

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 1:11-CV-24438-GAYLES

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

**STIEFEL LABORATORIES INC.
and CHARLES W. STIEFEL,**

Defendants.

**DISTRIBUTION AGENTS' STATUS REPORT
REGARDING THE FAIR FUND DISTRIBUTION**

The Court-appointed Distribution Agents Robert Levenson and Christopher Martin, on behalf of the Securities and Exchange Commission, file this report to inform the Court of the status of the ongoing Fair Fund distribution in this case. At the request of the Distribution Agents, the Third Party Fund Administrator¹ mailed notices to all 258 Eligible Shareholders and 29 Excluded Shareholders on June 2, 2021. None of the Excluded Shareholders have objected to their exclusion from a distribution. In addition, we have received the information from the majority of Eligible Shareholders required for them to receive their Fair Fund Distribution, and only one objected to their distribution amount by just a few dollars. However, we still have not received responses from 78 Eligible Shareholders. We recently made additional efforts to contact those Eligible Shareholders so that they can receive their Fair Fund distribution. We gave those Eligible Shareholders until October 14, 2021 to provide the required information, and by the beginning of November we expect to move the Court for Final Approval to distribute the Fair Fund.

¹ All capitalized terms have the same meaning in this report as in the Court-approved Distribution Plan.

Background

The Commission filed its Complaint against Defendants Stiefel Laboratories (“Stiefel Labs”) and Charles W. Stiefel (“Stiefel”) in December 2011, alleging they violated Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934. In general, the Complaint alleged fraudulent conduct by Stiefel Labs and Stiefel in connection with Stiefel Labs repurchases of its stock shares from certain employees and other shareholders from 2006 through April 20, 2009.

The Commission staff and the Defendants entered into a proposed settlement at Court-ordered mediation on February 26, 2020, which the Commission later approved. As a result, on June 4, 2020, the Court created a Fair Fund and entered Final Judgments by consent against Stiefel Labs and Stiefel (DE 233, 234, and 235). Under the terms of the Final Judgments, Stiefel Labs and Stiefel neither admitted nor denied the allegations of the Complaint and agreed to pay in the aggregate \$37 million in disgorgement, prejudgment interest, and civil penalties. The Defendants have made those payments, which now constitute the Fair Fund in this case.²

On September 24, 2020, the Commission proposed a Distribution Plan, which called for a pro-rata distribution of funds among the 258 Eligible Shareholders (DE 240 and 240-1). The Distribution Plan also described the criteria for determining Eligible and Excluded Shareholders, how the Distribution Agents determined the pro-rata distribution formula, and a series of events and deadlines for the distribution process. *Id.* On November 10, 2020, two sets of shareholders filed objections to the Distribution Plan (DE 250 and 253). After briefing and a hearing on the objections, the Court overruled the objections and entered an Order approving the Distribution Plan on May 21, 2021 (DE 286).

² The final distribution amount may vary slightly from \$37 million, depending on the fees and costs of the Tax Administrator and the Third Party Fund Administrator the Court previously appointed, the amount of taxes owed by the Fair Fund, and the interest currently being earned on the Fair Fund.

The Distribution Process

The Distribution Plan called for the Distribution Agents to mail notices to all 258 Eligible Shareholders and 29 Excluded Shareholders within two weeks of the Court's Order approving the Distribution Plan. As a result, at the request of the Distribution Agents, the Third Party Fund Administrator mailed notice packages to all the shareholders on June 2, 2021. All notices contained a copy of the Distribution Plan, and the Eligible Shareholder notices contained further information about forms the shareholders needed to fill out and return to either receive a roll-over distribution into a qualified retirement plan or to receive the funds directly. Excluded Shareholders had 45 days, or until July 17, 2021, to object to their status; Eligible Shareholders had the same 45 days to object to their distribution amount and to return one of the forms choosing how they wanted to receive their distribution. Copies of the forms and the notice letters were attached to the Commission's Motion to Approve the Distribution Plan. DE 240 and 240-1.

The Distribution Agents are pleased to report that not a single Excluded Shareholder has objected to their status. In addition only one Eligible Shareholder (actually the wife of a deceased shareholder) objected to the distribution amount by just a few dollars based on an unsupported claim that the number of shares her husband sold back to Stiefel Labs was different than the amount shown in Stiefel Labs records that the Distribution Plan uses. We have overruled this objection based on the lack of documentation and we will seek approval of the Court to overrule this objection as part of our Motion for Final Approval.

By July 17, the Distribution Agents and the Third Party Fund Administrator had received responses from approximately 150 of the 258 Eligible Shareholders. However, not all those shareholders had returned forms or filled them out correctly. In addition it became apparent through dozens of telephone calls and emails from Eligible Shareholders that several factors were

delaying responses, including: (1) in the intervening years several shareholders had died, and surviving spouses or other beneficiaries needed additional time to provide documentation showing they were entitled to the distribution; (2) shareholders had moved and no forwarding addresses were available or the shareholders were unable to retrieve mail from their prior addresses; (3) shareholders incorrectly assumed they only had to respond if they objected to their distribution amount; and (4) shareholders needed additional time to consult with financial advisors on how they should take the distribution.

The Distribution Plan gave the Distribution Agents an additional 60 days after July 17, or until September 15, 2021, to review completed responses and resolve any objections. Since July 17, the Distribution Agents have been attempting to contact shareholders from whom we received no responses and work with shareholders who had contacted us but had not yet provided completed forms.

As of September 10, 2021, the Distribution Agents have received completed forms and necessary documentation from 177³ of the 258 Eligible Shareholders. Three additional Eligible Shareholders provided responses, but need to provide additional information. We have contacted those Eligible Shareholders and are working with them to get the additional information. That leaves 78 Eligible Shareholders who have not responded.

To attempt to reach those Eligible Shareholders, the Distribution Agents have taken several steps, including posting weekly updates on a website devoted exclusively to the distribution, www.stiefellabsfairfund.com. In addition, the Third Party Fund Administrator did additional database research, and found additional or updated addresses for many of those 78 Eligible

³ The Distribution Agents received two competing claims from relatives of one deceased shareholder, but only one of the two relatives was able to provide documentation showing she was entitled to receive the deceased shareholder's Fair Fund distribution.

Shareholders. As a result, the Distribution Agents sent second notice letters to all 78 of those shareholders, making it clear that they needed to respond within 30 days with a completed form or other documentation. We are hopeful this will result in a majority, if not all, of the remaining 78 Eligible Shareholders providing the required information to the Distribution Agents or the Third Party Fund Administrator so they can receive a distribution. The last responses from those second letters are due no later than October 14, 2021.

Although the Distribution Plan does not specifically allow for time beyond the 60 days expiring September 15, 2021 for Eligible Shareholders to respond to the original notice letters, the Distribution Agents believe that in equity and fairness we should give all Eligible Shareholders one last chance to receive a distribution. It certainly is not the fault of the Eligible Shareholders that more than 12 years have elapsed between the fraud that occurred and the availability of a Fair Fund to compensate them. And as described above, those 12 years have resulted in deaths, relocations, and other circumstances that have caused delays in reaching all Eligible Shareholders.

We certainly understand the desire of the Eligible Shareholders who have contacted us to receive their distribution as soon as possible. But the short delay caused by the additional attempts to reach the non-responsive Eligible Shareholders will not harm the responding Eligible Shareholders. The Fair Fund will continue to earn interest during the intervening period, thereby increasing the distribution each shareholder will receive.

Steps After October 14

The Distribution Agents anticipate incorporating any additional responses into the distribution formula, and plan by early November to file a motion for the Court to approve the actual distribution of funds to all responding Eligible Shareholders. The motion will include, among other things, a final report showing number of Eligible Shareholders who responded, the

final amount of the Fair Fund to be distributed, and the specific amounts by shareholder number. The Distribution Plan calls for checks to be sent out shortly after Court approval of that motion.

We are available to respond to any questions the Court may have about the distribution process, and we are posting a copy of this status report on the website.

September 15, 2021

Respectfully submitted,

Robert K. Levenson, Esq.
Senior Trial Counsel
Florida Bar No. 0089771
Direct Dial: (305) 982-6341
Email: levensonr@sec.gov

Christopher E. Martin, Esq.
Senior Trial Counsel
SD Fla. Bar No. A5500747
Direct Dial: (303) 844-1106
Email: martinc@sec.gov

Distribution Agents and
Attorneys for Plaintiff
SECURITIES AND EXCHANGE COMMISSION
801 Brickell Avenue, Suite 1950
Miami, Florida 33131