

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 97470 / May 10, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-17956

In the Matter of	:	
	:	
MagnaChip Semiconductor Corporation and Margaret Hye-Ryoung Sakai, CPA,	:	ORDER APPROVING PLAN OF DISTRIBUTION
	:	
Respondents.	:	

On May 1, 2017, the Commission issued a settled Order¹ against MagnaChip Semiconductor Corporation (“MagnaChip”) and Margaret Hye-Ryoung Sakai, CPA (“Sakai”) (collectively, the “Respondents”). In the Order, the Commission found that Respondents violated the antifraud, books and records and internal control provisions of the federal securities laws, when it began engaging in a variety of practices to inappropriately inflate its revenues and meet the gross margin targets it previously had announced to the public. As a result, MagnaChip’s financial statements and related disclosures were materially misstated in its periodic, annual, and current reports filed with the Commission. MagnaChip also falsely stated in an October 2013 press release that it had met its revenue and gross margin guidance for ten consecutive quarters following its IPO. Following an internal investigation, MagnaChip self-reported the revenue issues and, as a result, MagnaChip restated its financial statements in early 2015, reducing its previously reported revenue for 2011 through 2013 by \$121 million. The Commission ordered the Respondents to pay a total of \$3,135,000 in civil money penalties to the Commission. The Commission also created a Fair Fund, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, so the penalties paid can be distributed to harmed investors (the “Fair Fund”).

The Respondents have paid \$3,134,999.99. The Fair Fund and has been deposited in a Commission-designated account at the United States Department of the Treasury, and any accrued interest will be added to the Fair Fund.

¹ Order Instituting Public Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Sections 4C and 21C of the Securities Exchange Act of 1934, and Rule 102(e) of the Commission’s Rules of Practice, Making Findings, and Imposing Remedial Sanctions and Cease-and-Desist Orders, Securities Act Rel. No. 10352 (May 1, 2017).

On March 19, 2020, the Commission appointed Strategic Claims Systems, Inc. as the Fund Administrator of the Fair Fund and set the fund administrator’s bond at \$3,134,999.99.²

On August 17, 2022, the Division, pursuant to delegated authority, published a Notice of Proposed Plan of Distribution and Opportunity for Comment, and simultaneously posted the Proposed Plan of Distribution (the “Proposed Plan”), pursuant to Rule 1103 of the Commission’s Rules on Fair Fund and Disgorgement Plans (the “Commission’s Rules”).³ The Commission received one comment (the “Comment Letter”) on the Proposed Plan—a letter from Securities Class Action Services, LLC (“SCAS”), a self-described professional Third-Party Filer⁴ that assists institutions in making claims to Commission distribution funds and other settlement funds.

After careful consideration of the Comment Letter and the Commission staff’s recommendation, the Commission concludes that the Proposed Plan should be approved without modification.

I.

A. Public Comment on the Proposed Plan

SCAS submitted a letter dated September 14, 2022, objecting to two paragraphs in the Proposed Plan regarding procedures to be followed with respect to Third-Party Filers.

SCAS objects to paragraphs 85 and 86 of the Proposed Plan—the provisions that require distribution payments to be made directly to harmed investors, and that prohibit deduction of the Third-Party Filer’s fees from distribution payments to harmed investors. The Comment Letter recommends revising the Proposed Plan to allow distribution payments to be made directly to Third-Party Filers, and to allow Third-Party Filers to deduct their fees from the distribution payments. To support its recommendation, SCAS states:

As currently drafted, the Proposed Plan will effectively bar ISS SCAS from rendering these valuable services to important investor clients in connection with this Fair Fund. This is because Paragraph 85 of the Proposed Plan provides, in the first instance, that “a Third-Party Filer shall not be the payee of any Distribution Payment check or electronic Distribution Payment.” In many situations, ISS SCAS does initially receive distribution amounts on behalf of its clients and then remits those amounts to its clients. We believe that the requirements of Paragraph 85 might preclude our typical operational processes.

² See Order Appointing Fund Administrator and Setting Bond Amount, Exchange Act Rel. No. 88430 (Mar. 19, 2020).

³ 17 C.F.R. § 201.1103.

⁴ The Proposed Plan defines a Third-Party Filer as a third-party, including without limitation a nominee, custodian, or an intermediary holding in street name, who is authorized to submit and submits a claim(s) on behalf of one or more Preliminary Claimants or Class Action Second Settlement Claimants. Proposed Plan, ¶ 31.

...

The proposed provisions [that prohibit Third-Party Filers from deducting their fees from distribution payments] in particular will affect ISS SCAS's clients who have contractually agreed to a contingency fee arrangement, whereby the fees they are charged for the service are based on a pre-agreed percentage of any recovery obtained (the "Contingency Clients"). Many of the Contingency Clients are institutions who represent individual investors, smaller investment funds, or separately managed accounts.

...

Under such arrangements with these Contingency Clients, the typical, and effectively only way for ISS SCAS to get paid is to receive a deduction or distribution from the recovery. However, since such compensation from the Fair Fund is seemingly prohibited under the Proposed Plan, ISS SCAS will not be in a position to file claims on these clients' behalf.⁵

SCAS further states that investors rely on its subject matter expertise, technology, and procedures and controls to submit claims and process recoveries more efficiently and at a lower cost than if investors were to submit claims themselves. In SCAS's opinion, the Commission's provisions prohibiting deductions from its distribution payments could discourage investors from seeking distribution payments altogether. Conversely, SCAS asserts, removing this prohibition would "ensure that [] investors receive the recoveries they deserve."⁶

The Commission has considered this objection and concludes that it does not require modification to the Proposed Plan. Commission distribution funds are qualified settlement funds under Section 468B(g) of the Internal Revenue Code, 26 U.S.C. § 468B(g), and related regulations, 26 C.F.R. §§ 1.468B-1 through 1.468B-5, and Third-Party Filers are not entitled to deduct their fees from the Commission's distribution payments.

The Commission has determined that the requirements of paragraphs 85 and 86, demonstrating that the preferred method of payment is directly to the Eligible Claimant and prohibiting the offset of Third-party Filer compensation from Distribution Payments, are necessary to reduce risks to the Commission's distribution program and to harmed investors and therefore, are fair and reasonable. Section 21(d)(4) of the Exchange Act evidences Congress's intent that certain practices prevalent in private securities litigation, such as compensation of attorneys and other private parties from investors' compensation, should not be carried over to the distribution of Commission disgorgement funds.

Congress entrusted the Commission with the responsibility of distributing Commission settlement funds, and the Commission has procedures in place to efficiently and effectively

⁵ Comment Letter, p. 2.

⁶ *Id.* at p. 2-3.

distribute these government settlement funds while protecting the funds from waste and fraud. Distribution funds should not be sent to Third-Party Filers because the Commission does not have visibility into how these funds are handled once in the Third-Party Filers' possession. Furthermore, the Third-Party Filers are not subject to the controls and oversight procedures prescribed in the distribution plan, and all of the safeguards implemented by the Commission and Congress to protect investors can no longer protect the distribution funds once in the Third-Party Filers' possession. For the above reasons, the Commission concludes that paragraphs 85 and 86, which preclude the sending of payments to Third-Party Filers, and which preclude the offset of Third-Party Filer compensation from Distribution Payments, are appropriate as a means to protect the integrity of Commission distributions.

B. Approval of the Proposed Plan

For the reasons stated above, the Commission finds that the Proposed Plan is fair and reasonable and should be approved without modification.

II.

Accordingly, it is hereby ORDERED, pursuant to Rule 1104 of the Commission's Rules,⁷ that the Proposed Plan is approved, and the approved Plan of Distribution shall be posted simultaneously with this Order on the Commission's website at www.sec.gov.

By the Commission.

Vanessa A. Countryman
Secretary

⁷ 17 C.F.R. § 201.1104.