

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Civil Action No. 14-cv-23336-MORENO/O'SULLIVAN

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ABATEMENT CORP. HOLDING COMPANY LIMITED,

Defendant, and

BRENDA M. DAVIS
INTERNATIONAL BALANCED FUND,

Relief Defendants.

DISTRIBUTION PLAN

This Plan of Distribution (“Plan”) sets forth the proposed methods and procedures for distributing the funds obtained from defendants in the above-captioned action to the investors harmed as the result of a Ponzi scheme operated by the principal of Abatement Corp. Holding Company Limited (“Abatement”) with respect to the International Balanced Fund (“IBF”) and the related misappropriation of funds. The Plan is proposed by the Securities and Exchange Commission (“SEC” or “Commission”) in coordination with the Distribution Agent, Kurtzman Carson Consultants LLC (“KCC” or “Distribution Agent”), appointed by the Court on May 20, 2015. The Court also appointed Damasco & Associates LLP as the Tax Administrator (“Tax Administrator”) on July 28, 2015, to execute all the tax reporting and filing obligations of the Distribution Fund as a qualified settlement fund pursuant to section 468B(g) of the Internal

Revenue Code, 26 U.S.C. § 468B(g) and related regulations. The Plan is subject to approval by the Court, which retains jurisdiction over the implementation of the Plan.

Allocation of the Distribution Fund

1. The funds available for distribution will be allocated to injured investors according to the losses incurred by investors in Abatement. The SEC has collected \$1,449,949.55 and is holding these funds in an interest bearing account at the U. S. Treasury. This sum plus any interest earned, minus taxes, fees and administrative expenses paid constitute the amount available for distribution to harmed investors (the “Distribution Fund”).¹ The Distribution Fund will be disbursed to injured investors in a two-step process described in paragraph 15.

2. Because the Distribution Fund is not sufficient to permit payments for the total outstanding losses of each harmed investor, each harmed investor will be paid the percentage of the Distribution Fund that each investor’s loss bears to the total of the losses of all investors. This represents the investor’s *pro rata* share of the Distribution Fund pursuant to the terms of the Distribution Plan.

3. During the Commission’s investigation of this action, Commission Staff² gathered and analyzed injured investor account trading and transaction records and have provided the Distribution Agent with the investment calculations based on the Staffs’ analysis of the records. Commission Staff calculated each identified investor’s harm by calculating the sum of documented investments (amounts “Paid In”) less the sum of all documented returns of funds on their investment (amounts “Paid Out”) for each injured investor. According to the

¹ The Commission staff does not anticipate receiving any material additional funds in this matter; however a potential dividend payment may be received and added to the Distribution Fund.

² Commission Staff or Staff herein after refers to SEC staff from the Miami Regional Office, from the Division of Economic and Risk Analysis (“DERA”) and from the Office of Distributions.

investigative records and analysis, there are thirty-three (33) injured investors that suffered losses (“Identified Investors”) totaling \$3,615,747.49.

4. After withholding a reserve for the estimated fees and expenses of the Distribution Agent and Tax Administrator to complete the distribution, projected tax liabilities, and other anticipated costs, the Distribution Agent estimates the total funds available for distribution to Identified Investors to be approximately \$1,384,632.89.

Identifying Injured Investors

5. To identify potential injured investors, the Distribution Agent reviewed in detail the investor reports prepared by Staff that compiled each investor’s Paid In and Paid Out account activity to verify the current balance of their investment (“Investment Loss”). The reports reflect that forty-three (43) investors Paid In to Abatement of which thirty-three (33) injured investors are eligible for distributions from the Distribution Fund. Eligible investors are those investors that had total Paid In balances in excess of their total Paid Out balances; i.e. their Investment Loss is greater than zero. Attached as Exhibit B is the list of eligible Identified Investors (they are not identified by name, but by an assigned number, to preserve confidentiality) and their corresponding loss amounts and their *pro rata* percentage (“*Pro Rata Share*”) of the Distribution Fund, which is calculated by dividing each investor’s Investment Loss by the Investment Loss of all eligible investors.

6. The Distribution Agent and Commission Staff believes that all injured investors in Abatement have been identified and the amount each will receive will be accurately calculated without additional information from investors. As a result, there will be no claims-made process for an investor to participate in the Distribution Fund. There may be investors, however, who have not been identified and believe they are entitled to a share of the Distribution Fund. They will be given an opportunity to participate in the distribution as provided below.

Locating and Notifying Identified Investors

7. Within thirty (30) days of the Court's approval of this Plan, the Distribution Agent will send each Identified Investor a notice by United States Postal Service regarding the Court's approval of the Plan (the "Notice"). The Notice will include a statement characterizing the distribution, instructions for requesting a copy of or down-loading the Plan, the calculated balances of the amounts Paid In and amounts Paid Out and resulting Investment Loss for the investor, a description of the tax information reporting and other related tax matters, the procedure for the objection and distribution process as set forth in the Plan, and the name of the Distribution Agent to contact with questions regarding the distribution (the "Plan Notice"). If necessary, the Distribution Agent will coordinate with the Tax Administrator to request information from each injured investor that is needed to accomplish the distribution in accordance with applicable tax requirements relating to the Distribution Fund.

8. To participate in the distribution, an Identified Investor must provide a written response or return the confirmation form within thirty-three (33) days from the date the Notice is mailed. The response must include a statement that the investor either agrees with or objects to the Investment Loss provided in the Notice. The response must also confirm the name and address of the recipient. Identified Investors will be directed to submit responses (including objections) to the Distribution Agent and instructed not to contact the Commission, the Court, or the Clerk of the Court.

9. All Identified Investors who respond timely and agree with their Investment Loss will receive a Step One distribution payment within thirty-three (33) days of the response deadline in accordance with paragraph 15. This Step One payment will equal 80% of the investors *pro rata* share of the Distribution Fund.

10. Investors who object must provide a reason for the objection and documents supporting their claim. The Distribution Agent will investigate the objection, and within thirty-three (33) days of receipt of the written objection, the Distribution Agent will notify the investor of the resolution of their objection, which will be final. This procedure will be set forth in the Notice. The Distribution Agent will notify the Commission Staff immediately upon receipt of any objections so that such objections may be addressed timely and efficiently.

11. If an Identified investor fails to respond within thirty-three (33) days from the mailing of the Notice, the Distribution Agent will then make no fewer than two (2) follow-up/additional attempts to contact the investor by mail or phone. The second attempt will in no event take place more than fifty (50) days from the mailing of the Notice. Detailed address searches will be performed on all returned notices. If an investor fails to respond to the Distribution Agent's contact attempts as described in this paragraph, the Distribution Agent, in agreement with the Commission's Staff, may remove such investor from the distribution and the allocated distribution amounts will be recalculated for Step Two of the distribution.

12. If a Plan Notice is returned as undeliverable, the Distribution Agent will make all reasonable efforts to ascertain an investor's correct address. The Distribution Agent will then resend the Plan Notice to the Identified investor's new address within thirty (30) days of receipt of the returned Plan Notice. If the Plan Notice is returned as undeliverable again, and the Distribution Agent, despite all reasonable efforts, is unable to find an investor's correct address, the Distribution Agent, in agreement with the Commission's Staff, may remove such investor from the distribution and the allocated distribution amounts will be recalculated for Step Two of the distribution.

Additional Injured Investors

13. A person who does not receive a Notice and believes that he or she should have received a Notice after becoming aware of the Plan (e.g., through other Identified Investors or on www.AbatementDistributionFund.com) is deemed a potentially eligible investor and must submit documentation to the Distribution Agent within forty-five (45) days after the Notices are sent to Identified Investors to establish that he or she is in fact eligible to receive a Notice. The Distribution Agent, after consulting with Staff, will determine if the person is an additional Identified Investor and will send the person its determination and a Notice, if applicable, within twenty-one (21) days of receiving the individual's documentation.

14. After the time periods allotted for submitting objections and for establishing additional injured investors has passed:

- a. If objections or additional Identified Investors are approved, the Distribution Agent and Commission Staff will notify the Court of the reconstituted list of Identified Investors and their loss amounts and *pro rata* percentages of the Distribution Fund and will proceed to distribute the remaining Distribution Fund pursuant to Step Two(b). If no objection amounts or additional Identified Investors are determined eligible, the Distribution Agent will notify the Commission staff and the Court of the same and proceed to complete the disbursement of the distribution fund in accordance with Step Two of paragraph 15.

15. To accommodate for an unidentified investor or additional investment losses from an objecting investor, the Distribution Fund will be distributed through this two-step process.

Step One and Step Two payments shall be calculated as follows:

- a. The Net Distribution Fund is the Distribution Fund less all expenses and reserves;
- b. The Identified Investor's Investment Loss Amount is the amount of each Identified Investor's investment less any returns of their investment as calculated by Commission Staff from the records of the defendant. It has been calculated as set forth in Exhibit B.
- c. The *Pro Rata* Percentage of Loss for each Identified Investor is the product of dividing each Identified Investor's Investment Loss amount by the sum of all eligible investors' Investment Loss amounts. It also has been set forth in Exhibit B.
- d. The Step One Distribution Amount for each Initial is calculated as the *Pro Rata* Percentage of Loss x Net Distribution Fund. Here also it has been set forth in Exhibit B.

All timely responding and non-objecting investors on Exhibit B will be sent 80% of their *pro rata* share of the Distribution Fund within 33 days of the Notice Response deadline. If an additional Identified Investor or an objector(s) additional loss amount is approved by the Distribution Agent, they are added to Step Two. A responding objecting investor from Exhibit B and any approved additional Identified Investor will be considered in Step Two.

Step Two (a): The Distribution Agent's determination as to the eligibility of the additional Identified Investors and the additional loss amounts of objectors will be final and added to the list of Identified Investors in Exhibit B, and a new *pro rata* percentage and distribution payment amount will be recalculated

for all eligible Identified Investors by dividing each investor's Investment Loss amount by the sum of all investors' Investment Loss amounts. The investors who received a Step One payment will receive a Step Two payment equal to the new *pro rata* distribution payment less the payment already received. The eligible unidentified investor or objecting investor will be sent their *pro rata* share of the Distribution Fund as recalculated in Step Two. The second distribution payment will be made 115 days from the Court approving the Distribution Plan, or sooner if possible.

Step Two (b): If any funds remain after the second distribution is completed, the void date on checks has passed, and all fees and expenses are paid, the remaining funds, upon Court Order will be transferred to the U.S. Department of Treasury ("U.S. Treasury").

16. Defendants will not be eligible for a distribution from the Distribution Fund.

Validation and Approval of Disbursement of the Distribution Fund

17. The Distribution Fund disbursement to investors will be implemented by the Distribution Agent and disbursed through an escrow account established at Bank of America (the "Bank"), which will mail checks or electronically transfer funds to each payee as instructed by the Distribution Agent. The Distribution Agent will compile the payee information and prepare a payment file. The Distribution Agent will notify the Commission Staff when it is prepared to make the Step One distribution and then the Commission Staff will arrange for the transfer of the designated amount of the Step One distribution to the escrow account. The same process will be applied for the Step Two distribution.

18. The Distribution Agent shall establish with the Bank an Escrow Account pursuant to an escrow agreement (the “Escrow Agreement”) to be provided by the staff of the Commission, in the name of and bearing the Employer Identification Number (“EIN”) of the Qualified Settlement Fund as defined in paragraph 6. The Distribution Agent shall also establish with the Bank a separate “Deposit Account” (e.g. controlled distribution account, managed distribution account, linked checking and investment account) for the purpose of funding Distribution Payments to be distributed to Eligible Claimants by the Distribution Agent pursuant to the Plan. The name of each account shall be in the following form: Abatement Settlement Fund (EIN XX-XXXXXXX), as custodian for the benefit of investors allocated a distribution pursuant to the Plan in *Securities and Exchange Commission v. Abatement Corp. Holding Company Limited et. al.*

19. During the term of the Escrow Agreement, if invested, the Escrow Account shall be invested and reinvested in short-term United States Treasury securities backed by the full faith and credit of the United States Government or an agency thereof, of a type and term necessary to meet the cash liquidity requirements for payments to Eligible Claimants, and tax obligations, including investment or reinvestment in a bank account insured by the Federal Deposit Insurance Corporation (“FDIC”) up to the guaranteed FDIC limit, or in money market mutual funds registered under the Investment Company Act of 1940 that invest 100% of their assets in direct obligations of the United States government. The Distribution Agent shall provide duplicate original bank and/or investment statements on any accounts established by the Distribution Agent to the Tax Administrator on a monthly basis and shall assist the Tax Administrator in obtaining mid-cycle statements, as necessary.

20. All funds shall remain in the Escrow Account, separate from bank assets, pursuant to the Escrow Agreement until needed to satisfy a presented check. All Distribution Fund checks presented for payment or electronic transfer will be subject to “positive pay” controls (e.g. check number and check amount) before they are honored by the Bank, at which time funds will be transferred from the Escrow Account to the Deposit Account to pay the approved checks.

21. The Distribution Agent will work with the bank to obtain information about un-cashed checks, any returned items due to non-delivery, insufficient addresses, and/or other deficiencies. The Distribution Agent is responsible for researching and reconciling errors and reissuing payments when possible and for following up on un-cashed checks. The Distribution Agent is also responsible for accounting for all payments. Checks will include a statement on their face that they are valid for 60 days. Checks that are not negotiated before the stale date shall be voided and the issuing financial institution shall be instructed to stop payment on those checks. An Identified Investor’s claim will be extinguished if he, she or it fails to negotiate his, her or its check by the stale date, and the funds will remain in the Distribution Fund.

Payment of Costs, Fees, and Taxes, and Filing of Reports

22. All taxes and the reasonable costs and fees of the Distribution Agent and the Tax Administrator will be paid from the Distribution Fund.

23. The Distribution Agent will provide Commission Staff with a progress report within twenty (20) days after the end of each quarter and a final report with a final accounting once the distribution is complete.

Timeline

24. The Distribution Agent’s timeline for executing the Distribution Plan and making final distributions is attached as Exhibit A. The timeline set forth in Exhibit A is based

on the assumption that investor objections, if any, will not raise extraordinary issues not contemplated by the Distribution Agent at this time and that the Court provides the requested approval as anticipated.

Amendments and Procedural Deadline Extensions

25. The Distribution Agent will take reasonable and appropriate steps to distribute the Distribution Fund according to the Plan. The Distribution Agent will inform the Commission Staff of any changes needed in the Plan. If a change is determined to be material, a plan may be amended upon motion of the Distribution Agent, or Commission Staff. Immaterial changes may be made by the Distribution Agent with approval of the Commission Staff. For good cause shown, Commission Staff may extend any of the procedural dates set forth in the Plan.

Taxes

26. The Distribution Fund is a “Qualified Settlement Fund” within the meaning of the regulations issued under Section 468B(g) of the Internal Revenue Code of 1986, as amended. The Tax Administrator is the administrator of such Qualified Settlement Fund, for purposes of Treas. Reg. § 1.468B-2(k)(3)(I), and shall satisfy the tax related administrative requirements imposed by Treas. Reg. § 1.468B-2, including, but not limited to:

- a. Obtaining a tax identification number;
 - b. Submitting requests for funds from the Distribution Fund that are necessary for the timely payment of all applicable taxes, making timely payment of taxes for which the Tax Administrator has received funds, and filing all applicable returns;
- and

c. Fulfilling any information reporting or withholding requirements required for distributions from the Distribution Fund.

27. The Distribution Agent shall cooperate with the Tax Administrator in providing any information necessary to ensure income tax compliance.

Wind Down of Distribution and Disposition of Undistributed Funds

28. Upon agreement with Commission Staff that the distribution is complete, the Distribution Agent will take-down the website, email, PO Box, and phone number, as applicable.

29. The Distribution Fund will be eligible for termination, and the Distribution Agent eligible for discharge, after all of the following have occurred:

a. A final accounting, on an accounting form supplied by the Commission Staff, has been submitted to and approved by the Court;

b. All tax returns have been filed;

c. All taxes, fees and expenses have been paid; and

d. All remaining funds have been paid to the Commission for transfer to the United States Treasury.

30. The Distribution Agent will maintain all documents, including documents in any media, six (6) years after approval of the final accounting and thereafter will transfer the documents to the Commission, pursuant to Commission Staff direction.

31. Once all of the distribution payments and payments for fees and costs have been cashed or voided, any remaining funds will be paid to the Commission for transfer to the United States Treasury.