

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 79866 / January 24, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-16398

In the Matter of	:	
	:	
SANDRA DYCHE,	:	ORDER APPROVING
	:	PLAN OF DISTRIBUTION
Respondent.	:	
	:	

I.

On February 20, 2015, the Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Sections 15(b) and 21C of the Securities Exchange Act of 1934, and Section 9(b) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”)¹ against Sandra Dyche (“Dyche” or “Respondent”). The Order required Dyche to pay disgorgement of \$1,000,000, prejudgment interest of \$164,000 and a civil penalty of \$250,000. In accordance with the Order, Dyche paid a total of \$1,414,000 in disgorgement, prejudgment interest and civil monetary penalties to the Commission.

The Order created a Fair Fund pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, for the funds paid by Dyche (the “Fair Fund”).² The Fair Fund is subject to

¹ Securities Act Rel. No. 9729 (Feb. 20, 2015).

² The Commission also filed a civil action against Premiere Power, LLC, its CEO, and its Chairman (collectively, “Defendants”). Currently pending in district court, that action, *SEC v. Premiere Power, LLC*, No. 15-cv-1248 (S.D.N.Y.), alleges that the Defendants participated in a fraudulent scheme, along with Dyche, to misappropriate investor funds and defrauded the three investors referred to in the Order. The Commission staff intends to request that the court overseeing *SEC v. Premiere Power* direct any funds collected as a result of monetary sanctions being

the continuing jurisdiction and control of the Commission and the Fair Fund has been deposited at the United States Department of Treasury's Bureau of the Fiscal Service for investment.

On September 20, 2015, the Commission published a Notice of Proposed Plan of Distribution and Opportunity for Comment ("Notice")³ pursuant to Rule 1103 of the Commission's Rules on Fair Fund and Disgorgement Plans ("Rules").⁴ The Notice advised interested persons that they could obtain a copy of the Proposed Plan of Distribution ("Proposed Plan") from the Commission's public website at <http://www.sec.gov/litigation/fairfundlist.htm> or by submitting a written request to Michael Lim, United States Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-5876.

The Notice also advised that all persons desiring to comment on the Proposed Plan could submit their comments, in writing, no later than thirty (30) days from the date of the Notice (1) to the Office of the Secretary, United States Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090; (2) by using the Commission's Internet comment form (<http://www.sec.gov/litigation/admin.shtml>); or (3) by sending an e-mail to rule-comments@sec.gov. On October 18, 2016, the Commission received a comment letter on behalf of the Respondent through her counsel. The Proposed Plan has been modified to address the comments received (the "Plan").

After careful consideration, the Commission has concluded to approve the Plan.

sought in the Commission's litigation to investors or to the Commission to be added to the Fair Fund for subsequent distribution.

³ Exchange Act Rel. No. 78889 (Sept. 20, 2016).

⁴ 17 C.F.R. § 201.1103.

II.

A. Public Comments on the Proposed Plan

Scott J. Watnik, of Wilk Auslander LLP submitted a comment letter dated October 18, 2016 on behalf of the Respondent. The letter requested certain revisions to paragraphs 1 and 2 of the Proposed Plan (i) including language to make it clear that the Order against Dyche was “a settled agreement” and (ii) that any funds that are part of the Net Fair Fund⁵ but which are not ultimately claimed by any Eligible Investor should be subject to precisely the same process as “additional funds” are subject pursuant to paragraph 13.g. of the Proposed Plan.

The Commission has considered the comments and agrees that some modification to the Proposed Plan is appropriate.⁶ While the Commission’s Proposed Plan accurately sets out the findings made by the Commission in the Order, to make expressly clear the Order represents a settlement with the Respondent, we have added the following sentence to paragraph 1 after the second sentence: “Dyche consented to the entry of the Order, without admitting or denying the Commission’s findings, except, as to the Commission’s jurisdiction over her and the subject matter of the Commission’s proceedings, which were admitted.”

⁵ All capitalized terms used, but not herein defined shall have the same meaning ascribed to them in the Plan.

⁶ When modifying a proposed plan, Rule 1104 of the Rules states that, “[i]n the discretion of the Commission, a proposed plan that is substantially modified prior to adoption *may* be republished for an additional comment period pursuant to Rule 1103.” 17 C.F.R. § 201.1104 (emphasis added). As a result, under Rule 1104 of the Rules, even if a plan is “substantially modified,” the Commission retains discretion as to whether the modification warrants republication for comment. The Rules do not define “substantial modification.” In the context of one recent order approving a distribution plan, the Commission has explained that “[i]n determining whether a plan is substantially modified, the Commission considers, among other things, whether modifications revise the distribution plan’s methodology, in particular whether such modifications could have a negative effect on the proposed eligible recipients, and whether the modifications affect the group of persons eligible to participate in a plan.” *G-Trade Services LLC*, Exchange Act Rel. No. 75519 (July 24, 2015). In this case, there is no “substantial” modification to the proposed distribution plan because the Plan’s methodology is unchanged and the change made will not have any effect on the proposed eligible recipients. As a result, republication of the Plan is unnecessary and, in the exercise of the Commission’s discretion, republication of the Plan does not appear to be otherwise appropriate.

The Commission has considered Watnik's second comment and concluded that no modification is necessary. The Commission staff does not anticipate any unclaimed funds because there are only three Eligible Investors and they have already been identified and contacted. In the unlikely event that an Eligible Investor cannot be subsequently contacted or fails to respond to the Fund administrator, the Proposed Plan provides in paragraphs 15 and 16 respectively that the Fund Administrator, in his discretion, may remove such Eligible Investor from the distribution and the allocated amount the investor would have received will be added to the Net Fair Fund and will be distributed to the remaining Eligible Investors in accordance with paragraph 13 of the Proposed Plan.

B. Modification and Approval of the Plan

For the reasons stated above, the Commission finds that the Proposed Plan should be modified in response to some of the comments submitted, with the changes that are incorporated into the Plan submitted herewith.

Consistent with the approach used by district courts when considering whether to approve a distribution plan, the Commission's objective is to distribute funds in a fair and reasonable manner, taking into account relevant facts and circumstances.⁷ A *pro rata* distribution is fair and reasonable under the circumstances because it allocates the available funds in a manner proportional to the economic harm that the three investors sustained.

⁷ See *Official Committee of Unsecured Creditors of WorldCom, Inc. v. SEC*, 467 F.3d 73, 82 (2d Cir. 2006) (citing *SEC v. Wang*, 944 F.2d 80, 88 (2d Cir. 1991)).

III.

Accordingly, it is hereby ORDERED, pursuant to Rule 1104 of the Rules,⁸ that the Plan is approved.

By the Commission.

Brent J. Fields
Secretary

⁸ 17 C.F.R. § 201.1104.