

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SECURITIES AND EXCHANGE	:	CIVIL ACTION
COMMISSION	:	
	:	
v.	:	
	:	
DALE J. LANGE, FRANK G.	:	
LEPORE, MARK F. LEPORE	:	
PHILIP S. PORTOGHESE,	:	
STUART W. PORTOGHESE,	:	
STEPHEN P. PORTOGHESE, and	:	
TIMOTHY L. GARNER	:	No. 97-6018

MEMORANDUM ORDER

Presently before the court is plaintiff's Motion for Payment of Funds to the Treasury in this SEC enforcement action. The SEC charged that while associated with Cephalon, a publicly traded corporation, defendants engaged in insider trading of that corporation's shares over a seven-day period in the spring of 1995. Pursuant to a final judgment of April 9, 1999, defendants paid disgorged proceeds totaling \$85,158 into the Registry of the Court. It is these funds which the SEC seeks to direct to the Treasury.

The fundamental purpose of disgorgement is not to compensate securities fraud victims but to deny the violator his ill-gotten gains. See United States v. Fischbach Corp., 133 F.3d 170, 175 (2d Cir. 1997). The court has broad discretion to approve a proposed plan of distribution based on equitable principles. See SEC v. Drexel Burnham Lambert, Inc., 956 F.

Supp. 503, 507 (S.D.N.Y. 1997). Distribution of disgorged funds generally is not appropriate when numerous victims have suffered relatively small losses, many or all victims cannot be identified or none are entitled to damages. See id.; SEC v. Lorin, 869 F. Supp. 1117, 1129 (S.D.N.Y. 1994), aff'd, 76 F.3d 458 (2d Cir. 1996). In such cases, the disgorged funds are appropriately paid to the Treasury. See Drexel Burham, 956 F. Supp. at 507; SEC v. Dimensional Entertainment Corp., 1996 WL 107290, *2 (S.D.N.Y. Mar. 12, 1996); SEC v. Lund, 570 F. Supp. 1397, 1404-05 (C.D. Cal. 1983).

It appears in the instant case that it would be extremely difficult and costly to identify the investors who traded in Cephalon stock on the seven days at issue. The insider trading at issue occurred over six years ago. Federal securities laws require brokers to preserve order tickets for only three years. The amount of the disgorged funds would result in a nominal payment if proportionately distributed to the affected investors if they could feasibly be located.

ACCORDINGLY, this day of March, 2002, upon consideration of plaintiff's Motion For Payment of Funds to the Treasury (Doc. #12), **IT IS HEREBY ORDERED** that said Motion is **GRANTED** and the Clerk shall pay the funds held in the Registry of the Court in connection with the above case by check to the Comptroller, Securities and Exchange Commission, 450 Fifth Street N.W., Washington, D.C. 20549 with an accompanying letter

identifying the caption and civil action number of this case and specifying that the funds are being paid for deposit into the United States Treasury; and, upon receipt of such funds, the Comptroller of Securities and Exchange Commission shall promptly remit them to the United States Treasury.

BY THE COURT:

JAY C. WALDMAN, J.