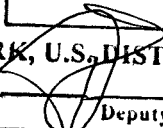


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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
JAN | 7 2006
CLERK, U.S. DISTRICT COURT
By  Deputy

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

i2 TECHNOLOGIES, INC,

Defendant.

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ORIGINAL

Case No.:
3:04-CV-1250-P

SEC'S UNOPPOSED MOTION FOR APPROVAL OF DISTRIBUTION PLAN

Plaintiff Securities and Exchange Commission submits this motion for distribution of the funds in the Court Registry Investment System interest-bearing account established in this action.

I. OVERVIEW

The Commission proposes distribution of the funds in this Court's registry through the pending class action against i2 Technologies, Inc. Specifically, the Commission requests that:

- a Fair Fund be established under Section 308 of the Sarbanes-Oxley Act of 2002, consisting of the \$1 of disgorgement and \$10 million civil penalty paid by i2 Technologies, Inc., plus interest;
- an accountant be appointed as a tax administrator to calculate the taxes owed by the disgorgement fund and file tax returns and related documents;
- the funds currently held in the CRIS account be transferred to a non-interest-bearing registry fund pending further order of this Court; and

- after the tax administrator has calculated the taxes owed by the disgorgement fund and filed tax returns, and upon further order of the Court, all of the money in the disgorgement fund, less taxes and related expenses, be turned over to the Claims Administrator of the settlement distribution fund in Scheiner v. i2 Technologies, Inc., et al., Civil Action No. 3:01-CV-418-H, in the United States District Court for the Northern District of Texas, Dallas Division (“i2 Class Action”) for the pro rata distribution to the class members who will receive proceeds from that fund.

A proposed order is attached.

In addition, the Commission requests that the Court, before ruling on the SEC’s motion for distribution of funds, issue an order establishing a comment period for the SEC’s motion. A separate proposed order is attached. The Commission proposes that any person who wishes to comment on or object to the SEC’s proposal for distribution of funds be required to do so by filing their comments in writing with the Court within thirty days after entry of the order establishing a comment period. Any such comments or objections should also be served by first-class mail upon counsel for the Commission and i2. The SEC also proposes that it be given thirty days from the comment deadline to respond to any comments. Upon entry of the order establishing a comment period, the SEC will issue a litigation release providing notice of its proposal for distributing the funds, and inviting written comments from the public. The SEC will post the release on its website.

II. ESTABLISHMENT OF DISGORGEMENT FUND

1. The Commission filed this settled enforcement action against i2 on June 9, 2004. Without admitting or denying the allegations of the Commission’s Complaint, i2 consented to a Final Judgment entered by this Court on June 14, 2004. As required by paragraph 1 of the Final

Judgment, i2 paid disgorgement of \$1 and a civil penalty of \$10 million to the Clerk of the Court on June 28, 2004. Under the terms of the Final Judgment, i2 relinquished all legal and equitable right, title, and interest in the funds by making the payment.

2. As required by paragraph 2 of the Final Judgment, the Clerk of the Court deposited the funds into an interest-bearing account with the CRIS. The funds will remain in that account, accumulating interest, pending further order of the Court.

3. The Commission now seeks to establish a Fair Fund with the monies in the CRIS account and to distribute those funds to investors harmed by the fraudulent conduct alleged in its Complaint. The fund will include the \$10 million civil penalty, in addition to the \$1 of disgorgement. Section 308(a) of the Sarbanes-Oxley Act of 2002 [P.L. No. 107-204] – the so-called “Fair Funds” provision – states in relevant part:

(a) CIVIL PENALTIES ADDED TO DISGORGEMENT FUNDS FOR THE RELIEF OF VICTIMS. If in any judicial or administrative action brought by the Commission under the securities laws . . . the Commission obtains an order requiring disgorgement against any person for a violation of such laws or the rules or regulations thereunder, or such person agrees in settlement of any such action to such disgorgement, and the Commission also obtains pursuant to such laws a civil penalty against such person, the amount of such civil penalty shall, on the motion or at the direction of the Commission, be added to and become part of the disgorgement fund for the benefit of the victims of such violation.

Permitting i2’s civil penalty to be aggregated with disgorgement – rather than paid to the United States Treasury¹ – will permit the Commission to return more money to defrauded investors. This is precisely the result that Congress intended when it passed the Fair Funds provision of Sarbanes-Oxley.

¹ Before Sarbanes-Oxley, Section 21(d)(3)(C) of the Securities Exchange Act of 1934 [15 U.S.C. § 78u(d)(3)(c)] required that civil penalties be paid to the United States Treasury.

III. APPOINTMENT OF TAX ADMINISTRATOR

4. The Commission's understanding is that the disgorgement fund must file tax returns and may owe taxes from the interest earned on the funds held in the CRIS account during 2004.

5. The Commission applies to have Damasco & Associates appointed as tax administrator to calculate any taxes and file tax returns and related documents for the disgorgement fund. A copy of Jude Damasco's curriculum vitae is attached as **Appendix 001-002**. Mr. Damasco has advised the Commission staff that his fees will not exceed \$1,600 per annum. The Commission's proposed order includes various provisions setting forth requirements and rights of the tax administrator.

IV. TRANSFER OF FUNDS

6. The Commission seeks an order that the Clerk of the Court notify Plaintiff and the tax administrator of the amount of money in the disgorgement fund that is held in the CRIS interest-bearing account and transfer those funds into a non-interest-bearing registry account pending further orders of the Court. This transfer will enable the tax administrator to prepare any necessary federal tax returns and calculate any taxes due. The proposed Order provides that, in the event all of the funds are not distributed in the i2 Class Action, an amount representing the SEC Fund percentage of the i2 Class Action fund shall be returned to the SEC for deposit with the U.S. Treasury.

V. DISTRIBUTION OF FUNDS

7. The Court enjoys broad discretion in fashioning distribution plans in SEC enforcement actions. SEC v. FOREX Asset Management LLC, 242 F.3d 325, 330 (5th Cir.

2001)(“ [i]n shaping equity decrees the trial court is vested with broad discretionary power, and appellate review is correspondingly narrow”); SEC v. Levine, 881 F.2d 1165 (2d Cir. 1989). See also SEC v. Finacor Anstalt, 1991 WL 173327 at *3 (S.D.N.Y. 1991)(rejecting challenge to SEC’s proposed distribution plan and holding that the “equities weigh in favor of limiting payment at this time to the claimants suffering the greatest injury.”). This discretion “include[es] the flexibility to decide that certain groups of claimants would receive payments and others would not.” Levine, 881 F.2d at 1182. Accord SEC v. Wang, 944 F.2d 80, 87-88 (2d Cir. 1991)(“decision to treat some options traders differently from stock traders was reasonable and fair” even though “[t]his kind of line-drawing . . . inevitably leaves out some potential claimants.”).

8. In distributing the CRIS account funds, which are substantially less than total investor losses, the Commission seeks to maximize the return to aggrieved investors, distribute money as quickly as possible, and minimize administrative costs.

9. The Commission has considered alternatives for distributing the funds, including seeking the appointment of a receiver or disbursement agent in this case. But the Commission has determined that investors’ interests will be best served by having the funds in the CRIS account here (less taxes and related expenses) turned over to the i2 Class Action claims administrator. The claims administrator will distribute the funds pro rata to the class members who will receive proceeds of the settlement distribution fund established under the October 1, 2004 Order and Final Judgment in the i2 Class Action. A copy of that Order and Final Judgment is attached as **Appendix 003-017**. Distributing the funds in this manner will minimize administrative costs and will be far more efficient than appointing a receiver to distribute the funds.

10. The i2 Class Action is an appropriate mechanism for distribution of the disgorgement fund, for several reasons. First, the claims administrator expects to distribute the funds in the Class Action settlement fund shortly. The disgorgement fund can simply be added to that settlement fund without additional cost (other than taxes and related expenses). In addition, the complaint in the i2 Class Action contains the same substantive allegations as the SEC's Complaint and covers the same period. Further, i2 is a defendant in both actions.

11. Significantly, the certified class in the i2 Class Action includes the same set of victims as this action. In the i2 Class Action, the Court certified as a class "all persons or entities who purchased or otherwise acquired i2 common stock between March 22, 2000 and July 31, 2003, inclusive, and who were damaged thereby," excluding the defendants and various related parties. (App. at 003-004.) March 22, 2000 was the date of i2's filing of its 1999 Form 10-K. July 31, 2003 was the date of i2's restatement of its financial statements to correct revenue and net income overstatements from 1999 through the first three quarters of 2002. That is the same period of misconduct alleged in the Commission's Complaint.²

12. There are tens of thousands of valid claimants with a total recognized loss in excess of \$3 billion in the i2 Class Action. Accordingly, there is no risk that adding the roughly \$10 million dollars in the disgorgement fund in this action to the \$84,850,000.00 settlement fund in the i2 Class Action will provide double recovery or any sort of windfall to the valid claimants in the i2 Class Action.

13. Distributing the funds in the CRIS account through the i2 Class Action claims administrator will save money and be more efficient than appointing a receiver in this case. The

² Although the Commission's Complaint generally alleges financial misstatements as early as 1998, it does not quantify them. The first quantified misstatement – year-end 1999 – conforms to the beginning of the class period. Likewise, the Commission's allegations of misstatements through the first three quarters of 2002 correspond to the ending date of the class period. Were the Commission to seek the appointment of a receiver, the Commission would recommend using the same dates as the class period to identify victims.

i2 Class Action claims administrator has already taken steps to provide notice to class members, identify valid claims, and determine the pro rata amounts to which the class members are entitled. A receiver for the disgorgement fund in this case would essentially have to repeat many of those steps.

14. The Court in the i2 Class Action stated that the requirements of mailing notices to each class member who could be identified and publishing notice in the *Wall Street Journal* had been complied with and that a hearing providing all interested persons with an opportunity to be heard had been conducted. (App. at 004.) The Court also approved the settlement and plan of allocation in the i2 Class Action. (App. at 004, ¶ 7.)

15. The SEC requests that none of the proceeds in the disgorgement fund be distributed to plaintiffs' counsel or the claims administrator in the i2 Class Action, neither of whom has requested any fee from the disgorgement fund. Their compensation will come from the existing proceeds in the i2 Class Action settlement fund.

16. Counsel for the SEC has discussed with both plaintiffs' counsel and the i2 Class Action claims administrator the SEC's proposal for the distribution of the disgorgement fund in accordance with this motion and the accompanying order. They have no objection to the proposal and agree that it will maximize the return to aggrieved investors and minimize costs.

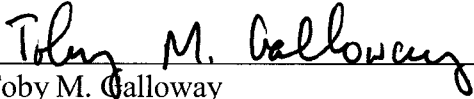
VI. CONCLUSION

For these reasons, the SEC requests that its motion be granted and that (a) a disgorgement fund be established consisting of all funds in the CRIS account (disgorgement, civil penalty and interest); (b) Damasco & Associates be appointed as a tax administrator to calculate taxes owed by the disgorgement fund and file tax returns and related documents; (c) the funds in the CRIS account be transferred to a non-interest-bearing registry fund pending further order of the Court;

and (d) after the tax administrator calculates taxes and files returns, and upon further order of the Court, all money in the disgorgement fund (less taxes and related expenses) be turned over to the claims administrator of the settlement fund in the i2 Class Action for pro rata distribution to the class members. The SEC further requests that, before ruling on this motion, the Court enter an order in the form attached establishing a comment period for the SEC's distribution proposal.

Dated: January 17, 2006

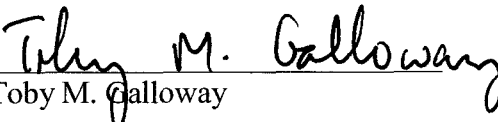
Respectfully submitted,



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CERTIFICATE OF CONFERENCE

I certify that I conferred regarding the relief requested in this motion with counsel for the private class plaintiffs, the i2 Class Action claims administrator, and counsel for i2 Technologies. None of these parties opposes the relief sought in this motion.


Toby M. Galloway