

1 JINA CHOI (N.Y. Bar No. 2699718)
JOHN S. YUN (Cal. Bar No. 112260)
2 yunj@sec.gov
ERIN E. SCHNEIDER (Cal. Bar No. 216114)
3 schneidere@sec.gov
JASON H. LEE (Cal. Bar No. 253140)
4 leejh@sec.gov

5 Attorneys for Plaintiff
SECURITIES AND EXCHANGE COMMISSION
6 44 Montgomery Street, Suite 2800
San Francisco, California 94104
7 Telephone: (415) 705-2500
Facsimile: (415) 705-2501
8

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION
12

13
14 SECURITIES AND EXCHANGE COMMISSION,

15 Plaintiff,

16 v.

17 WALTER NG, KELLY NG, BRUCE HORWITZ,
and THE MORTGAGE FUND, LLC

18 Defendants.
19
20
21
22
23
24
25
26
27
28

Case No. C-13-CV-00895 SC

**ORDER GRANTING PLAINTIFF'S
MOTION FOR CREATION OF FAIR
FUND, APPOINTMENT OF THE TAX
ADMINISTRATOR AND FOR TRANSFER
OF PAYMENTS TO THE MORTGAGE
FUND '08 LIQUIDATING TRUST**

Dated: January 16, 2015
Time: 10:00 a.m.
Courtroom: 1
Judge: Hon. Samuel Conti

ORDER

1
2 Plaintiff Securities and Exchange Commission’s (the “Commission”) Motion for an Order to
3 Establish a Fair Fund, for the Appointment of the Tax Administrator and for the Transfer of
4 Payments to the Mortgage Fund ‘08 Liquidating Trustee is GRANTED. It is therefore ordered that:

5 1. A Fair Fund is established pursuant to Section 308(a) of the Sarbanes-Oxley Act of
6 2002, as amended by the Dodd-Frank Act of 2010 [15 U.S.C. § 7246(a)], from the funds deposited
7 with the Commission under the case name designation “SEC v. Walter Ng,” plus interest earned on
8 those funds minus fees, taxes, and other expenses pursuant to the Final Judgments entered in this
9 case (the “Fund”).

10 2. Damasco & Associates LLP is appointed as Tax Administrator to execute all income
11 tax reporting requirements, including the preparation and filing of tax returns, with respect to
12 funds under this Court’s jurisdiction in this case.

13 3. Damasco & Associates LLP shall be designated the Tax Administrator of the Fund,
14 pursuant to Section 468B(g) of the Internal Revenue Code (“IRC”), 26 U.S.C. § 468B(g), and related
15 regulations, and shall satisfy the administrative requirements imposed by those regulations, including
16 but not limited to (a) obtaining a taxpayer identification number, (b) filing applicable federal, state,
17 and local tax returns and paying taxes reported thereon out of the Fund, and (c) satisfying any
18 information, reporting, or withholding requirements imposed on distributions from the Fund. The
19 Tax Administrator shall contemporaneously provide copies of all such filings to the Commission’s
20 counsel of record.

21 4. The Tax Administrator shall, at such times as the Tax Administrator deems necessary
22 to fulfill the tax obligations of the Fund, request that the Commission’s counsel approve the transfer
23 funds from the Fund on deposit with the Commission to pay any tax obligations of the Fund.

24 5. The Tax Administrator shall be entitled to charge reasonable fees for tax compliance
25 services and related expenses in accordance with its agreement with the Commission. The Tax
26 Administrator shall, at such times as the Tax Administrator deems appropriate, submit a declaration
27 of fees and expenses to the Commission’s counsel of record for approval and for payment from the
28 Fund.

1 6. The Commission is authorized to pay, from the Fund and without further order by the
2 Court, the standard tax administration fees of Damasco & Associates, as well as any federal and state
3 income taxes or assessments.

4 7. The funds deposited with the Commission in this matter may be transferred, after
5 payment of taxes and fees of the Fair Fund, to the Mortgage Fund '08 Liquidating Trust created by
6 the Chapter 11 Bankruptcy Plan in the *In re: Mortgage Fund '08 LLC*, Case No. 11-49803-RLE-11,
7 bankruptcy proceeding for distribution to the allowed Class 2 unsecured claimants in accordance with
8 the Joint Chapter 11 Plan. Excluded from that distribution is the single general unsecured creditor
9 (non-investor) which submitted an allowed claim for \$10,597.

10 8. The funds transferred by the Commission to the Mortgage Fund '08 Liquidating Trust
11 may be used to reimburse a *pro rata* share of the Mortgage Fund '08 Liquidating Trust's expenses of
12 administering the distribution. Absent further order by this Court, the transferred Fair Fund shall not
13 be used to pay attorney's fees or the hourly fees of Liquidating Trustee Susan L. Uecker. The
14 Liquidating Trustee shall distribute the transferred Fund, less permitted expenses, to the holders of
15 the allowed Class 2 unsecured claims pursuant to the Joint Chapter 11 Plan, with the exception of the
16 general unsecured creditor, which has agreed to excluded from the distribution of the funds
17 transferred by the Commission. At the conclusion of the distribution, the Liquidating Trustee will
18 submit a final report to the Commission staff and the staff in turn will file the final report with the
19 Court. The report shall include, among other things, a final accounting of all monies received, earned,
20 spent, and distributed in connection with any administration of the Distribution Plan. The
21 Liquidating Trustee's duty to submit this final report may be satisfied by the inclusion of the required
22 information in a quarterly report that the Liquidating Trustee files in the Mortgage Fund '08
23 bankruptcy proceeding. A copy of that quarterly report shall be filed in this proceeding.

24 Dated: February 5, 2015

25
26 
27 JUDGE SAMUEL CONTI
28 United States District Court