

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

Securities and Exchange Commission

v.

Tyco International Ltd.  
Case No. 06 CV 2942 (RWS)

**PLAN OF DISTRIBUTION NOTICE OF SEC FAIR FUND TO TYCO INVESTORS**

**TO:** Tyco investors who purchased or acquired Tyco common stock from December 1, 1997 through March 13, 2003 (the "Recovery Period").

If you satisfy the eligibility criteria described below and wish to participate in the distribution of the SEC Fair Fund established to compensate investors in this matter, you must submit a Proof of Claim form so that it is postmarked no later than May 6, 2011 (the "Claims Bar Date"), unless you fall within the exception for certain class action claimants described below.

If you submitted an eligible claim in the class action settlement of *In re Tyco International Ltd. Securities Litigation*, MDL Docket No. 02-1335-PB (D.N.H.) ("Tyco Class Action") that was approved by the Court in that action, you do not need to submit a claim in order to be a potentially eligible claimant for your previously approved transactions during the period December 13, 1999 to June 7, 2002. However, as explained below, to be eligible to recover for transactions occurring from December 1, 1997 through December 12, 1999, and June 8, 2002 through March 13, 2003, you must submit a complete and valid Proof of Claim and supporting documentation.

**I. Purpose of this Notice.**

The purpose of this Plan of Distribution Notice is to inform you that you may be entitled to share in the proceeds of the SEC Fair Fund described herein. Unless you fall within the exception described in Section III below, you must file a Proof of Claim form in accordance with the steps in this Plan of Distribution Notice to be potentially eligible to share in the SEC Fair Fund. Proof of Claim forms together with this Plan of Distribution Notice are being mailed to all potentially eligible claimants who purchased Tyco common stock during the Recovery Period (December 1, 1997 through March 13, 2003) and who can be identified by the Fund Administrator. Copies of this Plan of Distribution Notice and the Proof of Claim form are also available on the SEC Fair Fund's website at [www.tycosecsettlement.com](http://www.tycosecsettlement.com) and through the website of the United States Securities and Exchange Commission (the "Commission") at [www.sec.gov](http://www.sec.gov). However, as explained in greater detail below, if you submitted an eligible claim that was previously approved in the Tyco Class Action, and you do not have any additional purchases of Tyco common stock, you do not need to submit another Proof of Claim form to receive the share of the SEC Fair Fund to which you may be entitled.

Please Note: Receipt of this Notice does not mean you have an eligible claim. The Fund Administrator does not have information regarding your potentially eligible transactions, unless you filed an eligible claim in the Tyco Class Action settlement.

**NOTE TO INSTITUTIONAL FILERS.** Claims with 100 or more transactions or on behalf of 20 or more different accounts must be submitted electronically and in the required format. To obtain the mandatory electronic filing requirements and file layout, you may visit the SEC Fair Fund's website at [www.tycosecsettlement.com](http://www.tycosecsettlement.com) or you may e-mail the Fund Administrator at [eClaim@gcginc.com](mailto:eClaim@gcginc.com). Any submission not in accordance with the required electronic filing format may be rejected. Proof of authority to submit a Proof of Claim form on behalf of any managed accounts must be submitted with any Proofs of Claim for such accounts. If you intend to file electronically, you can submit and track the history of your claims by using our secure website, GCG ICE™ ([www.gcgice.com](http://www.gcgice.com)), which is available 24/7. GCG ICE™ allows institutional investors to upload electronic claims and documents, track the history and status of submissions, view claim rejections and how to fix them, update contact information, and receive important status alerts via e-mail.

**PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. IF YOU SATISFY THE ELIGIBILITY CRITERIA DESCRIBED BELOW, YOU MAY BE ENTITLED TO A RECOVERY FROM THE SEC FAIR FUND. THIS NOTICE CONTAINS IMPORTANT INFORMATION REGARDING YOUR ABILITY TO SHARE IN THE SEC FAIR FUND.**

## **II. Background.**

On April 17, 2006, the Commission filed its Complaint in this action alleging that from 1996 through 2002 Tyco International Ltd. ("Tyco") violated the federal securities laws by, among other things, fraudulently overstating its financial results, improperly using excess reserves to enhance and smooth those reported earnings, and failing to disclose to investors substantial amounts of senior executive compensation and a large number of related party transactions. On May 1, 2006, this Court entered final judgment (the "Final Judgment") against Tyco, to which Tyco consented without admitting or denying the allegations in the Complaint. The Final Judgment ordered Tyco to pay disgorgement of \$1 and a civil penalty of \$50,000,000 to the Clerk of the Court within ten business days. On May 10, 2006, Tyco paid a total of \$50,000,001 to the Clerk of the Court. Pursuant to the Final Judgment, the funds were deposited in the Court Registry Investment System ("CRIS") in an interest-bearing account identified by this case name and docket number ("Tyco CRIS Account"). Subsequently, on December 21, 2006, the Commission filed a related case against three former Tyco officers and employees alleging violations related to the accounting misconduct that was asserted in the Commission's action against Tyco. See *SEC v. Richard D. Power, Edward Federman, and Richard J. "Skip" Heger*, No. 06-CV-15343 (RWS). From late 2007 to 2009, final judgments were entered against all three of the defendants in that action. The final judgments ordered that the disgorgement and civil penalties paid by the individual defendants be deposited into the Tyco CRIS Account. As of December, 2010, the Tyco CRIS Account's balance was approximately \$56.1 million. The final judgments entered in these matters provided that the Commission may propose a plan to distribute the funds in the Tyco CRIS Account subject to the Court's approval, and that such plan may provide that the funds be distributed pursuant to the SEC Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002, 15 U.S.C. § 7246(a). On August 5, 2009, the Commission submitted its Motion to Establish a SEC Fair Fund and Appoint a Fund Administrator. On August 19, 2009, this Court granted the Commission's motion and entered an Order Establishing a SEC Fair Fund and Appointing a Fund Administrator ("Order"). The SEC Fair Fund consists of all of the funds in the Tyco CRIS Account, together with any funds added to that account prior to any distribution of the SEC Fair Fund, plus accrued interest. The Order also appointed The Garden City Group, Inc. ("GCG") to serve as the Fund Administrator ("Fund Administrator") to assist in developing a Plan of Distribution of the SEC Fair Fund pursuant to which monies in the SEC Fair Fund will be distributed to investors harmed by the violations alleged in the Complaint. The Order also authorizes the Fund Administrator to oversee the administration of claims and the distribution of the SEC Fair Fund pursuant to the terms of the Plan of Distribution, subject to oversight by the Court.

The Fund Administrator, in consultation with the Commission staff, prepared the Plan of Distribution, and the Commission submitted the Plan of Distribution to this Court for its approval. The Court approved the Plan of Distribution on November 23, 2010.

## **III. Previously Approved Claimants in Tyco Class Action.**

The SEC Fair Fund is separate and independent from the settlement fund previously established in the Tyco Class Action, the securities class action involving Tyco, which was brought in the United States District Court for the District of New Hampshire. However, like the class action settlement, the SEC Fair Fund relates to purchases of Tyco common stock, and the Recovery Period for the SEC Fair Fund (December 1, 1997 through March 13, 2003) overlaps with the class period in the Tyco Class Action (December 13, 1999 to June 7, 2002). **Therefore, if you submitted a Proof of Claim form in connection with a claim that was approved by the Court in the Tyco Class Action, you do not need to submit another Proof of Claim form for those same purchases. If you engaged in additional purchases of Tyco common stock during the Recovery Period, including the periods of December 1, 1997 through December 12, 1999, and June 8, 2002 through March 13, 2003, that were not approved by the Court in the Tyco Class Action, you must submit a Proof of Claim form to be eligible to recover for those purchases.**

## **IV. Plan of Allocation for the Tyco SEC Fair Fund Distribution Plan.**

Overview of the Plan: The corpus of the Tyco SEC Fair Fund previously established by the Court's August 19, 2009 Order, together with any funds added prior to any distribution, and the interest earned thereon, is the Gross SEC Fair Fund. The Gross SEC Fair Fund, less all taxes, approved costs, fees, and expenses will be distributed to purchasers of Tyco's common stock (NYSE ticker: TYC) during the period starting December 1, 1997 through and including March 13, 2003 ("Recovery Period") who submit acceptable claims ("Eligible Claimant"). The Garden City Group, Inc., the Fund Administrator, is responsible for identifying and notifying potentially Eligible Claimants, and for processing the claims and determining the amount of each Eligible Claimant's share of the distribution.

Basis of the Plan: The Tyco SEC Fair Fund Plan of Distribution is based on an event study analysis of the amount by which the price of Tyco's common stock was artificially inflated during the Recovery Period. The results of this study can be viewed on the SEC Fair Fund's website [www.tycosecsettlement.com](http://www.tycosecsettlement.com) (the Tyco International Ltd., Daily Common Stock Price and Artificial Inflation, the "Inflation Table").

Method of Allocation: Claims to the Tyco SEC Fair Fund Distribution shall be processed in the following manner. For each share of Tyco common stock purchased between December 1, 1997 and March 13, 2003, inclusive, a "Recognized Loss (or Gain) Per Share" amount will be calculated that is equal to the Inflation Per Share on the Purchase Date minus the Inflation Per Share on the Sale Date. The Inflation Per Share values are listed in the Inflation Table. For stock sold or held on or after March 14, 2003, the Inflation Per Share on the Sale Date is zero.

For each claimant, the Fund Administrator will determine the date the share was purchased and the date the share was sold using the first-in, first-out ("FIFO") method. In other words, for claimants who made multiple purchases or sales of Tyco common stock during the Recovery Period, the earliest sale of Tyco stock will be matched first against those securities in the claimant's opening position on the first day of the Recovery Period, and then matched chronologically thereafter against each purchase made during the Recovery Period. After calculating the Recognized Loss (or Gain) Per Share for each share purchased during the Recovery Period, this amount will be aggregated across all transactions to determine the Eligible Loss Amount, if any.

To the extent there are sufficient funds available to distribute, each Eligible Claimant will receive an amount equal to the Eligible Claimant's entire Eligible Loss Amount. If, as anticipated, the total Eligible Loss Amount for all claimants is greater than the funds available to distribute, then each Eligible Claimant will be paid *pro rata*, in accordance with the percentage that each Eligible Claimant's Eligible Loss Amount bears to the total of the Eligible Loss Amount of all Eligible Claimants.

Minimum Distribution Amount: The Tyco SEC Fair Fund Plan of Distribution provides that, after prorated payments are calculated, such payment must equal or exceed a specified dollar amount for a distribution to be made to an Eligible Claimant. The Minimum Distribution Amount in the Tyco SEC Fair Fund Plan of Distribution is \$10.00.

**You are excluded from participation in the SEC Fair Fund if you are:**

- A person or entity that was a defendant in the Tyco Class Action, a present or former officer, director or partner of any defendant, or an immediate family member, legal representative, heir, successor or assign of any defendant, officer or defendant, or an entity in which any of the foregoing have or had a controlling interest, unless such defendant was found not liable in the Tyco Class Action prior to the Claims Bar Date, and proof of the finding(s) is included in such defendant's timely filed Proof of Claim form.
- An employee of Tyco who has been terminated for cause in connection with the violations alleged in the Commission's Complaint in this action or any related Commission action, or who was otherwise terminated or has resigned in connection with the violations alleged in the Commission's Complaint in this action or any related Commission action (or any of such employee's assigns, heirs, immediate family members, or controlled entities);
- A person who, as of the Claims Bar Date, May 6, 2011, has been the subject of criminal charges related to the violations alleged in the Commission's Complaint in this action, or any related Commission action (or any of his or her Affiliates, assigns, heirs, immediate family members, or controlled entities);
- A person who assigned his or her right to obtain a recovery in the Commission's lawsuit against Tyco;
- An assignee of another person's right to obtain a recovery in the Commission's lawsuit against Tyco, provided, however, this provision shall not be construed to exclude those persons who obtained such a right by inheritance or devise; and
- The Fund Administrator, its employees, and those persons assisting the Fund Administrator in its role as the Fund Administrator.

**V. Proof of Claim forms.**

**PROOF OF CLAIM FORMS ARE BEING MAILED TOGETHER WITH THIS NOTICE TO ALL POTENTIALLY ELIGIBLE CLAIMANTS WHOM THE FUND ADMINISTRATOR IS ABLE TO IDENTIFY. IF YOU DID NOT RECEIVE A FORM IN THE MAIL OR REQUIRE ADDITIONAL FORMS, SEE THE INSTRUCTIONS UNDER ADDITIONAL INFORMATION BELOW FOR OBTAINING FORMS.**

**IF YOU ALREADY SUBMITTED AN ELIGIBLE CLAIM THAT WAS PREVIOUSLY APPROVED BY THE COURT IN THE TYCO CLASS ACTION, AND DO NOT HAVE ANY ADDITIONAL TRANSACTIONS IN TYCO**

**COMMON STOCK THAT WERE NOT PREVIOUSLY APPROVED IN THAT CLASS ACTION, YOU DO NOT NEED TO SUBMIT ANOTHER PROOF OF CLAIM FORM TO BE ELIGIBLE TO SHARE IN THE SEC FAIR FUND.**

**THE DEADLINE TO SUBMIT A PROOF OF CLAIM FORM AT THE ADDRESS BELOW IS MAY 6, 2011 (PLEASE NOTE: THIS IS A POSTMARK DEADLINE). IF YOU HAVE NOT ALREADY SUBMITTED A PROOF OF CLAIM FORM AND FAIL TO TIMELY SUBMIT A COMPLETED PROOF OF CLAIM FORM, YOU WILL BE BARRED FROM RECEIVING A PAYMENT FROM THE SEC FAIR FUND. THE PROOF OF CLAIM FORM MUST BE ACCOMPANIED BY APPROPRIATE SUPPORTING DOCUMENTS FOR EACH TRANSACTION LISTED IN SECTION B OF THE PROOF OF CLAIM FORM.**

If you submit a Proof of Claim form that fails to provide all required information, or is otherwise deficient, you may receive a Claim Deficiency Notice advising you of the reason(s) why the claim is deficient and of the opportunity to cure such deficiencies.

**VI. Claims Determination.**

The Fund Administrator shall mail a notice advising each claimant that submitted a new or amended Proof of Claim form of the determination concerning such claim. If a claim is denied in whole or in part, the Fund Administrator will state the reason for such denial.

All determinations of the Fund Administrator that are made in accordance with the Plan of Distribution shall be final and not subject to appeal.

**VII. Instructions for Submitting a Proof of Claim form.**

**UNLESS YOU HAVE ALREADY SUBMITTED A COURT-APPROVED PROOF OF CLAIM FORM IN THE TYCO CLASS ACTION LISTING ALL OF YOUR ELIGIBLE TRANSACTIONS, YOU MUST COMPLETE AND SIGN THE PROOF OF CLAIM FORM AND SUBMIT IT TO THE FUND ADMINISTRATOR SO THAT IT IS POSTMARKED NO LATER THAN MAY 6, 2011 AT THE ADDRESS LISTED BELOW OR FILE YOUR CLAIM ON THE WEB AT [WWW.TYCOSECSETTLEMENT.COM](http://WWW.TYCOSECSETTLEMENT.COM) IN ORDER TO BE ELIGIBLE TO RECOVER FROM THE SEC FAIR FUND:**

**Tyco SEC Fair Fund  
c/o The Garden City Group, Inc.  
Fund Administrator  
P.O. Box 9382  
Dublin, OH 43017-4282**

**VIII. Other Claims.**

Upon receipt and acceptance of a distribution from the SEC Fair Fund, you shall be deemed to have released any claims you may have against the Fund Administrator and its agents. By participating in the distribution of the SEC Fair Fund, you will not be releasing any rights or claims you may have against any other party, including, but not limited to, Tyco and Tyco's past and present directors, officers, advisors and agents.

**IX. Special Notice to Securities Brokers and Other Nominee Purchasers.**

If you purchased Tyco common stock during the Recovery Period as nominee for a beneficial owner and have additional names and addresses that were not previously submitted in the Tyco Class Action due to the longer Recovery Period, then within ten (10) calendar days after you receive this Plan of Distribution Notice, you must either: (a) send a copy of this Plan of Distribution Notice and the accompanying Proof of Claim form by first-class mail to all such beneficial owners; or (b) provide a list of the names and addresses of such beneficial owners to the Fund Administrator at the address above.

**X. Additional Information.**

Additional information regarding the SEC Fair Fund may be found at [www.tycosecsettlement.com](http://www.tycosecsettlement.com). Additional Proof of Claim forms and Plan of Distribution Notices may also be downloaded at the SEC Fair Fund's website. You may obtain additional information or request copies of forms and notices by calling the SEC Fair Fund's toll-free hotline at (800) 810-5638 in the United States, or by email at [Questions@tycosecsettlement.com](mailto:Questions@tycosecsettlement.com).

**PLEASE CHECK THE WEBSITE ([WWW.TYCOSECSETTLEMENT.COM](http://WWW.TYCOSECSETTLEMENT.COM)) FREQUENTLY FOR UPDATES**