax administrator (the “Tax Administrator”) of the Fair Fund, and authorizing the SEC to approve payment of the Fair Fund’s tax obligations and the related fees and expenses of the Tax Administrator without further order of the Court. Dkt. 35.

On March 8, 2024, the Court entered an Order appointing Analytics Consulting, LLC as distribution agent (the “Distribution Agent”) of the Fair Fund and authorizing the SEC to approve payment of the Distribution Agent’s fees for administration without further order of the Court. Dkt. 37.

The Court Should Approve the Distribution Plan

The Commission now seeks approval of a proposed Distribution Plan (attached hereto as Exhibit A) to distribute the funds collected from the Defendants. The Distribution Plan provides for a distribution to certain individuals (the “Eligible Claimants”) who were harmed by the Defendants’ violations of the federal securities laws. The Distribution Plan contemplates that the Fair Fund, currently consisting of \$1,237,532.60 in funds available (less a reserve of taxes, fees, and expenses) will be distributed to Eligible Claimants whom suffered a Recognized Loss as calculated in accordance with the Plan of Allocation. The Distribution Agent plans to commence the distribution process subject to this Court’s approval of the 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 Plan for the Fair Fund constitutes a fair and reasonable allocation of the funds available for distribution, and should be approved.

Conclusion

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

Dated: October 17, 2024

Respectfully submitted,

By: /s_____
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CERTIFICATE OF SERVICE

I, Sondra Panahi, hereby certify that, on October 17, 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