

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 81696 / September 25, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-16175

In the Matter of

**KENNETH C. MEISSNER, JAMES
DOUG SCOTT, and MARK S. “MIKE”
TOMICH,**

Respondents.

**ORDER APPROVING PLAN OF
DISTRIBUTION, APPOINTING A
DISTRIBUTION PLAN
ADMINISTRATOR, AND AUTHORIZING
TRANSFER OF FAIR FUND FUNDS**

On September 25, 2014, the Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 and Section 9(b) of the Investment Company Act of 1940 (the “Administrative Order”) ¹ against Kenneth C. Meissner (“Meissner”), James Doug Scott (“Scott”), and Mark S. “Mike” Tomich (“Tomich”) (collectively, the “Respondents”). In the Administrative Order, the Division of Enforcement (the “Division”) alleged that from August 2011 to January 2013, Gary Snisky (“Snisky”) recruited the Respondents to solicit prospective investors with false promises of no-risk, profitable alternatives to traditional annuities, when in fact, Snisky made no legitimate investments with investor funds. None of the Respondents was registered with the Commission as a broker or associated with a registered broker-dealer during this time.

On December 23, 2014, the Commission accepted Tomich’s settlement offer and issued an Order Making Findings and Imposing Remedial Sanctions and a Cease-And-Desist Order Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 and Section 9(b) of the Investment Company Act of 1940 as to Mark S. “Mike” Tomich (the “Settled Order”) ² to which Tomich consented without admitting or denying the findings, except as to jurisdiction and for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523. In the Settled Order, the Commission found that Tomich willfully violated Section 15(a) of the Exchange Act. The Commission ordered Tomich to pay disgorgement of \$48,327.00, prejudgment interest of \$2,976.87, and a civil penalty of \$48,000.00. The Settled Order provides that the Commission may distribute the penalties collected, if in its discretion, it

¹ Exchange Act Rel. No. 73226 (Sept. 25, 2014).

² Exchange Act Rel. No. 73925 (Dec. 23, 2014).

establishes a Fair Fund pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended.

By Initial Decisions filed on April 7, 2015 and August 4, 2015, respectively,³ an Administrative Law Judge (“ALJ”) adjudicated the allegations against Meissner and Scott on motions for summary disposition filed by the Division. In both, the ALJ found the respondent willfully violated Section 15(a)(1) of the Exchange Act. The ALJ ordered Meissner to disgorge \$19,268.70, and ordered Scott to disgorge \$26,297.84 and pay prejudgment interest of \$2,294.22 and a civil penalty of \$15,000. By orders issued on May 20, 2015 (“Meissner Finality Order”) and September 28, 2015 (“Scott Finality Order”), respectively, the Initial Decisions became final and effective.⁴

On December 9, 2016, the Commission appointed Damasco & Associates LLP (“Damasco”), a certified public accounting firm located in Half Moon Bay, California, as tax administrator for the Fair Fund.⁵

On August 14, 2017, the Commission established a Fair Fund pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, to distribute funds collected from the Respondents.⁶

On August 21, 2017, the Commission published a Notice of Proposed Plan of Distribution and Opportunity for Comment (“Notice”)⁷ pursuant to Rule 1103 of the Commission’s Rules on Fair Fund and Disgorgement Plans (“Rules”).⁸ The Notice advised interested persons that they could obtain a copy of the proposed plan of distribution (“Distribution Plan”) from the Commission’s public website at <http://www.sec.gov/litigation/fairfundlist.htm> or by submitting a written request to Catherine E. Pappas, Esq., United States Securities and Exchange Commission, One Penn Center, 1617 JFK Blvd., Ste. 520 Philadelphia, PA 19103.

The Notice also advised that all persons desiring to comment on the Distribution Plan could submit their comments, in writing, no later than thirty (30) days from the date of the Notice (1) to the Office of the Secretary, United States Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090; (2) by using the Commission’s Internet comment form (<http://www.sec.gov/litigation/admin.shtml>); or (3) by sending an email to rule-comments@sec.gov. The Commission received no comments on the Distribution Plan.

As of July 24, 2017, the Fair Fund holds approximately \$101,000 in disgorgement, prejudgment interest, and penalties paid by or collected from the Respondents, less administrative

³ Initial Decision Rel. Nos. 768 (Apr. 7, 2015) and 850 (Aug. 4, 2015), respectively.

⁴ Exchange Act Rel. Nos. 75005 (May 20, 2015) and 76001 (Sept. 28, 2015), respectively.

⁵ Exchange Act Rel. No. 79522 (Dec. 9, 2016). Damasco & Associates LLP is now part of Miller Kaplan Arase LLP. See Notice of Name Change of Appointed Tax Administrator, Exchange Act Rel. No. 81064 (June 30, 2017).

⁶ Exchange Act Rel. No. 81385 (Aug. 14, 2017).

⁷ Exchange Act Rel. No. 81449 (Aug. 21, 2017).

⁸ 17 C.F.R. § 201.1103.

expenses and taxes. Tomich has paid \$99,303.87, satisfying his monetary obligations, and Meissner has paid \$5,041.35. Collection activities continue on the obligations imposed by the Meissner Finality Order and the Scott Finality Order.

Pursuant to Rule 1102(a) of the Rules, 17 C.F.R. § 201.1102(a), the Distribution Plan proposes to transfer all funds currently in the Fair Fund, and additional funds collected from the Respondents, less any taxes and expenses, to the Court Registry Investment System (“CRIS”) account established in the related criminal action, *United States v. Snisky*, No. 13-cr-00473 (D. Colo.) (the “Criminal Action”), for distribution to harmed investors in accordance with the restitution process in the Criminal Action. In accordance with Rule 1102(a), the Criminal Action arises from substantially similar facts as those alleged in the Administrative Order. The Division has concluded that transferring the funds to the Criminal Action for distribution through the restitution process is fair and reasonable, and employs a more efficient use of resources to benefit investors harmed as a result of the Respondents’ misconduct than would two separate distribution processes.

The Division now requests that the Commission approve the Distribution Plan as published and authorize the transfer of all funds currently in the Fair Fund, less any taxes and expenses, to the CRIS account established in the Criminal Action. The Division further requests that additional collections from the Respondents, less any taxes, fees, and expenses, periodically be transferred to that account pursuant to further Commission Orders.

The Commission finds that, in accordance with Rule 1102(a), the Criminal Action arises from substantially similar facts as those alleged in the Administrative Order.

Accordingly, it is hereby ORDERED that:

- A. Pursuant to Rule 1104 of the Rules, 17 C.F.R. § 201.1104, the Distribution Plan is approved;
- B. Pursuant to Rule 1102(a) of the Rules, 17 C.F.R. § 201.1102(a), the Commission staff shall transfer \$101,267.37 currently held in the Fair Fund to the CRIS account established in the Criminal Action, net of any taxes, fees, and expenses, for distribution to harmed investors; and
- C. In accordance with the Distribution Plan, additional collections by the Commission staff from the Respondents, less any taxes and expenses, shall periodically be transferred to that account pursuant to further Commission Orders.

By the Commission.

Brent J. Fields
Secretary