

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 84415 / October 12, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-17300

In the Matter of

APEX FUND SERVICES (US), INC.,

Respondent.

**NOTICE OF AMENDED PLAN OF
DISTRIBUTION AND
OPPORTUNITY TO COMMENT**

In response to a comment received on the proposed plan of distribution (the “Prior Plan”) in the captioned administrative proceeding, published on April 30, 2018, the Division of Enforcement (“Division”) has submitted an amended proposed plan of distribution (“Amended Plan”) to the Securities and Exchange Commission (the “Commission”) for publication. Notice is hereby given, pursuant to Rule 1103 of the United States Securities and Exchange Commission’s Rules on Fair Fund and Disgorgement Plans (the “Rules”), 17 C.F.R. § 201.1103, that the Division of Enforcement has published the Amended Plan at <https://www.sec.gov/litigation/fairfundlist.htm#apex> and seeks comment from interested persons.¹ Based on the comment, the Division revised the methodology by which it is calculating each Eligible Investor’s Net Loss Amount and Distribution Payment.²

On June 16, 2016, the Commission issued an Order Instituting Cease-and-Desist Proceedings Pursuant to Section 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing a Cease-and-Desist Order (the “Order”)³ against Apex. The Commission found that, from May 2012 through June 2014, Apex served as the fund administrator providing accounting and fund administration services to two private funds managed by EquityStar Capital Management, LLC and Steven Zoernack (collectively, the “Managers”): the Momentum Growth Fund, LLC (the “Momentum Fund”) and the Global Partners Fund, LLC (the “Global Fund”) (collectively, the “Funds”). According to the Order, the Managers made undisclosed withdrawals of more than \$1 million directly from the Funds (the “Withdrawals”) in violation of Sections 206(2) and 206(4) of the Investment Advisers Act of 1940 (“Advisers Act”) and Rule 206(4)-8 thereunder. The Commission found that Apex

¹ The Commission, pursuant to delegated authority, previously issued an order extending the time for approval or disapproval of this plan. Exchange Act Rel. No. 83496 (June 22, 2018). As a result of the Commission’s decision to republish the Prior Plan for comment, an order approving or disapproving the Amended Plan will be entered in accordance with the provisions of Rule 1104 of the Rules, 17 C.F.R. 201.1104.

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Amended Plan.

³ Investment Advisers Act Rel. No. 4429 (June 16, 2016).

improperly classified the Withdrawals as receivables without evidence that the Managers were able or willing to repay the Withdrawals. The Commission further found that the improper classification of the Withdrawals as assets resulted in the overstatement of the value of investor holdings in the Funds in monthly statements sent by Apex to investors. According to the Order, Apex first sent monthly investor account statements disclosing the receivables due from an affiliate in March 2014 (the “Apex Disclosure”). The Commission determined that, by this conduct, Apex was a cause of the Managers’ violations of Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder.

The Commission ordered Apex to disgorge \$89,050, and to pay prejudgment interest of \$7,786 and a civil money penalty of \$75,000, for a total payment of \$171,836. The Commission also created a Fair Fund, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, for the distribution of the monies ordered (the “Fair Fund”). Apex has paid the money ordered in full.

OPPORTUNITY FOR COMMENT

Pursuant to this Notice, all interested persons are advised that they may obtain a copy of the Modified Plan from the Commission’s public website at <http://www.sec.gov/litigation/fairfundlist.htm>. Interested persons may also obtain a written copy of the Distribution Plan 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. All persons who desire to comment on the Distribution Plan may submit their comments, in writing, no later than thirty (30) days from the date of this 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 e-mail to rule-comments@sec.gov.

Comments submitted should include “Administrative Proceeding File No. 3-17300” in the subject line. Comments received will be publicly available. Persons should submit only information that they wish to make publicly available.

THE AMENDED PLAN

The Prior Plan proposed the *pro rata* distribution of the Net Fair Fund to Eligible Investors in proportion to their Net Loss Amount at the Funds’ termination; it was amended after review and consideration of a public comment suggesting that the Net Fair Fund be allocated in proportion to the Withdrawals made from Investors.

The Amended Plan describes its methodology for distributing the Net Fair Fund in paragraph 28. It proposes to first allocate the Fair Fund less any costs and expenses (the “Net

Fair Fund”) to the Funds in proportion to the Withdrawals taken from each Fund. Then, each Fund Allocation will be distributed among Eligible Investors in that Fund in a manner that ensures, to the extent practicable, that each Eligible Investor recovers, through a combination of their Redemptions and Distribution Payment, the same percentage of their account balance after the Apex Disclosure (“March Holding Value”) as other Eligible Investors in that Fund (the “Fund Recovery Ratio”). Any Potentially Eligible Investor in the Fund who, through Redemptions in the Fund, has recovered more than the Fund Recovery Ratio, will not receive a Distribution Payment under the Amended Plan.

Under the Amended Plan, the Global Fund and the Momentum Fund will be allocated 41% and 59% of the Net Fair Fund, respectively, in proportion to the Withdrawals made from each Fund. For each Fund, the Fund Administrator will then determine the Fund Recovery Ratio by dividing the sum of Potentially Eligible Investors’ Redemptions in the Fund and the Fund Allocation by the aggregate March Holding Values of those investors. The preliminarily calculated Fund Recovery Ratio is 44.75% for the Global Fund; that is, if all Potentially Eligible Investors in Global had received Redemptions and a payment from the Global Fund’s Fund Allocation in proportion to their March Holding Value, each investor would have had a recovery of \$0.4475 on each dollar of March Holding Value. For the Momentum Fund, the preliminarily calculated Fund Recovery Ratio is 68.93%.⁴ After determining each Fund’s Fund Recovery Ratio, the Fund Administrator will classify as ineligible any Potentially Eligible Investor in the Fund whose ratio of Redemptions to March Holding Value in the Fund exceeds the Fund Recovery Ratio of that Fund. For each remaining Potentially Eligible Investor in the Fund, the Fund Administrator will distribute the Fund Allocation so that the ratio of the sum of each Potentially Eligible Investor’s Redemptions and Distribution Payment to their March Holding Value equals the Fund Recovery Ratio. In other words, Eligible Investors who received a higher percentage of their March Holding Value in Redemptions will receive a lower percentage of the Fund Allocations.

Eligible Investors will not be required to make claims or submit documentation to establish their eligibility; they have been identified on the basis of information obtained by the Commission staff through review and analysis of applicable records. Within thirty (30) days of the Commission’s approval of the Plan, the Fund Administrator will send to each Investor at the Investors last known address a notice regarding the Commission’s approval of the Plan and, including as appropriate, a statement characterizing the distribution; a link to the Plan posted on the Commission’s website and instructions for requesting a copy of the Plan; a unique Investor number by which the Investor will be referenced in any public filings, notices, or on schedules sent to multiple Investors; the Fund Administrator’s preliminary determination of the Investor’s eligibility and, for each Fund, the Investor’s preliminarily calculated March Holding Value and Redemptions; objection procedures; a description of tax information reporting and related tax matters, as applicable; contact information for the Fund Administrator; and information, if any, required from the Investor (the “Plan Notice”). The Fund Administrator will coordinate with the appointed Tax Administrator to request information from Investors that is needed to accomplish the distribution in accordance with applicable tax requirements relating to the Fair Fund.

⁴ These preliminary Fund Recovery Ratios likely will change based on, among other things, information submitted by Investors pursuant to the Amended Plan.

The Plan provides procedures for Investors to dispute the Fund Administrator's preliminary determinations of Investor eligibility and preliminary calculations of an Investor's March Holding Value in a particular Fund and/or the Investor's Redemptions in that Fund. Any dispute must be submitted in writing within sixty (60) days of approval of the Plan in accordance with the procedures set forth in the Amended Plan and the Plan Notice. The Fund Administrator will review all objections and supporting documentation and will notify the Investor in writing of the resolution of the objection within ninety (90) days of approval of the Plan. The Fund Administrator's resolution of the dispute shall be final.

By the Commission.

Brent J. Fields
Secretary