

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**SECURITIES AND EXCHANGE COMMISSION,
Plaintiff,**

v.

ICP ASSET MANAGEMENT, LLC, et al.

**Defendants and
Relief Defendants.**

**Case No.:
10-cv-4791-LAK-JCF**

**Notice of Motion and Motion
for a Second Order to
Disburse**

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that, upon the accompanying Motion, Memorandum, Declaration, and Proposed Order, and all other related papers and proceedings, Plaintiff, the Securities and Exchange Commission (the “SEC”) will move this Court, at a date and time to be determined by the Court, for a Second Order to Disburse in accordance with the Distribution Plan approved by this Court (ECF No. 276, the “Plan”).

MOTION

Pursuant to the Plan, Plaintiff, the SEC, respectfully submits this Motion for a second order to disburse \$219,793.00 to Payees in accordance with the Plan.

The grounds for this Motion are set forth in the accompanying memorandum and declaration of the Distribution Agent.

WHEREFORE, the SEC respectfully requests that the Court enter an Order substantially in the form submitted with this Motion.

Dated: April 1, 2024

Respectfully submitted,

s/Catherine E. Pappas
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**CERTIFICATE OF
SERVICE**

I hereby certify that on April 1, 2024, I electronically filed the foregoing Notice of Motion and supporting documents with the Clerk of the Court using CM/ECF, which will automatically send a copy of the document to all interested parties as set forth on the Service List below.

/s/Catherine E. Pappas
Catherine E. Pappas

SERVICE LIST

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UNITED STATES DISTRICT COURT
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**(Proposed) Second Order to
Disburse**

The Court has reviewed the Securities and Exchange Commission's (the "SEC") Motion for a Second Order to Disburse, the accompanying Memorandum in Support, the Declaration of the Distribution Agent, and any related filings; and has considered all arguments presented;

And for good cause shown;

IT IS HEREBY ORDERED that the SEC shall disburse \$219,793.00 pursuant to the Plan.

Dated: _____, 2024

Lewis A. Kaplan
U.S. District Court Judge

UNITED STATES DISTRICT COURT
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Memorandum in Support of
Entry of a Second Order to
Disburse

I. Introduction

In accordance with ¶¶ 46 and 58 of the Court-approved distribution plan (ECF No. 276, the “Plan”), Plaintiff, the Securities and Exchange Commission (the “SEC”), respectfully submits this memorandum in support of its Motion for a Second Order to Disburse (the “Motion”), directing the disbursement of \$219,793.00 in accordance with the Plan.

II. Background

A. This Action

By Complaint filed on June 21, 2010, amended on June 30, 2011,¹ the SEC charged ICP Asset Management LLC (“ICP”); ICP Securities, LLC (“ICPS”); Institutional Credit Partners, LLC (“ICP Holdco”); and Thomas C. Priore (“Priore”) (collectively, the “Defendants”) with repeated violations of the federal securities laws. Beginning in 2006, ICP was the asset manager of the Triaxx CDOs. The SEC alleged that, starting in 2007, as the mortgage markets deteriorated, the Defendants engaged in a range of improper transactions that defrauded the

¹ ECF Nos. 1, 54.

Triaxx CDOs of tens of millions of dollars and placed them at risk of substantial additional losses in the future.

The SEC charged the Defendants, variously, with violations of Section 17(a) of the Securities Act of 1933, 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, 17 C.F.R. § 240.10b-5; Section 15(c)(1)(A) of the Exchange Act, 15 U.S.C. § 78o(c)(1)(A) and Exchange Act Rule 10b-3, 17 C.F.R. § 240.10b-3; Sections 206(1), 206(2), 206(3) and 206(4) of the Investment Advisers Act of 1940 ("Advisers Act"), 15 U.S.C. §§ 80b-6(1), 80b-6(2), 80b-6(3), and 80b-6(4) and Advisers Act Rule 206(4)-8, 17 C.F.R. § 275.206(4)-8; and Section 204 of the Advisers Act, 15 U.S.C. § 80b-4, and Advisers Act Rule 204-2 and 206(4)-7, 17 C.F.R. §§ 275.204-2 and 275.206(4)-7. The SEC further alleged that, in March 2010, after the SEC staff indicated that it intended to recommend an enforcement action, Priore transferred assets into trusts that he had created during the SEC's investigations; and named Thomas C. Priore, Lori A. Priore, and Bertrand H. Smyers, the trustees of those trusts, as relief defendants (collectively, the "Relief Defendants").

The litigation initiated by the Complaint is complete. By stipulation entered on September 6, 2012,² the SEC dismissed counts X-XV of the Amended Complaint, thereby resolving the charges with respect to the Relief Defendants. By final judgment entered on the consent of the Defendants on September 12, 2012 (the "Final Judgment"),³ the Court ordered, in relevant part:

- ICP Holdco and ICP, jointly and severally, to pay to the SEC disgorgement of \$13,916,005 and prejudgment interest of \$3,709,028, for a total of \$17,625,033;

² ECF No. 225.

³ ECF No. 226.

- ICP to pay to the SEC a civil penalty of \$650,000;
- ICPS to pay to the SEC disgorgement of \$1,637,581, prejudgment interest of \$301,893, and a civil penalty of \$1,939,474; and
- Priore to pay to the SEC disgorgement of \$797,337, prejudgment interest of \$215,045, and a civil penalty of \$487,618 pursuant to a payment schedule.

Since the Final Judgment, the SEC has been paid and/or collected approximately \$22 million of the approximately \$23.6 million ordered.

B. Procedural History

By Order entered February 10, 2017, the Court established a Fair Fund so that civil penalties, along with disgorgement and prejudgment interest, can be distributed to harmed investors (the “Fair Fund”); appointed Miller Kaplan Arase LLP (“Miller Kaplan”) as the tax administrator for the Fair Fund; and appointed Nichola L. Timmons, an SEC employee, as fund administrator for the Fair Fund (the “Fund Administrator”).⁴ The Court further authorized the Fund Administrator to retain an expert at the expense of the Fair Fund to assist with the development of a distribution plan. The Fund Administrator retained Securities Litigation and Consulting Group (“SLCG”) as the expert to assist with the development of a distribution plan.

Based on both SLCG’s initial analysis and communications from potential victims, on August 7, 2020, the SEC moved the Court to appoint a distribution agent to, among other things, solicit claims from entities that may have suffered harm as a result of the misconduct described in the Complaint, and to work with the SEC staff and SLCG to review the claims and to draft and implement a plan of distribution.⁵ The Court granted the SEC’s motion, appointing RCB Fund

⁴ ECF No. 260. The Order references Damasco and Associates, LLC (“Damasco”). As of October 1, 2016, Damasco and Associates, LLC became part of Miller Kaplan.

⁵ ECF No. 271.

Services LLC as the distribution agent (the “Distribution Agent”) and discharging the previously appointed Fund Administrator.⁶

By Order entered on May 31, 2023, the Court approved the SEC’s proposed plan of distribution (referenced herein as the “Plan”).⁷ Upon the SEC’s motion in the related case, *SEC v. Abdullah*, 10-cv-4957 (LAK) (S.D.N.Y.) (the “Abdullah Action”), on June 23, 2023, the Court authorized the SEC to include the disgorgement, prejudgment interest, and civil penalty paid by Abdullah in its distribution pursuant to the Plan.⁸

C. The Fair Fund

The Fair Fund originally held over \$23 million, comprised of money paid to, or collected by, the SEC in the captioned matter; money paid to the SEC in the Abdullah Action; and accrued interest. As of January 31, 2024, after the First Distribution (described below), it held \$430,873.00, comprised of the Reserve⁹ withheld from the First Distribution. Declaration of the Distribution Agent in Support of Motion for a Second Order to Disburse (“Declaration”), attached as Exhibit A, at ¶ 6.

D. The First Distribution

By Order entered November 8, 2023, this Court granted the SEC’s Motion for an Order Disburse (the “Order to Disburse”).¹⁰ Pursuant to the Order to Disburse and in accordance with the Payee List compiled by the Distribution Agent, in November 2023, the SEC disbursed \$22,937,549.57 to two Payees by check or wire (the “First Distribution”). Declaration at ¶ 4. By

⁶ ECF No. 273 (August 17, 2020).

⁷ ECF No. 276.

⁸ Abdullah Action, ECF No. 15 (Order Establishing Fair Fund and Authorizing Distribution of the Fair Fund through a Related Action).

⁹ Capitalized terms not defined in this memorandum are used as defined in the Plan.

¹⁰ ECF No. 279.

the First Distribution, Payees were compensated for approximately 1.09% of their (approximately) \$2.1 billion aggregate Eligible Loss Amount. *Id.* The Distribution Agent monitored the status of both payments and has confirmed that both Payees received the Distribution Payment made to them in the First Distribution. *Id.* at ¶ 5.

III. The Second Distribution

After offsetting a Reserve of \$211,080 for Administrative Costs, including \$160,000 for anticipated taxes, the Net Available Fair Fund holds \$219,793.00. *Id.* at ¶ 7. The Distribution Agent, in consultation with the SEC staff and in accordance with paragraph 58 of the Plan, has determined it feasible to conduct a second distribution to Payees, up to their Eligible Loss Amount and subject to the \$10 Minimum Distribution Amount. *Id.* at ¶ 7.

In accordance with paragraph 45 of the Plan, the Distribution Agent has provided to the SEC staff the Payee List, including the name, address, calculated Eligible Loss Amount, tax withholding amount (if any), and the amount of the Distribution Payment for each Payee. The Distribution Agent further represents that the Payee List (a) was compiled in accordance with the approved Plan; (b) is accurate as to all information therein, including Payees' names, addresses, Eligible Loss Amount, tax withholding amount (if applicable), and amounts of their Distribution Payment; (d) includes the percentage of the Payee's Eligible Loss Amount being compensated by the disbursement from the Fair Fund, and if applicable, the total percentage including the prior disbursement; and (f) provides all information necessary to make a payment to each Payee. *Id.* at ¶ 9.

The Tax Administrator has reviewed the Payee List and informed the Distribution Agent that no withholding of taxes is necessary. *Id.* at ¶ 10. Insofar as the aggregate Eligible Loss Amount exceeds the Net Available Fair Fund, each Payee will receive a Distribution Payment

equal to the Net Available Fair Fund multiplied by the ratio of their Eligible Loss Amount to the aggregate Eligible Loss Amounts of both Eligible Claimants. *Id.* at ¶ 11.

After calculations in accordance with the Plan, Payees will receive an aggregate payment of \$219,793.00. *Id.* at ¶ 12. This second Distribution Payment, combined with the First Distribution Payment, will compensate Payees for 1.1% of their Eligible Loss Amounts. *Id.*

Upon issuance of a second Order to Disburse, the SEC staff will direct the U.S. Treasury to issue Distribution Payments to each Payee in accordance with the Court's Order. Plan, ¶ 46. In accordance with paragraph 48 of the Plan, the Distribution Agent will send a communication to Payees regarding the Distribution Payment. Declaration at ¶ 13. After the issuance of Distribution Payments, the Distribution Agent will work with the SEC to determine if each Payee has received and/or negotiated the Distribution Payment and will make reasonable efforts to contact Payees who have failed to negotiate and/or receive their Distribution Payment. *Id.* at ¶ 14.

Upon completion of the distribution and any subsequent distribution(s) in accordance with the Plan, the SEC will move the Court for an Order, as appropriate, approving a final accounting, discharging the Distribution Agent, and Terminating the Fair Fund.

IV. Conclusion

For all the foregoing reasons, the SEC respectfully requests that the Court issue a second order to disburse substantially in the form accompanying the Motion and grant such other relief as the Court deems appropriate.

Dated: April 1, 2024

Respectfully submitted,

s/Catherine E. Pappas
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Exhibit A (Declaration)

Exhibit A to Memorandum

(Declaration)

UNITED STATES DISTRICT COURT
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**Declaration of the
Distribution Agent in Support
of Motion for an Order to
Disburse**

I, Brendan J. Manfreda, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury as follows:

1. I am Managing Director for RCB Fund Services LLC (“RFS” or “Distribution Agent”), the Distribution Agent in the captioned action, appointed by the Court by Order entered August 17, 2020. I submit this Declaration in support of the Securities and Exchange Commission’s (the “SEC”) Motion for a Second Order to Disburse collected funds in accordance with the Court-approved distribution plan (the “Plan”).

2. The following statements are based on my personal knowledge and information provided to me by other experienced RFS employees working under my supervision. If called to testify regarding the facts in this declaration, I could do so competently.

THE FIRST DISTRIBUTION

3. By Order entered November 8, 2023, this Court entered an Order granting the SEC’s Motion for an Order Disburse (ECF No. 279, the “Order to Disburse”).

4. Pursuant to the Order to Disburse and in accordance with the Payee List compiled by RFS, in November 2023, the SEC disbursed \$22,937,549.57 to two Payees¹ by check or wire (the “First Distribution”). By the First Distribution, Payees were compensated for approximately 1.09% of their Eligible Loss Amounts, which aggregated to \$2,101,364,620.64.

5. RFS monitored the status of both payments to ensure receipt by the Payees. Both Payees have received their Distribution Payment.

THE SECOND DISTRIBUTION

6. As of January 31, 2024, the Fair Fund holds \$430,873.00, comprised of the Reserve. RFS, in consultation with the SEC staff and in accordance with paragraph 58 of the Plan, has determined it feasible to conduct a second distribution to Payees, up to their Eligible Loss Amount and subject to the Minimum Distribution Amount.

7. As of January 31, 2024, the Net Available Fair Fund totals \$219,793.00, after offsetting a Reserve of \$211,080 for Administrative Costs, including \$160,000 for anticipated taxes.

8. After applying the \$10 Minimum Distribution Amount, RFS has determined both Payees eligible to receive a Distribution Payment in the second distribution.

9. In accordance with paragraph 45 of the Plan, RFS has provided to the SEC staff the Payee List, including the name, address, calculated Eligible Loss Amount, tax withholding amount (if any), and the amount of the Distribution Payment for each Payee. RFS further represents that the Payee List (a) was compiled in accordance with the approved Plan; (b) is accurate as to all information therein, including Payees’ names, addresses,

¹ Capitalized terms not defined in this Declaration are used as defined in the Plan.

Eligible Loss Amount, tax withholding amount (if applicable), and amounts of their Distribution Payment; (c) includes the number of Payees compensated; (d) includes the percentage of the Payee's Eligible Loss Amount being compensated by the disbursement from the Fair Fund, and if applicable, the total percentage including all prior disbursements; (e) includes the total amount of funds to be disbursed; and (f) provides all information necessary to make a payment to each Payee.

10. The Tax Administrator has reviewed the Payee List and informed RFS that no withholding of taxes is necessary.

11. Because the aggregate Eligible Loss Amounts exceed the Net Available Fair Fund, each Payee will receive a Distribution Payment equal to the Net Available Fair Fund multiplied by the ratio of their Eligible Loss Amount to the aggregate Eligible Loss Amounts of all Eligible Claimants.

12. After calculations in accordance with the Plan, Payees will receive payments totaling \$219,793.00. This additional payment will increase the Payees' percent recovery of their Eligible Loss Amounts to 1.10%.

13. Upon issuance of an Order to Disburse, RFS will promptly send out a communication to Payees regarding the Distribution Payment, as further described in paragraph 48 of the Plan. The Distribution Payments issued as part of the second distribution will be made in the same manner as the successfully payments made in the First Distribution.

14. After the issuance of Distribution Payments, RFS will work with the SEC to determine if each Payee has received and/or negotiated the Distribution Payment and will

make reasonable efforts to contact Payees who have failed to negotiate and/or receive their Distribution Payment.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 3/29, 2024


Brendan J. Manfreda
Managing Director
RCB Fund Services LLC