

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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| SECURITIES AND EXCHANGE COMMISSION |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | |
| |) | Case No. 1:07-cv-11387 (DLC) |
| BRIAN N. LINES, SCOTT G. S. LINES, |) | |
| LOM (HOLDINGS) LTD., |) | |
| LINES OVERSEAS MANAGEMENT LTD., |) | |
| LOM CAPITAL LTD., |) | |
| LOM SECURITIES (BERNUDA) LTD., |) | |
| LOM SECURITIES (CAYMAN) LTD., |) | |
| LOM SECURITIES (BAHAMAS) LTD., |) | |
| ANTHONY W. WILE, WAYNE E. WILE, |) | |
| ROBERT J. CHAPMAN, WILLIAM TODD PEEVER, |) | |
| PHILLIP JAMES CURTIS, AND RYAN G. LEEDS, |) | |
| |) | |
| Defendants. |) | |
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**MOTION AND MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR ORDER
ESTABLISHING A FAIR FUND, APPOINTING A TAX ADMINISTRATOR AND
AUTHORIZING PAYMENT OF TAX RELATED FEES, EXPENSES, AND
OBLIGATIONS**

MOTION

Plaintiff United States Securities and Exchange Commission (the “SEC” or “Commission”) respectfully moves this Court for an Order (i) establishing a Fair Fund (the “Fair Fund”) pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended by the Dodd-Frank Act of 2010 [15 U.S.C. § 7246], (ii) appointing Miller Kaplan Arase LLP as Tax Administrator to execute all income tax reporting requirements, and (iii) authorizing payment of future taxes, fees, and expenses of the Tax Administrator from the Fair Fund without further Court Order, with respect to funds under this Court’s jurisdiction in this case. The SEC intends to apply to the Court for an Order approving the distribution of collected funds, and the appointment of the Tax Administrator is

necessary to ensure that the funds are maintained and distributed in compliance with federal and state tax laws.

MEMORANDUM OF LAW

The SEC respectfully submits this Memorandum of Law in Support of its Motion for an Order Establishing a Fair Fund, Appointing a Tax Administrator, and Authorizing Payment of Tax-Related Fees, Expenses, and Obligations.

Background

1. On December 19, 2007, the SEC filed a Complaint against six (6) LOM Entities - LOM (Holdings) Ltd. (“LOM Holdings”), LOM Overseas Management Ltd. (“LOM Ltd.”), LOM Capital Ltd. (“LOM Capital”), LOM Securities (Bermuda) Ltd. (“LOM Bermuda”), LOM Securities (Cayman) Ltd. (“LOM Cayman”), LOM Securities (Bahamas) Ltd. (“LOM Bahamas”), as well as several individuals - Brian N. Lines (“Brian Lines”), Scott G. S. Lines (“Scott Lines”), Anthony W. Wile (“Anthony Wile”), Wayne E. Wile (“Wayne Wile”), Robert J. Chapman (“Chapman”), William Todd Peever (“Peever”), Phillip James Curtis (“Curtis”) and Ryan G. Leeds (“Leeds”) (collectively, the “Defendants”). The Complaint alleged that in 2002 and 2003, the Defendants through the use of the LOM Entities engaged in two separate, but similar, fraudulent schemes to manipulate the stock prices of two microcap companies, Sedona Software Solutions, Inc. (“Sedona”) and SHEP Technologies, Inc. (“SHEP”), whose shares were quoted and traded at the time on the Over-the-Counter Bulletin Board (“OTCBB”).

2. Both the Sedona and SHEP fraudulent schemes involved the undisclosed acquisition of publicly-traded shell companies, the use of LOM-controlled nominees to conceal beneficial ownership and control over Sedona and SHEP, the use of paid touters to promote Sedona and SHEP stock, and significant trading through the U.S. market in those stocks by defendants Brian Lines and Scott Lines. In the Sedona scheme, the Lines brothers' trading yielded

approximately \$1.5 million in illegal proceeds. In the SHEP scheme, trading by the Lines brothers and two of their customers, defendants Peever and Curtis, yielded approximately \$4.3 million in illegal proceeds.

3. The Sedona scheme collapsed on January 29, 2003 when the Commission suspended trading in Sedona securities.

4. Unlike the Sedona scheme, the SHEP scheme came to nearly complete fruition. Throughout the first half of 2003, defendants Peever, Curtis, Brian Lines, and Scott Lines collectively sold over three million shares of Inside Holdings Inc. (“IHI”)/SHEP into the public demand created by the paid touters, generating approximately \$4.3 million in illegal proceeds. These sales were made without a registration statement in effect, and with no valid exemptions from registration.

5. As a result of the fraud schemes carried out by the Defendants, unsuspecting investors were defrauded. The SEC sought and obtained injunctive relief against the Defendants, as well as disgorgement with prejudgment interest of the illegal profits and proceeds obtained as a result of their actions, and civil money penalties.

6. On October 14, 2010, the Court entered Final Judgments, ordering: Brian Lines, Scott Lines and the LOM Entities to pay, jointly and severally, disgorgement of \$1,277,403 and prejudgment interest of \$654,918; Brian Lines to pay a civil penalty of \$100,000; Scott Lines to pay a civil penalty of \$50,000; and the LOM Entities to pay, jointly and severally, a civil penalty of \$450,000. On or about November 3, 2010, the Defendants paid the entire amount of \$2,532,321 ordered by the Court and the funds were deposited in the Court Registry Investment System (“CRIS”).

7. On August 19, 2011, the Court also entered judgment against Defendants Curtis Peever and Chapman, ordering: Defendants Curtis and Peever to pay, jointly and severally,

disgorgement of \$2,894,537.48 and prejudgment interest of \$1,611,998.18; and Curtis, Peever and Chapman to pay civil penalties of \$120,000 each. Curtis, Peever and Chapman each defaulted on their payments. In September 2019, the SEC through its collection efforts, recovered approximately \$263,693.82 from the sale of property owned by Curtis that was located in Canada. Those funds were also deposited, in September 2019, in the CRIS account. Together, with interest earned, the funds in the CRIS account total approximately \$2.9 million.

Establishment of a Fair Fund

4. The Commission now moves the Court to establish a Fair Fund for the approximately \$2.9 million, plus accrued interest and earnings from investment of the funds in the CRIS account, pursuant to Section 308(a) of the Sarbanes- Oxley Act of 2002, as amended, which provides in relevant part:

If, in any judicial or administrative action brought by the Commission under the securities laws, the Commission obtains a civil penalty against any person for a violation of such laws, or such person agrees, in settlement of any such action, to such civil penalty, the amount of such civil penalty shall, on the motion or at the direction of the Commission, be added to and become part of a disgorgement fund or other fund established for the benefit of the victims of such violation.

See 15 U.S.C. § 7246(a).

5. The Commission brought this action under the securities laws, and Defendants Brian Lines, Scott Lines and the LOM Entities have paid disgorgement and prejudgment interest of \$1,932,321 and civil penalties of \$600,000 pursuant to their Final Judgments. In addition the SEC recovered approximately \$263,693.82 from Defendant Curtis. Accordingly, the requirements of Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, have been satisfied, and the Court should establish a Fair Fund to facilitate ultimate distribution of the funds to investors harmed by the Defendants' conduct.

6. The creation of a Fair Fund is a precursor to creating a plan of distribution for Court

approval and ultimately distributing funds to victims of the violations of the securities laws. The SEC intends to develop a distribution plan (“Plan”), which may involve applying to the Court for the appointment of a distribution agent to assist with the development and administration of such a Plan, and to then seek Court approval of the Plan.

Appointment of a Tax Administrator

7. The Fair Fund is a Qualified Settlement Fund (“QSF”) under section 468B(g) of the Internal Revenue Code (“IRC”), 26 U.S.C. § 468B(g), and related regulations, 26 C.F.R. §§ 1.468B-1 through 1.468B-5. A Tax Administrator, on behalf of the Fair Fund, should be appointed and authorized to take all necessary steps to enable the Fair Fund to obtain and maintain the status of a taxable QSF, including the filing of all required elections and statements contemplated by those provisions. The Tax Administrator will cause the Fair Fund to pay taxes in a manner consistent with treatment of the Fair Fund as a QSF. The reasonable costs, fees, and other expenses incurred in the performance of the Tax Administrator’s duties would be paid by the Fair Fund in accordance with the agreement between the SEC and the Tax Administrator.

8. The SEC recommends the appointment of Miller Kaplan, which is experienced in the taxation of QFSs and has agreed to reasonable fees for its services. In summary, the current agreement with Miller Kaplan provides for compensation for services and expenses as follows:

| SERVICE | FIXED FEE |
|---|-----------|
| Income tax returns, including items a-f (below). | \$1,600 |
| Income tax returns, including items a-f (below), for funds with assets of \$120,000 or less or that are open and closed within the same year. | \$700 |

Fixed fee tax compliance services include:¹

- a. Obtain a federal tax identification number for the QSF.
- b. Prepare and file federal and state income tax returns, as required.
- c. Where required, calculate quarterly estimated tax payments and provide information to the SEC so that payments may be made timely.
- d. Make arrangements with the SEC or its agents to pay tax liability.
- e. Calculate and recommend retention of a reserve for penalties and interest to be assessed as a result of any late filing of tax returns and late payment of taxes.
- f. Determine and comply with tax reporting obligations of the QSF relating to distributions or payments to vendors, if applicable.

Miller Kaplan has served as a tax administrator on numerous QSF's established by the Commission. The Commission staff respectfully requests that the Court appoint Miller Kaplan as Tax Administrator to execute all income tax reporting requirements, including the preparation and filing of tax returns, with respect to the Fair Fund under this Court's jurisdiction.

**Authorization to Pay Future Tax Obligations and
Tax Administrator Fees and Expenses**

9. In an effort to meet future tax payment deadlines, avoid the assessment of late payment penalties, and make timely payment to the Tax Administrator for services provided, the SEC further requests that SEC staff be authorized to approve and arrange payment of all future tax obligations and Tax Administrator fees and expenses from the Fair Fund without further Court approval. Authorizing the SEC staff to approve and pay future tax obligations and tax administration fees and expenses from the Fair Fund without further Court approval will expedite

¹ These fixed fees include all copying expenses, and any internal expenses of the Tax Administrator in performing these services such as facsimile fees and telephone charges. Expenses that are not included are postage, expedited delivery fees (such as Federal Express), and other extraordinary costs, such as extended telephone conferences and reports. Additional tax compliance services and services for the administration of the QSF would be provided at the Commission's request and billed at the Tax Administrator's current rates discounted by 20%.

the payment process, reducing the risk of late tax payments and penalties. All tax payments and tax administration fees will be reported to this Court in the final accounting of the Fair Fund once any court authorized distribution is completed.

WHEREFORE, for all the foregoing reasons, the SEC respectfully requests that this Court enter the attached proposed Order and grant such other relief as the Court deems just and proper.

Respectfully submitted,

/s/Nichola L. Timmons

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Dated: December 10, 2019

CERTIFICATE OF SERVICE

I, Nichola Timmons, hereby certify that, on December 9, 2019, I caused the foregoing document to be electronically filed with the clerk of the court for the U.S. District Court of Southern District of New York, using the electronic case filing system of the court. The electronic case filing system sent a “Notice of Electronic Filing” to all attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

/s/Nichola L. Timmons
Nichola L. Timmons

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ORDER ESTABLISHING A FAIR FUND, APPOINTING TAX ADMINISTRATOR AND AUTHORIZING PAYMENT OF TAX RELATED FEES, EXPENSES, AND OBLIGATIONS

The Court, having reviewed the Motion of Plaintiff Securities and Exchange Commission (“SEC”) to establish a fair fund, appoint Miller Kaplan Arase LLP (“Miller Kaplan”) as Tax Administrator, and to authorize payment of future tax obligations, and the fees and expenses of the Tax Administrator (the “Motion”) and for good cause shown,

IT IS HEREBY ORDERED:

1. The Motion is GRANTED.
2. A Fair Fund is established, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended by the Dodd-Frank Act of 2010 [15 U.S.C. § 7246] for the \$2.9 million, along with any accrued interest and earnings thereon (the “Fair Fund”).

3. Miller Kaplan is appointed Tax Administrator to execute all income tax reporting requirements, including the preparation and filing of tax returns, for all funds under the Court's jurisdiction in this case.

4. Miller Kaplan shall be designated the Tax Administrator of the Fair Fund, pursuant to Section 468B(g) of the Internal Revenue Code (IRC), 26 U.S.C. § 468B(g), and related regulations, and shall satisfy the administrative requirements imposed by those regulations, including but not limited to: (a) obtaining a taxpayer identification number; (b) filing applicable federal, state, and local tax returns and paying taxes reported thereon out of the Fair Fund; and (c) satisfying any information, reporting, or withholding requirements imposed on distributions from the Fair Fund. Upon request, the Tax Administrator shall provide copies of any filings to the SEC's counsel of record.

5. The Tax Administrator shall, at such times as the Tax Administrator deems necessary to fulfill the tax obligations of the Fair Fund, submit a request to the SEC's counsel of record for payment from the Fair Fund of any tax obligations of the Fair Fund.

6. The Tax Administrator shall be entitled to charge reasonable fees for tax compliance services and related expenses in accordance with its agreement with the SEC for the Tax Years 2019 through 2021. The Tax Administrator shall, at such times as the Tax Administrator deems appropriate, submit a request to the SEC's counsel of record for payment of fees and expenses from the Fair Fund.

7. The SEC is authorized to approve and arrange payment of all tax obligations owed by the Fair Fund and the fees and expenses of the Tax Administrator directly from the Fair Fund without further approval of this Court. All payments for taxes and the fees and expenses of the Tax Administrator shall be reported to the Court in a final accounting.

IT IS SO ORDERED.

Dated: December ___, 2019

United States District Court Judge