UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

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Civil Action No. 10-1277 (ESH)

ORDER

Based on the hearing held on August 16, 2010, and for the reasons stated in open court, it is hereby **ORDERED** that on or before September 8, 2010, plaintiff shall file a memorandum that addresses the following questions:

- What is the evidence that supports the charges that defendant committed fraud via negligence? (See Compl. ¶¶ 47-50.) Why did plaintiff not charge fraud under Section 10(b) of the Securities Exchange Act of 1934?
- Who are the individuals referred to throughout the complaint as "senior • management"?
- Why has plaintiff chosen to pursue only Gary L. Crittenden and Arthur H. Tildesley, • Jr., for the misconduct alleged in the complaint? See In re Crittenden, S.E.C. Release No. 34-62593, 2010 WL 2992474 (July 29, 2010).
- Why is the proposed \$75 million civil penalty to be paid by shareholders fair, ٠ adequate, reasonable, and in the public interest? How is this proposed civil penalty consistent with the nine considerations and other policies that plaintiff set forth in

2006 as pertinent to "the appropriateness of a penalty on the corporation in a particular case, as distinct from the individuals who commit a securities law violation"? S.E.C. Release No. 2006-004 (Jan. 4, 2006); *see also id* ("Where shareholders have been victimized by the violative conduct, or by the resulting negative effect on the entity following its discovery, the Commission is expected to seek penalties from culpable individual offenders acting for a corporation.")

- How does the proposed \$75 million civil penalty to be paid by shareholders compare with other civil penalties paid under comparable facts and circumstances?
- What did plaintiff's "economic analysis" show regarding the value of the pecuniary gain to defendant as a result of the conduct alleged in the complaint, and how was this figure determined?
- What is the source of the money that will comprise the proposed "fair fund"? Will TARP funds be used to fund this settlement? Who will be the beneficiaries of the "fair fund"? What is the definition of a "harmed shareholder"? Who, if anyone, will be excluded from the definition of a "harmed shareholder"?
- Does plaintiff have any response to the forms of non-monetary relief proposed by Stanley Lerner on pages 11-13 of his memorandum [Dkt. 11]?

It is **FURTHER ORDERED** that on or before September 13, 2010, defendant may file a memorandum addressing these same questions and/or responding to plaintiff's answers.

It is **FURTHER ORDERED** that a status conference is set for September 24, 2010, at 11 a.m. in Courtroom 23A.

/s/ ELLEN SEGAL HUVELLE United States District Judge

DATE: August 17, 2010