

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

SECURITIES AND EXCHANGE)	
COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 3:18-cv-00055-WWE
)	
DAVID S. HADDAD, TRAFALGAR)	
SQUARE RISK MANAGEMENT, LLC,)	
and NEW ENGLAND RE, LLC)	
)	
Defendants.)	

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF SECURITIES AND EXCHANGE COMMISSION’S MOTION TO ESTABLISH A FAIR FUND, APPOINT A TAX ADMINISTRATOR, APPOINT A DISTRIBUTION AGENT, APPROVE THE PROPOSED PLAN OF DISTRIBUTION, DISBURSE FUNDS, AND AUTHORIZE THE PAYMENT OF TAXES AND FEES

Plaintiff Securities and Exchange Commission (the “Commission” or “SEC”) submits this Memorandum of Law in support of its Motion to Establish a Fair Fund, Appoint a Tax Administrator, Appoint a Distribution Agent, Approve the Proposed Plan of Distribution, Disburse Funds, and Authorize the Payment of Taxes and Fees (“Motion”).

A. BACKGROUND

The Commission filed a complaint against Defendants David S. Haddad (“Haddad”), Trafalgar Square Risk Management, LLC (“Trafalgar”), and New England RE, LLC (“New England RE”) (collectively “Defendants”) on January 11, 2018 (“Complaint”) (Dkt. 1). In summary, the Commission alleged in the Complaint that Haddad operated two companies in the re-insurance industry, Trafalgar and New England RE. Haddad allegedly began raising money from investors through the offer and sale of unregistered securities in Trafalgar in or before 2012. He began offering unregistered New England RE securities to investors in late 2014 and,

through the Trafalgar and New England RE offerings, raised at least \$2.5 million from at least 29 separate investors. The SEC's Complaint alleges that, while making these offers and sales, Haddad, individually and on behalf of Trafalgar and New England RE, made various misleading claims to investors about the use of their funds. According to the SEC's Complaint, Haddad led investors to believe that their funds would be used to build and grow Trafalgar and New England RE when, in fact, Haddad diverted a significant portion of the investors' money for his own purposes, including the purchase of multiple homes, art and antiques, entertainment, and expenses of a dog rescue charity founded by Haddad. Haddad also used some investors' money to make Ponzi-like payments to other investors. The Complaint alleges that the money Haddad used to support his lifestyle far exceeded Trafalgar's revenues.

The Commission alleged that the Defendants violated Section 17(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. § 77q(a), Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78j(b), and Exchange Act Rule 10b-5, thereunder, 17 C.F.R. § 240.10b-5. Without admitting or denying the allegations of the Complaint, Haddad, Trafalgar, and New England RE consented to the entry of final judgments ("Final Judgments") permanently enjoining them from violations of these laws.

The Court entered the Final Judgments against the Defendants on January 18, 2018 (Dkt. Nos. 9, 10, and 11). The Final Judgments held that Haddad and Trafalgar were jointly and severally liable to pay a total of \$644,514.26 in disgorgement and prejudgment interest, pursuant to a payment schedule consisting of four installments over a nine-month period. The ordered amount of \$644,514.26 consists of \$619,382.43 in disgorgement plus prejudgment interest of \$25,131.83. Further, Haddad and New England Re were ordered to pay, jointly and severally, a total of \$271,672.66 pursuant to a payment schedule over a one-year period. The ordered

amount of \$271,672.66 consists of \$269,080 in disgorgement, plus prejudgment interest of \$2,592.66. In addition, Haddad was ordered to pay a civil monetary penalty of \$181,071 within one-year of the entry of the Final Judgments and was permanently barred, prohibiting him from acting as an officer or director of a publicly-traded company. The Final Judgments also provide that Haddad receive a permanent injunction prohibiting him from providing information to, soliciting, or accepting investments or funds from any investor or potential investors regarding the offer or sale of any securities issued by any entity that he directly or indirectly owns, controls, consults for, or is employed by, unless he first provides such person with a written disclosure regarding his prior regulatory history and maintains written records of such disclosures.

To date, the Commission has received two payments from Defendants Haddad and Trafalgar pursuant to the Final Judgments; the Commission received a payment on March 3, 2018 in the amount of \$530,000, and a payment on April 20, 2018 in the amount of \$114,514.26. These amounts are currently being held by the Commission under the case name designation “SEC v. Haddad, et al.”

B. ESTABLISHMENT OF A FAIR FUND

Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, is entitled “Fair Funds for Investors” and provides that a Court shall, upon the Commission’s motion, include a defendant’s civil penalties in a distribution to victims of securities laws violations.¹ A fair fund permits civil penalties to be distributed to injured investors instead of to the United States Treasury.² Section 308(a) states in relevant part:

¹ Section 308 was amended by Section 929B of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Public Law 111-203, 2010 HR 4173 (July 2010).

“CIVIL PENALTIES TO BE USED FOR THE RELIEF OF VICTIMS: 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). In this matter, permitting the civil penalties paid by the Defendants to be added to the Distribution Fund will allow the Commission to return a substantial amount of money to injured investors, rather than pay such monies directly to the U.S. Treasury.

Accordingly, the Commission requests that the Court establish a Fair Fund (the “Trafalgar Fair Fund” or the “Fair Fund”) consisting of all funds received or otherwise collected by the Commission in satisfaction of the Defendants’ ordered disgorgement, prejudgment interest, and civil penalty amounts, plus accrued interest thereon. Additional amounts which are collected or otherwise received by the Commission in connection with this matter will be added to the Fair Fund.

C. APPOINTMENT OF A TAX ADMINISTRATOR

The Commission respectfully seeks the appointment of Miller Kaplan Arase LLP, a certified public accounting firm, which acquired Damasco & Associates LLP (“Miller Kaplan”), with one of their offices located in San Francisco, California, as Tax Administrator, to execute all income tax reporting requirements, including the preparation and filing of tax returns, with respect to funds under this Court's jurisdiction in this case.

The Fair Fund constitutes 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

² Prior to the Sarbanes-Oxley Act, all civil penalties were required to be paid to the United States Treasury under Section 21(d)(3)(C) of the Exchange Act [15 U.S.C. § 78u(d)(3)(C)].

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 would 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 Commission and the Tax Administrator, and subject to the approval of this Court.

In summary, this agreement provides for compensation for services and expenses as follows:

SERVICE	FIXED FEE
Income tax returns, including items 1-7 (below).	\$1850
Income tax returns, including items 1-7 (below), for SEC funds with assets of \$120,000 or less, or are open and closed within the same calendar year.	\$850
Loss Carryback (claim for refund) returns.	\$550

FIXED FEE TAX COMPLIANCE SERVICES INCLUDE:³

1. Obtain a federal tax identification number ("FEIN") for each SEC Fund.
2. Prepare and file federal and state income tax returns, as required.
3. Where required, calculate quarterly estimated tax payments and provide information to the SEC so that payments may be made timely.

³ These fixed fees include all staff time for client setup, status meetings, Miller Kaplan internal controls, copying expenses and any internal expenses of Miller Kaplan in performing these services, such as facsimile fees and telephone charges. Expenses that are not included are postage, expedited delivery fees (such as Federal Express), PACER, and other extraordinary costs, such as extended long distance telephone conferences and extended reports. Miller Kaplan expects these additional costs to be minimal, if any, and will be charged at cost without any administrative overhead.

4. Make arrangements with the SEC or its agent to pay the tax liability.
5. 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 late payment of taxes.
6. Determine and comply with information reporting obligations of the SEC Fund for payments to vendors.
7. Execution of the above listed duties requires numerous administrative tasks to ensure that the tax filing and payment responsibilities are met on a timely and efficient basis.⁴

D. APPOINTMENT OF A DISTRIBUTION AGENT

The Commission respectfully is also seeking the appointment of Sondra Panahi, Trial Counsel, Office of Distributions, within the Commission's Division of Enforcement, as Distribution Agent. As a Commission employee, the Distribution Agent shall receive no compensation from the Trafalgar Fair Fund for her services in administering the Fair Fund. In carrying out her duties, the Distribution Agent may be assisted by other Commission staff acting under her supervision. If appointed, the Distribution Agent will, among other things, once the Proposed Plan of Distribution ("Distribution Plan") is approved by the Court, implement the Distribution Plan; oversee the administration of the Fair Fund; coordinate with the Tax Administrator in order to prepare accountings and to ensure that the Fair Fund complies with all related legal and regulatory requirements; and maintain accurate records concerning the Fair Fund.

E. PROPOSED PLAN OF DISTRIBUTION FOR THE FAIR FUND

The Commission requests that the Court approve the SEC's Distribution Plan (attached hereto as Exhibit A) to facilitate compensation to the twenty-eight defrauded investors who have been identified by the Commission staff as having suffered Net Harm as a result of Defendants'

⁴ These tasks include but are not limited to compiling case information, obtaining financial information, and corresponding, communicating, and otherwise coordinating with Commission staff or the Commission's designated agents.

conduct as described in the Complaint and Final Judgments (Eligible Investors”).⁵ Information regarding the Eligible Investors’ allocations is located within the blind charts contained within Paragraph 38 of the Distribution Plan.⁶ Upon the Court’s request, the identification of Eligible Investors will be made available to the Court or otherwise provided under seal.

F. THE DISTRIBUTION PLAN IS FAIR AND REASONABLE

The Commission asserts that its approach for the distribution of the Fair Fund in this case is equitable and reasonable. SEC v. Wang, 944 F.2d. 80, 85, 88 (2d Cir. 1991). The Commission is vested with broad discretion in fashioning distribution plans for disgorgement funds and Fair Funds. SEC v. Levine, 881 F. 2d 1165 (2d Cir. 1989). The Commission’s proposed Distribution Plan is an appropriate distribution plan for this fund, since it would fairly compensate the Eligible Investors.

In accordance with the Distribution Plan, funds from the Fair Fund, less approximately \$20,000 as an estimated reserve for taxes and fees, will be paid to the Eligible Investors to compensate them for their Net Harm.

G. DISBURSEMENT OF FUNDS

The Commission respectfully requests that the Court authorize disbursement of funds and direct the Commission to make distributions to the Eligible Investors from the Fair Fund in accordance with the Distribution Plan.

H. PAYMENT OF TAXES, FEES, AND EXPENSES OF THE DISTRIBUTION FUND

⁵ One of the twenty-nine investors was not identified as having suffered a net loss, and thus is not considered to be an Eligible Investor under this Distribution Plan. Additionally, several of the investors invested in both Trafalgar and New England RE securities. Such investments are being counted separately, and as separate investors for purposes of the Distribution Plan.

⁶ The names of the Eligible Investors are not provided in the public documents in order to protect their privacy.

To expedite the administration and the subsequent termination of the Distribution Fund, the Commission requests that the Court authorize the Commission to pay future tax obligations, and fees and expenses of the Tax Administrator from the reserve, upon written request to and written approval by Commission staff, without further order from the Court.

I. CONCLUSION

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

Dated: May 24, 2018

Respectfully submitted,

SECURITIES AND EXCHANGE COMMISSION
By its attorneys,

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CERTIFICATE OF SERVICE

I hereby certify that on May 24, 2018, a true copy of the foregoing motion was filed by electronic means using the Court's Electronic Case Filing (ECF) system.

/s/ Deena R. Bernstein

Deena R. Bernstein