UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 18-cv-23368-FAM

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

LYNETTE M. ROBBINS, *et al.*,

Defendants.

PLAINTIFF'S MOTION FOR CREATION OF FAIR FUND AND FOR TRANSFER OF PAYMENTS TO THE WOODBRIDGE BANKRUPTCY ESTATE'S LIQUIDATION TRUST

I. INTRODUCTION

Plaintiff Securities and Exchange Commission respectfully moves the Court for an Order creating a Fair Fund ("Fair Fund" or "Fund") pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley), as amended by the Dodd-Frank Act of 2010, 15 U.S.C. § 7246(a). The Fair Fund will comprise the disgorgement, interest and civil penalty payments made to the Commission by Lynette M. Robbins and Knowles Systems, Inc. ("Knowles Systems") (collectively "Defendants") in this matter, plus interest earned on those funds. The Commission makes this Motion on the grounds that, by creating a Fair Fund with Defendants' payments, the Court will facilitate compensating harmed investors who purchased the securities of Woodbridge Group of Companies, LLC and its affiliates ("Woodbridge").

Second, the Commission moves for an Order authorizing the transfer of the Fair Fund to the Liquidation Trust ("Woodbridge Liquidation Trust") established under the First Amended Joint

Chapter 11 Plan of Liquidation of Woodbridge Group of Companies, LLC and Its Affiliated Debtors ("Liquidation Plan") **(Exhibit A)**, for the benefit of creditors, most of whom are harmed investors, in accordance with the terms of the Liquidation Plan, in *In Re Woodbridge Group of Companies, LLC, et al.,* Case No. 17-12560-KJC (D. DE) (Jointly Administered) ("Bankruptcy Case"). The transfer will be more cost-effective and efficient than having the Commission retain its own distribution agent for a separate distribution.

II. FACTUAL AND PROCEDURAL BACKGROUND

The Commission filed the Complaint in this matter on August 20, 2018. [DE 1]. According to the Complaint, the Defendants, using Woodbridge-provided materials, solicited the general public by hiring several "media influencers" who advertised Woodbridge's securities to the general public via radio, television and internet based programs. The Defendants also had in-person meetings with their customers and conversed with them via email and telephone. Once in contact with a potential investor, the Defendants assured the safety and profitability of the Woodbridge investment.

The Defendants then, in sum, processed the necessary paperwork, and depending on the security product sold, either earned the spread from the wholesale annual rate versus the rate the Defendants offered their customers, or earned a 5% sales commission purposefully mischaracterized as a marketing bonus to avoid the appearance of paying transaction-based commissions. During the time they sold Woodbridge securities, the Defendants were neither registered broker-dealers nor associated with registered broker-dealers. And, in truth and in fact, Woodbridge and Shapiro were operating a massive Ponzi scheme where Woodbridge and Shapiro raised more than $1.2 billion before collapsing in December 2017 and filing for bankruptcy.

On August 20, 2018, the Commission filed, as part of the settlement, the signed Consents of Robbins and Knowles Systems to the entry of Final Judgments against each Defendant. [DE 3]. On August 31, 2018, the Court entered the corresponding Final Judgments [DE 4,5], which imposed permanent injunctions against future violations of Section 5 of the Securities Act of 1933 ("Securities Act") and Section 15(a)(1) of the Securities Exchange Act of 1934 ("Exchange Act"), and required Robbins and Knowles Systems to pay disgorgement of $925,000 plus prejudgment interest thereon of $98,360.49, jointly and severally, and required Robbins to pay a $100,000 civil penalty. Consistent with the Final Judgments, the Defendants paid these sums, in full, within the allotted time provided in the Final Judgments, including the requisite post-judgment interest.

Meanwhile in the Bankruptcy Case, the Court held a hearing on October 24, 2018 for consideration of the Liquidation Plan. After a full hearing, on October 30, 2018, the Court confirmed the Liquidation Plan **(Exhibit A, DE 2903)**. The Liquidation Plan went effective February 15, 2019 **(Exhibit B, DE 3421)**. It is the Commission's intent with this motion that all funds recovered in this enforcement action be placed in the custody of the Liquidation Trustee for purposes of distribution to investors in accordance with the Liquidation Plan.

III. LEGAL ARGUMENT

The Final Judgments against the Defendants provides that the Commission "may propose a plan to distribute the Fund subject to the Court's approval. Such a plan may provide that the Fund shall be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. The Court shall retain jurisdiction over the administration of any distribution of the Fund" (DE 4, pgs. 4-5; 5, pg. 4). Section 308(a) of Sarbanes-Oxley, as amended provides that:

> *Civil Penalties to be used/or 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) (emphasis added). By its terms, Section 308(a) mandates the creation of Fair Funds with penalty payments upon the Commission's motion to the Court. This statutory provision therefore reflects Congress' intent to provide a greater recovery for injured investors by allowing the Commission to distribute both disgorgement and civil penalty payments as part of a Fair Fund. *See S.E.C. v. J.P. Morgan Securities, LLC,* 2017 WL 44209, *4 (D.D.C., Jan. 4, 2017) ("In securities law cases, the Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204 'establishe[s] the ability of courts to create Fair Funds for monies from disgorgement and civil penalties[,] which are then to be distributed to investors.'") (quoting *Cont'l Cas.Co. v. Duckson,* 826 F. Supp. 2d 1086, 1097-98 (N.D. Ill. 2011)).

The use of a Fair Fund was contemplated in the Final Judgments as the alternative to having the Commission transfer all of the funds to the United States Treasury. Therefore, given the mandatory terms of Section 308(a), the Fair Fund should be created.

IV. THE LIQUIDATION TRUST SHOULD DISTRIBUTE THE FAIR FUND TO INVESTORS

This Court has the broad equitable power to craft remedies for violations of the federal securities laws. *S.E.C. v. Huff,* 758 F.Supp.2d 1288, 1358 (S.D. Fla. 2010) (citing *S.E.C. v. Fishbach Corp.,* 133 F.3d 170, 175 (2d Cir. 1997)). In addition to ordering disgorgement and penalty from the Defendants, the Court may also approve a plan for distributing disgorgement and penalty payments to injured investors. *S.E.C. v. Elliot,* 953 F.2d 1560, 1566 (11th Cir. 1992) (The district court has broad powers and wide discretion to determine relief in an equity receivership. This discretion derives from the inherent powers of an equity court to fashion relief);

S.E.C. v. Wang, 944 F.2d 80, 85 (2d Cir. 1991); *S.E.C. v. Certain Unknown Purchasers of Common Stock,* 817 F.2d 1018, 1020-21 (2d Cir. 1987). The judicial standard for approving a distribution plan is very broad; 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." *S.E.C. v. Amerindo Inv. Advisors,* 639 Fed. Appx. 752, 755 (2d Cir. Feb. 26, 2016) (citing *S.E.C. v. Wang,* 944 F.2d at 85); *see also S.E.C. v. Certain Unknown Purchasers,* 817 F.2d at 1021 (approving insider trading distribution plan).

To distribute Defendants' payments in a timely and cost-efficient manner, the Commission requests the Court's authorization to transfer the Fair Fund payments to the Woodbridge Liquidation Trust for distribution by the Liquidation Trustee in accordance with the Liquidation Plan. Before approving the Liquidation Plan, the Bankruptcy Court considered all pleadings, held a hearing on the matter **(Exhibit A at 1, 2)** and concluded, over the objection of certain unsecured creditors, the Liquidation Plan deserved approval **(*Id.* at 3)**. The Commission concurs with the Bankruptcy Court's approval of the Liquidation Plan. After the Woodbridge Liquidation Trust receives the Defendants' money from the Fair Fund, the Liquidation Trustee, Michael I. Goldberg, Esq., Partner at Akerman, LLP, can distribute those payments to Woodbridge investors in accordance with the Liquidation Plan.

Authorizing the Liquidation Trustee to distribute the Fair Fund payments will avoid the delay and expense of requiring a separate distribution of Defendants' payments. Such a separate distribution would involve the retention of a tax administrator and distribution agent for this case, and the payment of the tax administrator's and distribution agent's fees and expenses from the Fair Fund payments. If the distribution agent were required to develop a separate distribution plan for this case, that could involve the time and expense associated with

sending hundreds of notices and proofs of claims for this case to the Woodbridge investors and with reviewing and approving or rejecting the submitted claims. Additionally, there would be the costs (such as for stationary, postage, bookkeeping and check fees) associated with the process of mailing distribution checks to investors. This separate distribution process could take months and cost thousands of dollars in order to replicate a distribution that the Liquidation Trustee intends to undertake in the near future. Because a separate distribution in this case would not benefit Woodbridge investors, the Court should authorize the transfer of the Fair Fund payments to the Woodbridge Liquidation Trust for distribution to those investors in accordance with the Liquidation Plan.

V. CONFERRAL

The Commission staff has conferred with the Liquidation Trustee, Michael I. Goldberg, Esq., who concurs with the relief requested herein.

VI. CONCLUSION

To provide the maximum financial benefit to the defrauded Woodbridge investors, the Court should enter an Order (i) creating a Fair Fund and (ii) authorizing the transfer of Defendants' payments pursuant to the Final Judgments in this matter to the Woodbridge Liquidation Trust for distribution to the Woodbridge investors in accordance with the terms of the Liquidation Plan.

Dated: February 27, 2019

Respectfully submitted,

By: **Russell Koonin & Christine Nestor**
Senior Trial Counsel
kooninr@sec.gov; nestorc@sec.gov
FL Bar No.: 474479; FL Bar No. 597211
Telephone: (305) 982-6385; (305) 982-6367

Scott Lowry
Senior Counsel

lowrys@sec.gov
Special Bar ID # A5502400
Telephone: (305) 982-6387
Attorneys for Plaintiff

SECURITIES AND EXCHANGE COMMISSION
801 Brickell Avenue, Suite 1800
Miami, Florida 33131
Telephone: (305) 982-6300

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 27, 2019, the foregoing document was filed electronically with the Clerk of Court using CM/ECF and that a true and correct copy of same was served via email and U.S. Mail on all counsel of record identified on the below service list who are not CM/ECF users.

By: ***Russell Koonin***

SERVICE LIST

Securities and Exchange Commissio v. Robbins et al.
Case No. 18-cv-23368-FAM
United States District Court, Southern District of Florida

Via Email and U.S. Mail
Gary S. Betensky
Richman Greer
One Clearlake Centre, Suite 1504
250 Australian Avenue South
West Palm Beach, FL 33401
gbetensky@richmangreer.co,
Attorney for Defendant, Lynette M. Robbins

Via Email and U.S. Mail
R. Scott Shuker
Latham, Shuker, Eden & Beaudine, LLP
111 North Magnolia Ave., Suite 1400
Orlando, FL 32801
rshuker@lseblaw.com
Attorney for Defendant, Knowles Systems Inc.