

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 96737 / January 23, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-17791

In the Matter of	:	ORDER AUTHORIZING THE TRANSFER TO
	:	THE U.S. TREASURY OF ANY FUNDS
	:	RETURNED TO THE FAIR FUND IN THE
	:	FUTURE, DISCHARGING THE FUND
Orthofix International N.V.	:	ADMINISTRATOR, CANCELLING THE
	:	ADMINISTRATOR'S BOND, AND
Respondent.	:	TERMINATING THE FAIR FUND
	:	

ADMINISTRATIVE PROCEEDING
File No. 3-17792

In the Matter of	:
	:
Jeffrey Hammel, CPA	:
	:
Respondent.	:

ADMINISTRATIVE PROCEEDING
File No. 3-17793

In the Matter of	:
	:
Brian McCollum	:
	:
Respondent.	:

ADMINISTRATIVE PROCEEDING
File No. 3-17794

In the Matter of	:
	:
Kenneth Mack and Bryan McMillan	:
	:
Respondents.	:

On January 18, 2017, the Commission issued an Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Orthofix Order”)¹ against Orthofix International N.V. (“Orthofix”). The Orthofix Order required Orthofix to pay an \$8,250,000.00 civil money penalty, and created a Fair Fund, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, so the penalty could be distributed to harmed investors (the “Orthofix Fair Fund”). The Orthofix Order further provided that the Orthofix Fair Fund could receive funds from and/or be combined with fair funds established for civil penalties paid by other respondents for conduct arising in relation to the violative conduct at issue in the Orthofix Order.

The Commission simultaneously issued three settled orders (together with the Orthofix Order, the “Orders”) in related matters (collectively, the “Related Matters”) against Hammel,² McCollum,³ and Mack and McMillan.⁴ Hammel’s order required him to pay a \$20,000.00 civil money penalty, and McCollum’s order required him to pay a \$35,000.00 civil penalty. Mack and McMillan’s order required them to pay a \$40,000.00 and \$25,000.00 civil money penalty, respectively. Each order created a fair fund and provided that it could be added or combined with the Orthofix Fair Fund and/or may be added to or combined with fair funds established for the civil penalties paid by other respondents for conduct arising in relation to the violative conduct at issue in the order, so that the combined fair funds could be distributed to harmed investors affected by the same violative conduct.

On December 27, 2017, the Commission issued an order consolidating the fair funds created in the Related Matters with the Orthofix Fair Fund and appointed Strategic Claims Services, Inc. as the fund administrator.⁵ The Orthofix Fair Fund had a total of \$8,370,000.00 paid into it pursuant to the Orders.

On April 30, 2018, the Secretary, pursuant to delegated authority, published a Notice of Proposed Plan of Distribution and Opportunity for Comment (“Notice”),⁶ pursuant to Rule 1103 of the Commission’s Rules on Fair Fund and Disgorgement Plans (“Commission’s Rules”),⁷ and simultaneously posted the Proposed Plan of Distribution (the “Proposed Plan”). The Notice advised interested persons that they could obtain a copy of the Proposed Plan from the

¹ Securities Act Rel. No. 10281 (Jan. 18, 2017).

² See Order Instituting Public Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Sections 4C and 21C of the Securities Exchange Act of 1934, and Rule 102(e) of the Commission’s Rules of Practice, Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order, Securities Act Rel. No. 10282 (Jan. 18, 2017), Admin. Proc. File No. 3-17792.

³ See Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Cease-and-Desist Orders and Remedies, Exchange Act Rel. No. 79819 (Jan. 18, 2017), Admin. Proc. File No. 3-17793.

⁴ See Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Cease-and-Desist Orders and Penalties, Exchange Act Rel. No. 79820 (Jan. 18, 2017), Admin. Proc. File No. 3-17794.

⁵ See Order Consolidating Fair Funds, Appointing Fund Administrator, and Setting Administrator Bond Amount, Exchange Act Rel. No. 82410 (Dec. 27, 2017).

⁶ Exchange Act Rel. No. 83133 (Apr. 30, 2018).

⁷ 17 C.F.R. §201.1103.

Commission's public website or by submitting a written request to Keshia W. Ellis, United States Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-5876. The Notice also advised that all persons desiring to comment on the Proposed Plan could submit their comments, in writing, within 30 days of the Notice. The Commission received no comments on the Proposed Plan during the comment period. On June 22, 2018, the Secretary, pursuant to delegated authority, issued an order approving the Proposed Plan,⁸ and simultaneously posted the approved Plan of Distribution (the "Plan").

The Plan set forth a methodology for allocating the Net Fair Fund⁹ comprised of the \$8,370,000, plus interest, less taxes and expenses to investors who purchased shares of Orthofix International common stock at inflated prices during the period from March 2, 2010, through August 7, 2013, inclusive and who suffered losses in the value of their investments subsequent to disclosures by the Respondents. Any remaining funds that are infeasible to return to investors are to be returned to the Commission for transfer to the U.S. Treasury and the Orthofix Fair Fund terminated, subject to the Commission's approval of the Fund Administrator's final accounting.

As ordered by the Commission,¹⁰ the Fund Administrator distributed \$8,450,964.53 from the Orthofix Fair Fund, pursuant to the Plan, to 1,265 harmed investors. The Fund Administrator made additional efforts to reach investors who did not cash checks including refreshing addresses and reissuing checks when needed. Of the amount distributed, \$8,441,489.01 was successfully disbursed and cashed by recipient investors (99.9%), resulting in recipient investors being compensated for 11.9% of their losses. The Fund Administrator returned a total of \$9,475.52 to the Commission, representing the amount of returned and cancelled checks.

The Fair Fund earned \$424,324.89 in interest; and paid \$91,609.63 for state and federal taxes, \$821.21 for investment and banking fees, \$42,602.37 for Tax Administrator fees and expenses, and \$217,825.69 for Fund Administrator fees and expenses. The Fair Fund has a balance of \$0.00.

The Plan provides that after the Commission has approved the final accounting submitted by the Fund Administrator, the Commission staff may seek an Order: (a) to transfer the remaining funds in the Fair Fund and any funds returned in the future to the U.S. Treasury; (b) terminate the Fair Fund; (c) discharge the Fund Administrator; and (d) to cancel the bond.

The Commission staff has confirmed that the Fund Administrator has completed the distributions process in accordance with the Commission's orders, that all taxes, fees, and expenses have been paid, and that the Fund Administrator has transferred all monies remaining in the Fair Fund to the Commission. The Fair Fund has a balance of \$0.00 and all funds returned to the Fair Fund in the future will be transferred to the U.S. Treasury.

The final accounting, which was submitted to the Commission for approval, as required by Rule 1105(f) of the Commission's Rules, 17 C.F.R. § 201.1105(f), and as set forth in the Plan, has been approved.

⁸ See Order Approving Plan of Distribution, Exchange Act Rel. No. 83497 (June 22, 2018).

⁹ All capitalized terms used herein but not defined shall have the same meanings ascribed to them in the Plan.

¹⁰ See Order Directing Disbursement of Fair Fund, Exchange Act Rel. No. 89223 (July 6, 2020).

Accordingly, it is ORDERED that:

- A. Any funds returned to the Fair Fund in the future shall be transferred to the U.S. Treasury;
- B. The Fund Administrator, Strategic Claims Services, is discharged;
- C. The Fund Administrator's bond is canceled; and
- D. The Fair Fund is terminated.

By the Commission.

Vanessa A. Countryman
Secretary