

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-12868

In the Matter of	:	
	:	
	:	
PACKETPORT.COM, INC.,	:	
RONALD DURANDO,	:	
MICROPHASE CORP.,	:	PROPOSED PLAN OF
ROBERT H. JAFFE,	:	DISTRIBUTION
GUSTAVE DOTOLI,	:	
M. CHRISTOPHER AGARWAL,	:	
And THEODORE KUNZOG,	:	
	:	
	:	
	:	
Respondents.	:	
	:	

OVERVIEW

The Division of Enforcement (“Division”) submits the following Proposed Plan of Distribution (the “Plan”) to the Securities and Exchange Commission (“Commission”) pursuant to Rule 1101(a) of the Commission’s Rules on Fair Fund and Disgorgement Plans, 17 C.F.R. §201.1101(a). This Plan proposes distributing \$1,075,000 paid in disgorgement (the “Disgorgement Fund” or “Fund”) following settled administrative proceedings. See In the Matter of PacketPort.com, Inc., Ronald Durando, Microphase Corp., Robert H. Jaffe, Gustave Dotoli, M. Christopher Agarwal, and Theodore Kunzog, Admin. Proc. File No. 3-12868, Securities Act Release No. 8858 (October 18, 2007).

This Plan is subject to the notice and comment procedure set forth in paragraph 46. This Plan is subject to approval by the Commission, and the Commission retains jurisdiction over implementation of the Distribution Plan.

I. FACTUAL AND PROCEDURAL BACKGROUND

Settlement Description

1. On October 18, 2007, the Commission instituted settled administrative proceedings against two corporations and five individuals for violations of the federal securities laws in connection with a scheme involving the stock of PacketPort.com. See In the Matter of PacketPort.com, Inc., et al., Admin. Proc. File No. 3-12868 (October 18, 2007) (“Order”). The Order is published at <http://www.sec.gov/litigation/admin/2007/33-8858.pdf>.

2. Among other things, the Order found that the respondents violated the registration, disclosure, and anti-touting provisions of the federal securities laws, and ordered disgorgement totaling \$1,075,000 to be paid to the Commission. The disgorgement was fully paid as of October 15, 2008. On October 21, 2009, the Commission appointed Damasco & Associates to be tax administrator for the Disgorgement Fund.¹ The funds are deposited with the U.S. Department of Treasury Bureau of Public Debt (“BPD”) and have been invested in short-term U.S. Treasury bills. The Disgorgement Fund will receive no additional funds, other than interest from these investments.

Appointment of Fund Administrator

3. Rust Consulting, Inc. (“Rust”), a wholly-owned subsidiary of SOURCECORP, is proposed to act as the fund administrator of the Disgorgement Fund (“Fund Administrator”). Rust was founded in 1976 and has provided administration services for over 2,000 class action

¹ See Order Appointing Tax Administrator, Exchange Act Release No. 60852 (October 21, 2009).

settlements. Rust has provided administrative services in a number of Commission actions.

4. Rust shall be entitled to reasonable fees in accordance with the proposal submitted to the Commission and shall be entitled to reimbursement for reasonable costs and expenses from the Disgorgement Fund. The fees and expenses for the administration of the Disgorgement Fund will be paid first from interest earned on the invested funds, then, if not sufficient, from the corpus.

Bond

5. Because the Fund Administrator is not a Commission employee, Rule 1105(c) requires that it “obtain a bond in the manner prescribed in 11 U.S.C. 322, in an amount to be approved by the Commission.” The Fund Administrator will obtain the required bond from Hartford Fire Insurance Company (“Hartford”) in the amount of \$1,075,000, which satisfies the bond requirement of Rule 1105(c). Hartford is rated A+ by A.M. Best. The cost of the bond will be paid first from interest earned on the invested funds, then, if not sufficient, from the corpus.

Appointment of Tax Administrator

6. The Commission has appointed Damasco & Associates as the Tax Administrator (“Tax Administrator”) of the Disgorgement Fund. See Order Directing Appointment of Tax Administrator, Exchange Act Release No. 60852 (October 21, 2009). The Fund Administrator will cooperate with the Tax Administrator in providing information necessary to accomplish the income tax compliance, and any other tax-related work to the Tax Administrator by the Commission staff. The Tax Administrator shall be compensated from the interest earned on the Disgorgement Fund, and if the interest is not sufficient, then from the corpus.

Duties of Fund Administrator

7. The Fund Administrator will be responsible for, among other things, overseeing the administration of the Disgorgement Fund, obtaining accurate mailing information for shareholders, preparing accountings, cooperating with the Tax Administrator in providing the information necessary to accomplish the income tax compliance, distributing money from the Disgorgement Fund to shareholders in accordance with this Plan, and providing a system to address shareholder questions or concerns regarding the distribution.

8. The Fund Administrator shall ensure that sufficient amounts are withheld from the Disgorgement Fund to satisfy any tax obligations and to pay the fees and reimbursable costs of the Fund Administrator and the Tax Administrator.

9. Rust will have no discretion with respect to the allocation of the Distribution Fund because payment amounts will be determined and paid in accordance with the process set forth below.

10. In carrying out its duties, the Fund Administrator may be assisted by the Commission staff or others acting under its supervision. In addition, the Fund Administrator shall be entitled to rely on the information provided by Commission staff and others concerning the identification of the potential Eligible Claimants.

II. DEFINED TERMS

11. As used in this Plan, the following definitions shall apply:

a. “Approval Date” means the date on which this Plan is approved by the Commission;

b. “Claimants” shall mean those individuals and entities, or their lawful

successors, who purchased common shares of PacketPort.com during the Purchase Period, and who incurred losses on those shares under the loss calculation set forth in this Plan;

c. “Claim Deadline” means the date by which all Claim Forms must be postmarked by (or received by the Fund Administrator if not sent by U.S. Mail) in order to be eligible to receive any payment from the Fund. The Claim Deadline will be 90 days after the Claim Forms are mailed;

d. “Claims Packet” shall mean the materials relevant to submitting a claim that will be provided to Potentially Eligible Claimants known to the Fund Administrator or to those people who request such materials. The Fund Administrator, in consultation with Commission staff, shall prepare the Claims Packet, which shall include, at a minimum, a copy of the Distribution Plan, Notice, and a Proof of Claim Form;

e. “Disgorgement Fund” or “Fund” shall mean the \$1,075,000 in disgorgement paid, plus any interest earned, and less any taxes, fees, or expenses incurred for administration of the Plan;

f. “Distribution Date” means the date that first distribution checks are mailed to Eligible Claimants, which will be no later than thirty (30) days after the completion of the claims process;

g. “Eligible Claimants” are those Claimants the Fund Administrator determines to be entitled to receive a disbursement from the Disgorgement Fund. An “Eligible Claimant” in no event shall include:

(i) Any current or former officer or director of PacketPort.com, or any of such person's assigns, creditors, heirs, distributees, spouses, parents, children, or controlled entities or affiliates;

(ii) Any defendant or respondent in any action or proceeding brought by the Commission related to conduct described in In the Matter of PacketPort.com, Inc., Ronald Durando, Microphase Corp., Robert H. Jaffe, Gustave Dotoli, M. Christopher Agarwal, and Theodore Kunzog (Securities Act Rel. No. 8858, Oct. 18, 2007), or any such defendant's or respondent's assigns, creditors, heirs, distributees, spouses, parents, children, or controlled entities or affiliates; and

(iii) The Fund Administrator, its employees, Agents and their immediate family members;

h. "Fund Administrator" shall mean Rust Consulting, proposed by the Division to administer the Plan in accordance with the Commission's Rules on Fair Fund and Disgorgement Plans; and

i. "Purchase Period" shall mean December 13, 1999 through April 11, 2000.

III. IMPLEMENTATION OF THE PLAN

Identification of Eligible Claimants

12. The Commission staff has collected information that identifies some potential Eligible Claimants and will provide this information to the Fund Administrator.

13. The Fund Administrator shall take all reasonable steps to identify and locate potential Eligible Claimants, including but not limited to making inquiries to transfer agents and brokerage firms.

Claims Process

14. The Fund Administrator shall prepare a claim package (“Claim Package”) consisting of a summary of the Distribution Plan and its purpose, a claim form, and instructions for filing a claim. The Fund Administrator shall submit the Claim Package to the Commission staff for review and approval.

15. Within 30 days after this Distribution Plan is approved (the “Approval Date”), the Fund Administrator shall begin to send the Claim Package to all potential Eligible Claimants by First Class mail.

16. The Fund Administrator shall attempt to locate any potential Eligible Claimant whose claim form has been returned by the U.S. Postal Service (“USPS”) as undeliverable. The Fund Administrator shall immediately remail any returned undelivered mail for which the USPS has provided a forwarding address. The Fund Administrator may engage a third-party search firm to conduct more rigorous searches for missing Eligible Claimants and may make such additional efforts that are economically reasonable after consultation with Commission staff.

17. The Fund Administrator may require potential Eligible Claimants to support claim forms with such documentary evidence as the Fund Administrator deems necessary or appropriate. Each potential Eligible Claimant must verify his/her claim form under penalty of perjury. The Fund Administrator shall review all claim forms and associated documentation, evaluate each submission for completeness and integrity, and determine whether each potential Eligible Claimant may participate in the Disgorgement Fund.

18. The Fund Administrator shall give written notice to each potential Eligible Claimant whose claim is rejected for participation in the Disgorgement Fund and the reason for

the rejection. Any potential Eligible Claimant who seeks reconsideration of the rejection must so advise the Fund Administrator within 20 days of the postmark date of the notice of rejection. Following reconsideration review, the Fund Administrator shall notify such potential Eligible Claimant in writing of the Fund Administrator's final decision, which shall be non-appealable.

Allocation of the Disgorgement Fund

19. The Fund Administrator shall determine the net loss amount for each potential Eligible Claimant in three steps, as follows:

(a) For each share purchased by a Claimant during the Purchase Period, determine the share loss or gain by calculating the difference, on a first-in, first-out basis, between (1) the purchase price, and (2) the sale price, or, if the Claimant still holds the share, \$3.75, and then subtracting the total gains from the total losses;

(b) For each share purchased before the Purchase Period and sold during the Purchase Period, determine any artificial gains by calculating the difference, on a first-in, first-out basis, between the purchase price and the sale price; and

(c) Subtract the amount calculated in paragraph 20(b) above from the amount calculated in paragraph 20(a) above to determine the net loss amount.

20. The Fund Administrator shall determine the pro-rata share of the Disgorgement Fund to be paid to each potential Eligible Claimants' as follows:

(a) Set aside a reserve sufficient to satisfy tax obligations and the fees and expenses of the Fund Administrator and the Tax Administrator;

(b) Divide the remainder of the Disgorgement Fund (the total Disgorgement Fund less the reserve) by the sum of all potential Eligible Claimant net loss amounts to determine the pro-rata percentage; and

(c) Determine each potential Eligible Claimant's pro-rata share by multiplying his net loss amount by the lesser of the pro-rata percentage or 100 percent.

21. The Fund Administrator shall determine each Eligible Recipient's payment amount as follows:

(a) Eliminate pro-rata share losses of less than \$100; and

(b) Pro-rata share losses of \$100 or greater will receive a payment from the Disgorgement Fund.

22. The Fund Administrator shall determine, in consultation with Commission staff, whether the funds remaining in the Disgorgement Fund, taking into account unpaid and anticipated expenses, warrant a second distribution. If warranted, a second distribution will follow procedures to be established by the Fund Administrator and approved by the Commission staff. Any funds remaining after a second distribution shall be paid to the Commission for transfer to the US Treasury.

Procedures for Handling Disputes

23. Disputes shall be limited to matters relating to the calculation of the amount of distribution to Eligible Claimants. The Fund Administrator shall notify each Eligible Claimant in writing of the payment to which he/she is entitled and the basis for such computation. If an Eligible Claimant disputes the payment amount, the Eligible Claimant must advise the Fund Administrator in writing within ninety (90) days of the Distribution Date. Following an

investigation of the dispute including a review of the written dispute and any supporting documentation, within thirty (30) days within receipt of the dispute, the Fund Administrator shall notify the person submitting the dispute in writing of the Fund Administrator's final decision regarding the resolution of the dispute, which shall be non-appealable.

IV. ADMINISTRATION OF THE PLAN

Control of the Disgorgement Fund

24. The Commission has custody of the Disgorgement Fund and shall retain control of the assets of the Disgorgement Fund.

25. The Disgorgement 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.

26. All interest earned on the money will accrue for the benefit of Eligible Claimants except as otherwise provided herein. All costs associated with the QSF account will be paid first from the interest earned on the Disgorgement Fund, and if the interest is not sufficient, then from the corpus.

27. Upon approval of the Plan, pursuant to an Escrow Agreement provided by and approved by the Commission staff, the Fund Administrator shall establish an Escrow Account and an unfunded Controlled or Managed Distribution Account ("Distribution Account") at U.S. Bank (the "Bank"), in the name of and bearing the Employer Identification Number ("EIN") of the QSF as custodian for the distributees of the Distribution Plan. The name of each account shall be in the following form: Name of QSF, [EIN], as custodian for the benefit of investors allocated a distribution from PacketPort.com Plan of Distribution.

28. The Fund Administrator shall be the signer on the Escrow Account and the Distribution Account, subject to the continuing jurisdiction and control of the Commission.

29. U.S. Bank will hold the Disgorgement Fund assets during the check-cashing period. U.S. Bank maintains and will continue to maintain a Bankers Blanket Bond, which includes errors and omissions coverage with a single aggregate limit in the amount of \$85 million. The primary insurer is Indian Harbor Insurance Company, a company which, as of its most recent renewal, was rated “A+” by A.M. Best/Standard and Poor’s. U.S. Bank annually assesses the adequacy of their policy limits through extensive analysis of historical loss data, exposure to loss and internal company controls. The limits of U.S. Bank are reviewed annually by the companies’ Board of Directors. Documentation has been provided to the assigned Commission staff to support the foregoing representations.

30. The Fund Administrator shall authorize the Bank to provide account information to the Tax Administrator, including providing duplicate statements for the QSF account. The Fund Administrator shall use the assets and earnings of the Disgorgement Fund to provide payments to Eligible Claimants and to provide the Tax Administrator with assets to pay tax liabilities and tax compliance fees and costs.

31. Upon transfer from Treasury, the Funds will be held in the Escrow Account, separate from the assets of the Bank, until presentation of a check. Presented checks will be subject to “positive pay” controls before they are honored by the Bank, at which time funds will be transferred from the Escrow Account to the Distribution Account to pay the approved checks.

32. The Escrow Account shall be invested in AAA- rated Money Market Mutual Funds registered under the Investment Company Act of 1940 that directly invest in short term

U.S. Treasury securities and obligations, all backed by the full faith and credit of the U.S. Government; provided however, that the Money Market Mutual Funds' investments in short term U.S. Treasury securities will not be made through repurchase agreement or other derivative products.

Procedures for Distributing Funds

33. In order to distribute funds, the Fund Administrator will submit a validated list of payees and payment amounts (the "Payment List") to the assigned Commission staff, who will obtain authorization from the Commission to disburse pursuant to Rule 1101(b)(6). The payees and amounts will be validated by the Fund Administrator. The validation will state that the list was compiled in accordance with the Plan and provides all information necessary to make disbursement to each Eligible Claimant. Unless otherwise directed by the Commission, the Commission staff will obtain an Order Directing Disbursement that releases funds to the Bank account established by the Fund Administrator based upon the validated Payment List.

34. All checks will be issued by U.S. Bank. All checks will bear a stale date of 120 days from the date of the check. Checks that are not negotiated within the stale date shall be voided and U.S. Bank shall be instructed to stop payment on those checks.

35. All payments shall be preceded or accompanied by a communication that includes, as appropriate: (a) a statement describing the distribution; (b) a description of the tax information reporting and other tax related matters; (c) a statement that checks will be void after 120 days; and (d) the name of a person to contact, to be used in the event of any questions regarding the distribution. Any such information letter or other mailing to claimants characterizing their distributions shall be submitted to the assigned Commission staff for review

and approval. Distribution checks, on their face or in the accompanying mailing, will clearly indicate that the money is being distributed from an SEC Disgorgement Fund.

36. The Fund Administrator is responsible for accounting for all payments and transactions related to the Disgorgement Fund, including any distribution checks that expire uncashed. The Fund Administrator is responsible for researching and reconciling all returned items due to non-delivery, insufficient address, and/or any other deficiencies and shall issue new checks where appropriate.

37. In the event that an Eligible Claimant receives, but is not able to endorse, a Disgorgement Fund check as written (e.g. if an individual has changed names, a couple has divorced, or an individual is now deceased), and the Eligible Claimant or their lawful representative requests the re-issuance of a distribution check in a different name, the Fund Administrator will request, and must receive, documentation to support the requested change. The Fund Administrator will review the documentation to determine the authenticity and propriety of the change request. If such change request is properly documented, the Fund Administrator will issue an appropriately redrawn check to the requesting party.

38. The Fund Administrator will provide customer support and communications programs that will become active by the time the Claim Packages are mailed. These services will include a toll free number and a website for the public. The Commission staff retains the right to review and approve any material posted on the website. The toll free number shall be published in the letter of explanation that accompanies the Claim Package as described in paragraph 15.

Procedures for Handling Returned Checks

39. Checks returned as undeliverable by the USPS and for which a new address has been provided by the USPS will be repackaged and sent to the new address. For checks returned as undeliverable by the USPS and for which no new address is provided, the Fund Administrator shall direct a firm that specializes in such service to undertake an address update search. Additional efforts to identify new addresses for returned checks will be conducted as necessary and economically reasonable after consultation with the staff of the Commission. Where new address information becomes available, the Fund Administrator shall repackage the distribution check and send it to the new address. Where new address information is not available after a diligent search (and in no event later than 120 days after the initial mailing of the original check), the check shall be voided on the bank system.

40. After 120 days from the Distribution Date, the Bank shall notify the Fund Administrator of all uncashed checks and will credit the Disgorgement Fund for the amount of all uncashed checks.

Accounting

41. Once the Disgorgement Fund has been transferred from the BPD to U.S. Bank, the Fund Administrator will file an accounting with the Commission during the first ten days of each calendar quarter on a standardized accounting form provided by the staff of the Commission, and will submit a final accounting for approval by the Commission prior to termination of the Disgorgement Fund and discharge of the Fund Administrator.

Termination of the Fund

42. The Fair Fund shall be eligible for termination, and the Fund Administrator shall be discharged, after all of the following have occurred: (1) a final accounting, in an SEC standard accounting format provided by the staff, has been submitted by the Fund Administrator for approval of, and has been approved by, the Commission; (2) all taxes fees, and expenses have been paid; and (3) any amount remaining in the Fair Fund has been received by the Commission. When the Commission has approved the final accounting, the staff shall arrange for the transfer of any amount remaining in the Disgorgement Fund to the U.S. Treasury, and shall seek an order from the Commission to approve the termination of the Disgorgement Fund and discharge of the Fund Administrator.

Amendments

43. The Fund Administrator shall, as provided below, take reasonable and appropriate steps to distribute the Disgorgement Fund according to the procedures set forth in this Plan. Where the Fund Administrator deems necessary, after consultation with the Commission staff, the Fund Administrator may make immaterial modifications to this procedure to effectuate the general purposes of this Plan. However, if material changes are needed, the Fund Administrator will inform the Commission staff and will obtain approval from the Commission prior to implementation of the changes. This Plan may be amended upon the motion of any party, the Fund Administrator, or upon the Commission's own motion.

44. For good cause shown, the Commission's staff may extend any of the procedural deadlines set forth in the Plan.

V. NOTICE AND COMMENT PERIOD

45. Notice of this Plan will be published in the SEC Docket, on the Commission's website [<http://www.sec.gov>] and on the Administrator's website [www.rustconsulting.com]. Any person or entity wishing to comment on the Plan must do so in writing by submitting their comments within thirty days of the date of the notice (i) to the Office of the Secretary, United States Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549-1090; or (ii) via the Commission's Internet comment form (www.sec.gov/litigation/admin.shtml); or (iii) by sending an e-mail to rule-comments@sec.gov. Comments submitted by e-mail or via the Commission's website should include the Administrative Proceeding File Number (Admin. Proc. File No. 3-12868) in the subject line. Comments received will be publicly available. Persons should submit only information that they wish to make publicly available.