

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action NO. 21-cv-02870-CMA-SKC

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff

v.

ANN M. VICK,

Defendant.

**PLAINTIFF'S UNOPPOSED MOTION AND MEMORANDUM IN SUPPORT OF
MOTION FOR AN ORDER APPROVING THE PROPOSED DISTRIBUTION PLAN**

Plaintiff Securities and Exchange Commission (the "SEC or the "Commission") respectfully moves this Court for an Order approving the proposed Distribution Plan (the "Plan"). The memorandum in support of this motion is below and a Proposed Order Approving the Distribution Plan is attached.

MEMORANDUM IN SUPPORT OF MOTION

Procedural Background

1. On October 27, 2021, the Court entered Final Judgment against Ann Vick ("Vick" or the "Defendant"). (Dkt. No. 7). The Court ordered the Defendant to pay a total of \$1,168,229 consisting of disgorgement of \$570,150.00, prejudgment interest of \$27,929.00, and a civil penalty in the amount of \$570,150.00 to the Commission within 30 days of entry of the Final Judgment.

2. Ms. Vick did not pay the monetary relief ordered, and on December 20, 2021 and December 27, 2021, the Clerk of Court issued two writs of garnishment to Charles Schwab: (1) a writ of garnishment pursuant to Federal Rules of Civil Procedure 69 (“FRCP 69”) in the amount of \$589,079 in disgorgement plus prejudgment interest; and (2) a writ of garnishment pursuant to 28 U.S.C. § 3205(c)(7) of the Fair Debt Collections Practices Act in the amount of \$570,150 for the civil penalty and post-judgment interest owed. (Dkt. Nos. 13-15).

3. The SEC filed a Motion for A Garnishment Disposition Order on January 20, 2022 pursuant to 28 U.S.C. § 3205(c)(7) and FRCP 69 requiring Charles Schwab to turn over the garnished assets to the SEC for application to the Final Judgment entered against the Defendant. (Dkt. Nos. 17-18). On March 7, 2022, the Court granted the motion. (Dkt. No. 24). In accordance with the Court’s March 7, 2022 Order, on March 22, 2022, Charles Schwab turned over \$871,050.33 to the SEC. The SEC applied these funds against the debt owed by the Defendant and in partial satisfaction of the Final Judgment.

4. The \$871,050.33 surrendered to the SEC, plus accrued interest and earnings is being held in an SEC-designated account with the United States Treasury and will be distributed to harmed investors pursuant to a distribution plan to be approved by this Court.

5. On October 25, 2022 the Court established a Fair Fund, appointed Keshia W. Ellis, an SEC employee, as the Distribution Agent, and appointed Heffler, Radetich & Saitta, LLP as the Tax Administrator.

The Court Has Broad Discretion in Approving a Distribution Plan

6. 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 constitutes a fair and reasonable allocation of the funds available for distribution, and should be approved.

The Plan is Fair and Reasonable and Should be Approved

7. The Commission seeks approval of its proposed plan which provides for the fair and reasonable distribution of the Fair Fund. As described in the Plan, the Fair Fund will compensate investors for losses that they sustained from purchasing promissory notes from the Defendant or AMV Investments LLC between August 1, 2018 and January 31, 2021. Commission staff will distribute the Fair Fund, less any

taxes and 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.

8. The Commission's principal goal in fashioning a distribution plan for the Fair Fund was 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 distribute the collected funds as cost-effectively as possible to the harmed investors.

9. Under the Plan, the Distribution Agent and Commission staff will: (1) identify the Eligible Claimants who will be compensated, (2) calculate the total amount of all Eligible Claimants' harm; (3) determine the distribution amount to be paid to each Eligible Claimant; and (4) confirm that the Eligible Claimants are not excluded parties under the Plan. The Commission's Plan provides for a distribution to all Eligible Claimants, and thereby allocates the available funds fairly and reasonably, in a manner proportional to the economic harm they sustained.

10. 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 Residual¹, consistent with Sections 21(d)(3), (5), and (7)² of

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

² 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

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.³ In moving this Court to approve the final accounting, the SEC staff will also seek from the Court an Order that terminates the Fair Fund.

11. The SEC believes that the Plan fairly and reasonably distributes the Fair Fund to investors harmed by the conduct underlying the Complaint and respectfully requests that it be approved.

CONCLUSION

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

Pursuant to L.R. 7.1(a) counsel for the SEC has attempted to confer with Ms. Vick, a pro se defendant, regarding this motion. Counsel for the SEC emailed Ms. Vick on, Tuesday, May 30, 2023, and she responded that she would like to discuss the motion and Proposed Distribution Plan. On June 5, 2023, Counsel for the SEC emailed Ms. Vick a copy of the Proposed Distribution Plan and spoke to her by

“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).

³ Proposed Plan ¶ 58, Section 21F(g)(3) of the Exchange Act, 15 U.S.C. §§ 78u-6(g)(3), provides, in relevant part, that any monetary sanction of \$200 million or less collected by the SEC in any judicial action brought by the SEC under the securities laws that is not added to a disgorgement fund or Distribution Fund or otherwise distributed to victims, plus investment income, shall be deposited or credited into the SEC Investor Protection Fund.

phone. After Counsel for the SEC addressed her questions, Ms. Vick confirmed during the call that she had no further questions.

Dated at Washington, D.C., this 6 day June, 2023.

Respectfully Submitted,

/s/ KESHIA W. ELLIS

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CERTIFICATE OF SERVICE

I hereby certify that on June 6, 2023, I sent a copy of the foregoing document or paper to the following parties in the way described below each party's name:

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s/ KESHIA W. ELLIS

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