

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,  
Plaintiff,  
  
- against -  
  
SEAWORLD ENTERTAINMENT AND JAMES ATCHISON,  
Defendants.

1:18-CV-08480  
ECF CASE

SECURITIES AND EXCHANGE COMMISSION,  
Plaintiff,  
  
- against -  
  
FREDERICK D. JACOBS,  
Defendant.

1:18-CV-08482  
ECF CASE

**NOTICE FOR DISTRIBUTION OF THE SEC v. SEAWORLD FAIR FUND**

*This Distribution Plan Notice is issued pursuant to the Court-approved Distribution Plan.  
This is not a solicitation from a lawyer.*

If you purchased the stock of the company listed below (the “Eligible Security”) during the corresponding “Relevant Period” and suffered a loss as a result of the conduct described in the Complaint in the captioned matter, you may be eligible for compensation from the SeaWorld Fair Fund.

**Company Name, Trading Symbol, and Relevant Period (Inclusive)**

<b>Company Name</b>	<b>Trading Symbol</b>	<b>Relevant Period Start Date</b>	<b>Relevant Period End Date</b>
SeaWorld Entertainment Inc.	SEAS	12/20/13	8/12/14

In order to be considered for eligibility for a distribution from the SeaWorld Fair Fund, you must submit a completed and signed Claim Form to the Distribution Agent<sup>1</sup>, with adequate documentation of your transactions and a completed tax certification **by First Class Mail, postmarked by October 19, 2023; if not by First Class Mail, received by the Distribution Agent by October 19, 2023**. October 19, 2023, is referenced herein as the “Claims Bar Date.” Further directions for submitting a claim, including the online claims process and physical address, are set forth below and on the Claim Form.

The information contained in this Distribution Plan Notice is only a summary. More detailed information and important documents can be found on the website dedicated to this matter at [www.SeaWorldFairFund.com](http://www.SeaWorldFairFund.com) (the “Distribution Website”).

Please Note: Receipt of this Distribution Plan Notice does not mean you are eligible to receive a Distribution Payment; eligibility will be determined in accordance with the Court-approved Distribution Plan (the “Plan”) upon receipt of your Claim Form and necessary documentation.

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY BECAUSE YOU MAY BE ELIGIBLE FOR COMPENSATION FROM THE SEAWORLD FAIR FUND. THIS NOTICE CONTAINS IMPORTANT INFORMATION REGARDING YOUR POTENTIAL ELIGIBILITY TO SHARE IN THE SEAWORLD FAIR FUND.

## Background

### **The Civil Action**

On September 18, 2018, the SEC filed a Complaint against SeaWorld and Atchison. The SEC alleged that the defendants made untrue and/or misleading statements or omissions in SEC filings, earnings releases and calls, and other statements to the press regarding the impact of the documentary film Blackfish on the Company’s reputation and business (i.e., “Blackfish effect”). According to the Complaint, released in July 2013, Blackfish criticized SeaWorld’s treatment of its orcas (killer whales) and received significant media attention that escalated as the film became more widely distributed. The SEC alleged that, in connection with the offer and sale of SeaWorld stock, the defendants engaged in a course of business that by failing to disclose the Blackfish effect to investors they should have known would operate as a fraud or deceit upon the purchasers of the Securities.

According to the Complaint, from January through March 2014, Atchison sold shares of SeaWorld stock, resulting in the inflation of the Security and allowed Atchison to avoid losses of approximately \$730,860. As alleged in the Complaint, on August 13, 2014, SeaWorld acknowledged for the first time that its declining attendance was, among other factors, partially caused by negative publicity connected to Blackfish. According to the Complaint, SeaWorld’s stock price fell approximately 33% following this announcement, causing a loss of approximately \$830 million in shareholder value. On September 18, 2018, the SEC also filed a Complaint against Jacobs.

### **The SeaWorld Fair Fund, the Tax Administrator, and the Distribution Agent**

On October 4, 2018, the Defendants, without admitting or denying the allegations, consented to the entry of final judgments against each of them that imposed a total of approximately \$5.1 million in financial remedies. The Court ordered SeaWorld to pay a civil penalty of \$4,000,000; Atchison

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<sup>1</sup> Any capitalized terms used in this Distribution Plan Notice that are not otherwise defined herein shall have the meaning ascribed to them in the Distribution Plan, which is available on the website established for the SeaWorld Fair Fund at [www.SeaWorldFairFund.com](http://www.SeaWorldFairFund.com).

to pay disgorgement of \$730,860, prejudgment interest of \$119,323 and civil penalty of \$150,000; and Jacobs to pay disgorgement of \$84,885 and prejudgment interest in the amount of \$14,720. The Defendants paid in full, and the funds have been deposited in a Commission designated account at the United States Department of Treasury. On December 4, 2020, the Court entered an Order consolidating the two civil actions for the purposes of distributing the funds paid by the Defendants to harmed investors.

On December 15, 2020, the Court entered an Order establishing a Fair Fund for the \$5,266,679.31 in funds collected from Defendants, appointing Miller Kaplan Arase LLP as Tax Administrator, appointing JND Legal Administration as the Distribution Agent, and authorizing payment of administrative fees and expenses and tax obligations without further order of the Court.

## **The Plan**

On May 22, 2023, the United States District Court for the Southern District of New York approved Distribution Plan for the SeaWorld Fair Fund (the “Plan”). The Plan governs the administration and distribution of the SeaWorld Fair Fund and sets forth the method and procedures for distributing the assets of the SeaWorld Fair Fund to investors harmed by the conduct alleged in the Complaint. The Court-approved Distribution Plan is available on the Distribution Website at [www.SeaWorldFairFund.com](http://www.SeaWorldFairFund.com).

### **Who May Be Eligible for a Distribution?**

If you invested in SEAS during the corresponding Relevant Period; are not an Excluded Party as defined in the Plan; and suffered a loss according to the Plan, you may be eligible for a distribution from the SeaWorld Fair Fund.

To be considered for a Distribution Payment, you must timely submit a completed and signed Claim Form including adequate documentation for claimed transactions and a completed tax certification. If you believe you may be eligible for a distribution and are not an Excluded Party (see below), you should timely submit a completed and signed Claim Form.

“Excluded Parties” are defined in paragraph 18 of the Plan as follows and are not eligible to receive a distribution from the SeaWorld Fair Fund:

- (a) The Defendants;
- (b) Present or former officers or directors of SeaWorld or any assigns, creditors, or controlled entities of any of the foregoing entities;
- (c) Atchison and Jacobs and their heirs, distributees, spouses, parents, dependent children, siblings, assigns, creditors, and controlled entities of any of the foregoing Persons;
- (d) Any employee or former employee of SeaWorld or any of its affiliates who has been terminated for cause or has otherwise resigned, in connection with the conduct alleged in the Complaints;
- (e) Any Person who, as of the Claims Bar Date, has been the subject of criminal charges related to the conduct alleged in the Complaints or any related Commission action;

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Call toll-free (855) 533-0228 or email [info@SeaWorldFairFund.com](mailto:info@SeaWorldFairFund.com)

- (f) Any firm, trust, corporation, officer, or other entity in which any of the Defendants have or had a controlling interest;
- (g) The Distribution Agent, its employees, and those Persons assisting the Distribution Agent in its role as the Distribution Agent; or
- (h) Any purchaser or assignee of another Person's right to obtain a recovery from the Fair Fund for value; provided, however, that this provision shall not be construed to exclude those Persons who obtained such a right by gift, inheritance or devise.

### **Allocation of the SeaWorld Fair Fund**

A Plan of Allocation has been prepared that provides the formula by which Distribution Payments will be determined (*See* Attachment A of the Plan). The Net Available Fair Fund will be distributed to Eligible Claimants in accordance with that Plan of Allocation.

All Distribution Payments will be subject to a "Minimum Distribution Amount" -- if a Potential Claimant's Distribution Payment is less than \$10.00, that Potential Claimant will not receive a Distribution Payment and the funds will be distributed to Eligible Claimants whose Distribution Payments are equal to or greater than \$10.00. *See* the "Minimum Distribution Amount" section of the Plan of Allocation.

### **Claim Forms**

Your Claim Form may be submitted by First Class Mail or other delivery. A paper Claim Form has been included with this Distribution Plan Notice. If you require additional copies of the Claim Form, you may obtain them from the Distribution Website.

Your completed and signed Claim Form, including tax certification and adequate supporting documentation, must be submitted by **First Class Mail, postmarked by October 19, 2023, or, if not sent by First Class Mail, received by the Distribution Agent by October 19, 2023.** Mailed and/or otherwise physically delivered Claim Forms should be directed to the following address:

SeaWorld Fair Fund  
c/o JND Legal Administration  
PO Box 91190  
Seattle, WA 98111

If you fail to timely submit a completed and signed Claim Form by the deadline, you may be barred from receiving a payment from the SeaWorld Fair Fund. The Claim Form must be accompanied by a completed tax certification and adequate supporting documentation for each transaction listed in the Claim. You will be responsible for demonstrating timely submission of your Claim Form.

If you submit a 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 providing to you an opportunity to cure such deficiencies.

### **Special Notice to Securities Brokers and Other Nominee Purchasers**

Brokers, Dealers and other nominees that may have records of purchasers of the Eligible Security during the Relevant Period must notify the respective beneficial owners within fourteen (14) days of receipt of the Claims Packet so that beneficial owners may timely file a claim or provide to the Distribution Agent within fourteen (14) days of receipt a list of last known names and addresses for all beneficial owners for whom the record holders purchased the Eligible Security during the Relevant Period.

Questions? Visit [www.SeaWorldFairFund.com](http://www.SeaWorldFairFund.com)  
Call toll-free (855) 533-0228 or email [info@SeaWorldFairFund.com](mailto:info@SeaWorldFairFund.com)

**Additional Information**

Additional information regarding the SeaWorld Fair Fund, including the Distribution Plan, the Distribution Plan Notice, the Claim Form, relevant deadlines, and related materials are available on the Distribution Website at [www.SeaWorldFairFund.com](http://www.SeaWorldFairFund.com). You may obtain additional information or request copies of the Claim Form by contacting the Distribution Agent toll-free at (855) 533-0228, emailing [info@SeaWorldFairFund.com](mailto:info@SeaWorldFairFund.com), or writing to:

SeaWorld Fair Fund  
c/o JND Legal Administration  
PO Box 91190  
Seattle, WA 98111

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