

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

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-15393**

**In the Matter of**

**COMPREHENSIVE CAPITAL  
MANAGEMENT, INC.,**

**Respondent.**

**PLAN OF DISTRIBUTION  
TRANSFERRING FAIR FUND  
FUNDS TO A COURT-APPOINTED  
RECEIVER**

**I. OVERVIEW**

The Division of Enforcement (“Division”) has developed the following plan of distribution (“Distribution Plan”) pursuant to Rule 1101 of the Commission’s Rules on Fair Fund and Disgorgement Plans (“Rules”), 17 C.F.R. § 201.1101. As described more specifically below, the fair fund in this proceeding will be transferred, pursuant to Rule 1102(a) of the Rules, 17 C.F.R. § 201.1102(a), to a court-appointed receiver in the related Commission action, *SEC v. Roth, et al.*, Case No. 11-cv-2079 (C.D. Ill.) (the “Receiver Action”), for distribution to injured investors in accordance with the distribution plan to be established in the Receiver Action. The Division has concluded that a plan transferring the funds paid in the Commission’s administrative proceeding and distributing them through the Receiver Action’s distribution process is fair and reasonable under the circumstances here, because a distribution through the Receiver Action would benefit the same investors injured as a result of Comprehensive Capital Management, Inc.’s (“CCM” or “Respondent”) misconduct and be a more efficient use of the funds intended for distribution in this proceeding.<sup>1</sup>

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<sup>1</sup> In accordance with Rule 1102(a), 17 C.F.R. § 201.1102(a), the Receiver Action arises from the same facts as those at issue in this proceeding. The factual allegations against the Defendants consist of the same conduct by Roth

## **II. FACTUAL AND PROCEDURAL BACKGROUND**

### **A. Settlement of the Commission's Administrative Action**

1. This proceeding against CCM arose out of the fraudulent activities of Timothy J. Roth ("Roth"), a defendant in the Receiver Action, who misappropriated over \$16 million from investment advisory accounts managed by Respondent. From June 2003 until February 2011, while an associated person of CCM, Roth transferred mutual fund shares and cash from client accounts at a custodial broker-dealer to a nominee account he controlled in the name of KeyOp Exercise, Inc. ("KeyOp account"). The KeyOp account was held at CCM's clearing broker-dealer which served as the custodian of CCM's clients' assets. Roth accomplished this by using falsified transfer authorization forms and by abusing the standing authority several clients gave him over their advisory accounts.

2. On July 29, 2013, the Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order").<sup>2</sup> The Commission found that from June 2003 through February 2011, CCM failed reasonably to supervise Roth through its failures to reasonably implement its policies governing custody, reviews of transactions, books and records, e-mail, and annual office audits. Further, CCM violated the Investment Advisers Act of 1940 ("Advisers Act") books and records provisions by failing to maintain certain required records such as advisory agreements, client lists, and e-mails. CCM also violated the Advisers Act's rules, which require firms to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act.

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alleged as the basis for the Commission's settled administrative proceeding against CCM for its failure to supervise Roth. The allegations against CCM span the same time period.

<sup>2</sup> Advisers Act Release No. 3636 (July 29, 2013).

3. Without admitting or denying the findings of the Order, the Respondent made an offer of settlement and consented to the entry of the Order. The Order required the Respondent to pay a civil money penalty of \$120,000<sup>3</sup> to the Commission and created a Fair Fund pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended. Pursuant to the Order, the Respondent paid the sums ordered by the Commission, creating a \$120,000 Fair Fund, which is currently on deposit with the United States Department of the Treasury (“CCM Fair Fund”).

**B. The Receiver Action**

4. Previously, on March 21, 2011, the Commission filed a Complaint against Roth and several relief defendants (hereafter, “Defendants”) in the related case *SEC v. Roth, et al.*, Case No. 11-cv-2079 (C.D. Ill.). The Complaint alleged that Roth, an investment advisor with CCM, stole more than \$6 million worth of mutual fund shares from several nonqualified deferred compensation plans for whom he provided investment advice.<sup>4</sup> On March 21, 2011, the Commission also moved for a temporary restraining order and for certain ancillary relief against the Defendants, pursuant to the Securities Exchange Act of 1934 and Rule 65(b) of the Federal Rules of Civil Procedure, which the Court granted on the same day. Subsequently, on March 30, 2011, the Commission filed a motion to appoint a receiver. The Court granted the motion on March 31, 2011 and appointed Timothy Bertschy as the Receiver for Roth’s estate and the relief defendants.

5. Following his appointment, the Receiver undertook an investigation, which included efforts to identify the universe of investors harmed by Roth’s fraud and the location and value of any assets subject to the receivership. The investigation, which included a claims

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<sup>3</sup> The Order required the Respondent to pay the \$120,000 to the Commission in three equal installments of \$40,000 pursuant to a payment plan. The first payment was due within 10 days of the entry of the Order, the second was due within 180 days and the last payment was due within 360 days of the entry of the Order.

<sup>4</sup> It was later determined that Roth actually stole more than \$16 million from investment advisory accounts managed by Respondent.

process of which the deadline to file a claim was March 31, 2013, a forensic accounting of the relevant records (to the extent such records existed or were available to the Receiver), as well as discovery conducted pursuant to the powers granted to the Receiver (including the deposition of Roth conducted over five days), revealed that the universe of harmed investors was discernible and consisted of eight (8) total individuals or entities (some of which were trusts).

6. Since his appointment, the Receiver has collected roughly \$4.234 million. Of this amount, approximately \$2.466 million has been returned to harmed parties.<sup>5</sup> To date, no investors have been fully compensated for their losses. In addition, approximately \$1.58 million has been paid to the Receiver for fees and expenses.<sup>6</sup>

7. The Receiver is presently prosecuting a number of additional claims against individuals and entities to recover funds on behalf of the receivership.<sup>7</sup> The Receiver is also engaged in communications with other parties to potentially recover additional monies.

8. The Receiver anticipates that he will file a distribution plan with the Court to disburse the remaining funds *pro rata* to the eight (8) investors already identified.

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<sup>5</sup> The Receiver has distributed or caused to be returned approximately \$2.466 million to harmed investors and other victims of Roth's fraud. This is the net recovery on several lawsuits filed by the Receiver where injured investors were plaintiffs or where monies were found and returned directly or indirectly to third parties who had a clear ownership right to identifiable monies.

<sup>6</sup> The fees and expenses are the result of the Receiver's investigation to identify harmed parties and litigated actions to marshal assets, including bringing suit against several parties. All fees and expenses have been reviewed by the Commission in the civil action and approved by the District Court.

<sup>7</sup> On March 16, 2013, the Receiver filed suit against several of the former officers and directors of the corporate receivership entities, alleging breaches of fiduciary duty and related claims. The parties to that case are currently involved in settlement discussions. On July 2, 2013, the Receiver filed an "Omnibus Complaint" against several individuals and companies to consolidate many of the remaining claims the Receiver possesses. Several of the claims were resolved through mediation, and the Receiver continues to negotiate with the remaining defendants to resolve the respective claims.

**III. JOINT DISTRIBUTION OF THE CCM FAIR FUND AND FUNDS  
MARSHALLED BY THE RECEIVER**

9. Following Commission approval of this plan, the Commission staff will take the necessary steps to obtain a Commission order transferring the CCM Fair Fund to the Receiver's bank account established in the Receiver Action.

10. The Receiver is expected to distribute the CCM Fair Fund along with funds collected in the Receiver Action to injured investors in accordance with a distribution plan to be established in that case. The Receiver has agreed that the CCM Fair Fund will not be used by the Receiver to pay Defendants' creditors, employee back wages, or the fees and expenses of the Receiver or the Receiver's retained personnel.

11. The Receiver has agreed to be responsible for all tax compliance and reporting obligations. Taxes owed by the CCM Fair Fund may be paid from the CCM Fair Fund.

12. It is anticipated that all of the monies comprising the CCM Fair Fund will be distributed to injured investors with the monies in the Receiver Action. In the event that any portion of the CCM Fair Fund is not distributed to injured investors, or if it is determined that the distribution of the CCM Fair Fund is not feasible, the Receiver has agreed to transfer those funds, less taxes, and other fees/expenses (not referenced in paragraph 10) that may be deducted from the CCM Fair Fund, to the Commission.

13. The Receiver has agreed to submit a final report accounting for the disbursement of the CCM Fair Fund with the receivership funds to the Court presiding over the Receiver Action. When the Court has approved the final accounting and any remaining funds have been transferred to the Commission, Commission staff will arrange for the transfer of any amount remaining in the CCM Fair Fund to the U.S. Treasury.