



**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

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DIVISION OF ENFORCEMENT

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November 10, 2015

VIA ECF AND OVERNIGHT COURIER

The Honorable Richard M. Berman
United States District Judge for the Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
Room 8
500 Pearl Street
New York, NY 10007-1312

Re: *S.E.C. v. Kalucha, et al.*, Case No. 1:14-cv-03247-RMB (S.D.N.Y.)

Dear Judge Berman:

On behalf of the Securities and Exchange Commission (“Commission”), I write to respectfully request that the Court enter the attached Proposed Order (“Proposed Order”). The Proposed Order requires: (i) Pinnacle Canada Fund Administration, Ltd. (“Pinnacle”) to distribute \$221,221.81 to the Clerk of Court for deposit into the Court’s registry account; (ii) Vineet Kalucha (“Kalucha”) to transfer \$77,276.13 of funds belonging to Aphelion Fund Management LLC (“Aphelion Management”) from his personal bank account to the Clerk of Court for deposit into the Court’s registry account; (iii) Aphelion Management to endorse and send the currently uncashed check payable to itself in the amount of \$23,702.07 to the Clerk of Court for deposit into the Court’s registry account; and (iv) the Clerk of Court to distribute the deposited sums to Aphelion Management’s investors and creditors in accordance. The Commission makes this request because the Commission has learned that Aphelion Management no longer maintains any bank accounts, and, accordingly, it is unable to effectuate the Order Authorizing Distribution of Cash Reserve and Other Assets (“Order”). [Dkt. No. 56.] Counsel for Kalucha and Counsel for Aphelion joins the Commission’s request for the entry of the Proposed Order.

By way of background, on September 1, 2015, the parties filed a Joint Motion for Entry of Order Authorizing Distribution of Cash Reserve and Other Assets (“Joint Motion”). [Dkt. No. 54.] In the Joint Motion, the parties accurately stated that “Aphelion Management currently has \$100,978.20 in total assets (held in cash and an uncashed check issued in connection with the

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previous Court-ordered distribution in this matter).” [Dkt. No. 54 at ¶ 10.] The parties then requested that the Court enter an order, pending any objections or other input from investors, that, among other things, required: (i) first, Pinnacle to distribute \$221,221.81 to Aphelion Management; (ii) then, Aphelion Management to distribute \$257,200.01 to its investors; and (iii) finally, Aphelion Management to maintain a reserve in the amount of \$65,000 for a period of ninety (90) days to satisfy various potential obligations of Aphelion US Fund, LP and Aphelion Offshore Fund, Ltd. and/or Aphelion Management. [*Id.*] On September 18, 2015, the parties filed a Supplement to the Joint Motion for Entry of Order Authorizing Distribution of Cash Reserve and Other Assets (“Supplemental Motion”) in which they advised the Court that no investor had objected to the Joint Motion or requested a hearing on the Joint Motion. [Dkt. No. 55.] The Court entered the Order on October 27, 2015. [Dkt. 56.]

On Thursday afternoon, counsel for Aphelion Management and Kalucha learned that Aphelion Management’s bank account had been closed by its bank, that Aphelion Management no longer maintains any bank accounts in its name, and that the \$77,276.13 previously held in Aphelion Management’s account had been deposited into Kalucha’s personal bank account on Wednesday, November 4th. Counsel for Aphelion Management and Kalucha notified counsel for the Commission promptly after learning these facts.

On Friday, the bank where Kalucha maintains his personal account agreed – at the request of counsel for the Commission and with the consent of Kalucha and his counsel – to place a hold over the \$77,276.13 of Aphelion Management’s assets that had been deposited into Kalucha’s account pending further direction from counsel for the Commission or the Court. Aphelion Management’s assets thus are now held in the form of: (i) quarantined funds in the amount of \$77,276.13 held in Kalucha’s personal account; and (ii) an uncashed check payable to itself in the amount of \$23,702.07 that is being safeguarded by Aphelion Management’s attorneys. Aphelion Management does not have a bank account into which these funds can be deposited or transferred.¹ According, because Aphelion Management is unable to effectuate the Order, and no other party is equipped to do so, all counsel believe that the only viable solution is to use the Court’s registry account to effectuate the Order.

* * * * *

The Commission, together with Aphelion Management and Kalucha, thus respectfully requests that the Court enter the attached Proposed Order, which requires: (i) Pinnacle to

¹ Counsel for Aphelion Management has advised counsel for the Commission that it is highly unlikely that a banking institution would permit Aphelion Management to open a bank account in light of the allegations of fraud made against it in this lawsuit. Further, counsel for Aphelion Management has advised that even if Aphelion Management could find such a banking institution, this process would likely take months, which would delay payments being made to Aphelion Management’s investors and creditors, delay Aphelion Management’s wind-down, and create a need to maintain the \$65,000 reserve for more than ninety (90) days.

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distribute \$221,221.81 to the Clerk of Court for deposit into the Court's registry account;
(ii) Kalucha to transfer \$77,276.13 of funds belonging to Aphelion Management from his personal bank account to the Clerk of Court for deposit into the Court's registry account;
(iii) Aphelion Management to endorse and send the currently uncashed check payable to itself in the amount of \$23,702.07 to the Clerk of Court for deposit into the Court's registry account; and
(iv) the Clerk of Court to distribute the deposited sums to Aphelion Management's investors and creditors.

Thank you for your consideration of this matter.

Respectfully,



David F. Benson

Enclosure

cc: Jason D. Frank, *counsel for Aphelion Fund Management LLC* (via e-mail and ECF)
Douglas S. Brooks, *counsel for Vineet Kalucha* (via e-mail and ECF)
Eric M. Phillips, *counsel for Securities and Exchange Commission* (via e-mail and ECF)