

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT NEW YORK**

**SECURITIES AND EXCHANGE  
COMMISSION,**

**Plaintiff,**

**v.**

**HARRISON KATZEN**

**Defendant.**

**1:16-cv-06606-BMC**

**PLAINTIFF SECURITIES AND EXCHANGE COMMISSION’S MOTION TO  
APPROVE THE DISTRIBUTION PLAN**

**Motion**

Plaintiff Securities and Exchange Commission (“SEC” or “Commission”) respectfully moves this Court for an Order approving a plan to distribute more than \$349,000 to compensate harmed investors in connection with fraudulent schemes by the Defendants to offer and sell sham securities to investors to 60 investors, as alleged in the SEC’s Complaint. The proposed Distribution Plan, is appended as Exhibit A. The SEC has submitted a proposed Order to Chambers contemporaneously with the filing of this Motion. For the reasons set forth below, the Commission respectfully submits that its Motion should be granted in its entirety.

**I. MEMORANDUM**

**A. Procedural Background**

On November 29, 2016, the Commission filed a Complaint in the U.S. District Court for the Eastern District of New York against Harrison Katzen (“Defendant”). The Complaint alleged that the Defendant participated in fraudulent schemes to offer and sell sham securities

through a web of phony websites, internet advertisement, and an aggressive cold calling campaign – all of which, operating under the guise of seemingly legitimate investment firms, promised investors low risk and high rates of return. The schemes raised approximately \$3.2 million in illegal proceeds from approximately 60 investors in the United States and overseas.

On February 6, 2017, the Court entered final judgment against Katzen (Dkt. #14). The Court ordered the Defendant liable for disgorgement of \$75,574, prejudgment interest of \$9,479, and a civil penalty in the amount of \$264,947.

On February 9, 2017, the Defendant paid \$349,440.00 to the Commission. The fund was deposited in an SEC-designated account at the United States Treasury for investment, and any interest accrued will be added to the fund for distribution. On January 29, 2018, the Court entered an Order establishing a Fair Fund and appointing Miller Kaplan Arase LLP (“Miller Kaplan”) as the tax administrator (“Tax Administrator”). (Dkt. #19). On August 26, 2019, the Court entered an Order appointing Analytics LLC as distribution agent (“Distribution Agent”). (Dkt. #21). Regrettably, the distribution of funds in this matter was delayed. However, the Distribution Agent will endeavor to complete the distribution quickly once the Court approves the proposed Plan.

## **II. ARGUMENT**

### **A. The Applicable Standard**

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 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 should focus on whether the plan is fair and reasonable. *See Off. Comm. 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.”)). For the reasons stated below, 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.

**B. The Commission’s Plan Provides a Fair and Reasonable Allocation of the Fair Fund**

The Commission’s principal goal in fashioning a distribution plan for the Fair Fund is to identify a methodology that would allocate the available funds fairly and reasonably in a manner proportional to the harm that investors suffered as a result of the Defendant’s actions detailed in the Complaint. As such, the Commission desires to conduct the distribution to harmed investors in a cost-effective manner.

The Plan seeks to compensate investors who were harmed, by the Defendant’s conduct alleged in the Complaint, in connection with the sale of debt bonds issued by Altmark Holdings Ltd. and equity securities issued by PDL Portfolio (XIX) Ltd. (collectively, the “Securities”). According to the Plan, the Fair Fund will compensate investors on their losses on shares of the Securities purchased from May 1, 2012, through April 30, 2013.

The Plan provides that the Distribution Agent, subject to review by the Commission staff, will: (1) identify the eligible claimants who will be compensated, (2) calculate each

Eligible Claimant's Recognized Loss correlating to the harm from the Defendant's misconduct; (3) compile a Payee List identifying the distribution amounts to be paid to each eligible claimant; and (4) distribute the Fair Fund according to the Payee List. The Plan thereby allocates the available funds fairly and reasonably to the harmed investors, in a manner proportional to the economic harm they sustained.

**C. The Court Should Approve the Distribution Plan**

The Commission seeks approval of its proposed Distribution Plan for the Fair Fund. The Distribution Plan provides for a distribution to investors who were harmed by the Defendant's misconduct. The Commission staff plans to distribute the Fair Fund, less any taxes, fees paid to the tax administrator, and any other administrative expenses, on a *pro rata* basis to Eligible Claimants. A copy of the proposed Distribution Plan is attached as Exhibit A.

**D. Disposition of Remaining Funds after Distribution**

Upon completion of the final distribution, the SEC staff will file a motion with this Court to approve the final accounting, including a recommendation as to the final disposition of the Residual,<sup>1</sup> consistent with Sections 21(d)(3), (5), and (7)<sup>2</sup> of the Exchange Act and *Liu v. SEC*, 140 S. Ct. 1936 (2020). If distribution of the Residual to investors is infeasible, the SEC staff may recommend that the monies be transferred to the general fund of the U.S. Treasury subject to Section 21F(g)(3) of the Exchange Act.<sup>3</sup> In moving this Court to approve the final

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<sup>1</sup> All capitalized terms used herein but not defined shall have the same meanings ascribed to them in the Plan.

<sup>2</sup> 15 U.S.C. §§ 78u(d)(3), (5), and (7). Section 21(d)(7) was added to the Exchange Act by Section 6501(a) of the National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, enacted January 1, 2021. The relevant provisions of the NDAA apply "to any action or proceeding that is pending on, or commenced on or after, the date of" the NDAA's enactment. NDAA, Section 6501(b).

<sup>3</sup> Proposed Plan ¶72. Section 21F(g)(3) of the Exchange Act, 15 U.S.C. § 78u-6(g)(3), provides, in relevant part, that any monetary sanction added to a disgorgement fund or other fund under Section 308 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246) that is not distributed to the victims for whom the Fund was established unless the balance of the disgorgement fund at the time of the determination is made not to distribute the monetary sanction to

accounting, the SEC staff will also seek from the Court an Order that discharges the Distribution Agent and terminates the Fair Fund.

### III. CONCLUSION

For the foregoing reasons, the Commission respectfully requests that this Court enter the attached Proposed Order and grant such other relief as the Court deems just and proper.

Dated: July 10, 2023

Respectfully Submitted,

/s/ Keshia W. Ellis  
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Attachment: EXHIBIT A – Distribution Plan

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such victims exceeds \$200,000,000 shall be deposited into or credited to the Securities and Exchange Commission Investor Protection Fund.

**CERTIFICATE OF SERVICE**

I hereby certify that on July 10, 2023, I caused the foregoing document to be electronically filed with the clerk of the court for the U.S. District Court, Eastern District of New York, using the electronic case filing system of the court. 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.

Respectfully submitted,

/s/ Keshia Ellis

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