

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 98049 / August 3, 2023**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-20881**

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**In the Matter of**

**Kathryn Jane Meredith, d/b/a KM**  
**Advisory Services,**

**Respondent.**

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**NOTICE OF PROPOSED PLAN OF**  
**DISTRIBUTION AND**  
**OPPORTUNITY FOR COMMENT**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-20882**

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**In the Matter of**

**John Paul Harnish, d/b/a KM**  
**Advisory Services,**

**Respondent.**

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Notice is hereby given, pursuant to Rule 1103 of the United States Securities and Exchange Commission's (the "Commission") Rules on Fair Fund and Disgorgement Plans (the "Commission's Rules"), 17 C.F.R. § 201.1103, that the Division of Enforcement has submitted to the Commission a proposed plan of distribution (the "Proposed Plan") for the distribution of monies paid in the above-captioned matters.

On June 6, 2022, the Commission issued separate, but related administrative and cease-and-desist orders (collectively, the "Orders") against Kathryn Jane Meredith, d/b/a KM Advisory

Services (“Meredith”)<sup>1</sup> and John Paul Harnish, d/b/a KM Advisory Services (“Harnish”)<sup>2</sup> (collectively, the “Respondents”). In the Orders, the Commission found that former registered investment adviser KM Advisory Services (“KMA”)—an unincorporated sole-proprietorship owned by Meredith from 1994 through February 2020, and purchased by Harnish in February 2020—breached its fiduciary duties in connection with the receipt of mutual fund fees pursuant to Rule 12b-1 under the Investment Company Act of 1940 (“12b-1 fees”) and commissions in the form of sales “loads” from advisory client investments without fully and fairly disclosing the related conflicts of interest.

Since at least January 2016, and continuing through December 2020, KMA invested the vast majority of its clients’ assets in certain mutual funds that paid 12b-1 fees and charged sales load commissions exclusively through an introducing broker-dealer (the “Introducing Broker-Dealer”), with whom Meredith and later Harnish was a registered representative. As a result, KMA’s clients paid 12b-1 fees and commissions to the Introducing Broker-Dealer, a portion of which were shared with KMA (Meredith and Harnish). KMA failed to disclose fully and adequately this arrangement and the attendant conflicts of interest. KMA also breached its duty of care by not routinely comparing the Introducing Broker-Dealer’s order execution with other broker-dealers, which KMA’s advisory relationship with its clients required. KMA therefore caused its advisory clients to invest through the Introducing Broker-Dealer and in share classes of mutual funds that charged 12b-1 fees when other broker-dealers made available share classes of the same funds to their customers that may have presented a more favorable value for KMA’s clients under the particular circumstances in place at the time of the transactions. KMA also failed to adopt and implement written compliance policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder in connection with its mutual fund share class and broker-dealer selection practices. As a result of the conduct described above, KMA willfully violated Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

Among other remedies, the Commission ordered Meredith to pay \$574,743.53 in disgorgement, \$77,252.39 in prejudgment interest, and a \$100,000.00 civil money penalty, and Harnish to pay \$220,097.30 in disgorgement, \$5,549.69 in prejudgment interest, and a \$75,000 civil money penalty, to the Commission. In each of the Orders, the Commission also created a Fair Fund, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002 and further ordered the Fair Funds to be combined to form the KM Advisory Fair Fund, so the penalties paid, along with the disgorgement and interest paid, can be distributed to harmed investors.

The Fair Fund consists of the \$1,052,641.99 paid by the Respondents. The assets of the Fair Fund are subject to the continuing jurisdiction and control of the Commission. The Fair

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<sup>1</sup> Corrected Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order, Exchange Act Rel. No. 95046 (June 6, 2022), (Admin. Proc. File No. 3-20881).

<sup>2</sup> Corrected Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order, Exchange Act Rel. No. 95047 (June 6, 2022), (Admin. Proc. File No. 3-20882).

Fund has been deposited in a Commission-designated account at the U.S. Department of the Treasury, and any accrued interest will be added to the Fair Fund.

## **OPPORTUNITY FOR COMMENT**

Pursuant to this Notice, all interested persons are advised that they may obtain a copy of the 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 Proposed Plan by submitting a written request to Joshua Braunstein, United States Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-5876. All persons who desire to comment on the Proposed 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](mailto:rule-comments@sec.gov).

Comments submitted by email or via the Commission's website should include "Administrative Proceeding File Nos. 3-20881 and 3-20882" in the subject line. Comments received will be publicly available. Persons should submit only information they wish to make publicly available.

## **THE PROPOSED PLAN**

The Net Available Fair Fund<sup>3</sup> is comprised of the \$1,052,641.99 in disgorgement, prejudgment interest, and civil money penalties paid by the Respondents, plus any interest and income earned thereon, less Administrative Costs. The Proposed Plan seeks to distribute the Net Available Fair Fund to compensate investors for excess fees related to mutual fund 12b-1 fees and/or sales load commissions paid in accounts managed by KMA from January 1, 2016 through December 31, 2020.

For the Commission, by the Division of Enforcement, pursuant to delegated authority.<sup>4</sup>

Vanessa A. Countryman  
Secretary

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<sup>3</sup> All capitalized terms used herein but not defined shall have the same meanings ascribed to them in the Proposed Plan.

<sup>4</sup> 17 C.F.R. § 200.30-4(a)(21)(iii).