

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16829

In the Matter of

**WILLIAM B. FRETZ, JR., JOHN P.
FREEMAN, COVENANT CAPITAL
MANAGEMENT PARTNERS, L.P.,
AND COVENANT PARTNERS, L.P.,**

Respondents.

**PROPOSED PLAN OF
DISTRIBUTION**

I. OVERVIEW

1. The Division of Enforcement (“Division”) has developed this proposed Plan of Distribution (the “Plan”) pursuant to Rule 1101 of the Commission’s Rules on Fair Fund and Disgorgement Plans (“Rules”), 17 C.F.R. § 201.1101. The Plan is intended to distribute the funds collected and any future funds collected directly or indirectly from William B. Fretz, Jr. (“Fretz”), John P. Freeman (“Freeman”), Covenant Capital Management Partners, L.P. (“CCMP”), and Covenant Partners, L.P. (“Covenant”) (collectively, the “Respondents”) to compensate investors who bought partnership interests in Covenant and were harmed by the Respondents’ offering and investment advisory fraud. The method of calculation for distribution of the funds described in the Plan is intended to fairly and reasonably achieve this purpose. The Plan is subject to approval by the Commission, and the Commission retains jurisdiction over the implementation of the Plan.

II. THE ADMINISTRATIVE PROCEEDING

2. On September 23, 2015, the Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Sections 15(b) and 21C of the Securities Exchange Act of 1934, Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (the “Administrative Order”)¹ against the Respondents. The Respondents consented to the Administrative Order without admitting or denying the findings except as to jurisdiction.

¹ Securities Act Rel. No. 9925 (Sept. 23, 2015).

3. In the Administrative Order, the Commission found that Fretz and Freeman orchestrated an offering fraud and investment advisory fraud through sales of partnership interests in Covenant and the operation of its adviser, CCMP, which Fretz and Freeman controlled. The Commission found that, from 1999 through 2014, Fretz and Freeman raised approximately \$7.3 million through the sale of Covenant partnership interests (the “Fund”) to more than 50 limited partners by misrepresenting that Covenant would primarily invest in direct marketing companies, only pay the adviser performance fees if certain conditions were met, and that Fretz and Freeman would act as fiduciaries in the best interests of the Fund. The Commission found that, instead, Fretz and Freeman, through CCMP, used the majority of Covenant investors’ funds for their own purposes and benefit, in breach of their fiduciary duties.

4. As a result of this conduct, the Commission found that Fretz, Freeman, and CCMP willfully violated, and Covenant violated Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder; and, Fretz, Freeman, and CCMP willfully violated Sections 206(1), 206(2), and 206(4) of the Investment Advisers Act of 1940 and Rule 206(4)-8 thereunder. The Commission ordered the Respondents, jointly and severally, to disgorge \$5,476,928 and pay prejudgment interest of \$353,582, and Fretz and Freeman to each pay civil penalties of \$500,000.

5. As part of their consent to the Administrative Order, Fretz, Freeman, and CCMP waived their rights to any and all equity interest in Covenant and any claims against Covenant. Upon quantification of the waived equity interests and claims in the bankruptcy proceeding described below, these respondents will receive dollar-for-dollar offsets of the aggregate value of the interests and claims against the ordered disgorgement, prejudgment interest, and civil penalties.

III. THE BANKRUPTCY PROCEEDING

6. On September 19, 2014, Covenant filed for protection under Chapter 7 of the United States Bankruptcy Code (the “Bankruptcy Proceeding”).² On September 22, 2014, the United States Trustee appointed Gary F. Seitz as the Chapter 7 Trustee (the “Trustee”).

7. On October 2, 2014, the Commission filed a protective Proof of Claim in the Bankruptcy Proceeding for an undetermined amount of penalties, disgorgement, and prejudgment interest arising from possible violations of the federal securities laws.³

8. By Order entered on December 2, 2015, the Bankruptcy Court granted the Commission an allowed general unsecured claim of \$5,830,510, representing disgorgement of \$5,476,928 and prejudgment interest of \$353,582 (the “Allowed Claim”).⁴

9. On October 10, 2016, the Trustee filed a motion for approval of an interim distribution seeking, among other things, to distribute \$2,391,807.89 to the Commission on the

² *Covenant Partners, L.P.*, Case No. 14-17568-SR (Bankr. E.D. Pa.).

³ Bankruptcy Proceeding, Claim No. 1-1.

⁴ Bankruptcy Proceeding, Dkt. No. 109.

Allowed Claim.⁵ By Order dated November 16, 2016, the Bankruptcy Court approved the interim distribution and the Trustee distributed \$2,391,807.89 to the Commission on the Allowed Claim (the “Interim Bankruptcy Distribution”).⁶

10. At this time, the Commission staff anticipates that there will be one or more additional distributions to the Commission on the Allowed Claim before the termination of the Bankruptcy Proceeding.

IV. THE DISTRIBUTION FUND

11. A distribution fund has been created for any payments of disgorgement and prejudgment interest received from the Bankruptcy Proceeding or otherwise received from the Respondents, plus any interest earned on those funds (the “Distribution Fund”). The Distribution Fund is subject to the continuing jurisdiction and control of the Commission and is currently on deposit in a Commission designated interest bearing account at the United States Department of Treasury (“U.S. Treasury”).

12. At this time, the Commission staff anticipates collection of additional distributions from the Bankruptcy Proceeding and funds obtained through post-judgment collection activities. If the Commission staff collects any amounts in satisfaction of the civil penalties, it will, if appropriate, seek the creation of a Fair Fund, combining the civil penalty collections with any amounts remaining in the Distribution Fund for distribution in accordance with the Plan.

13. On December 8, 2016, the Interim Bankruptcy Distribution was deposited into the Distribution Fund.

V. DEFINITIONS

As used herein, the following definitions shall apply:

14. “Administrative Costs”: fees, obligations, and expenses related to the administration of the Plan and the distribution of the Distribution Fund, including without limitation tax payments, tax administrator fees and costs, and any investment fees and costs. All Administrative Costs will be paid by the Distribution Fund.

15. “Aggregate Payments In”: During the period January 1, 1999 through December 31, 2014 (the “Relevant Period”), the sum of all monetary contributions of all Investors on the Preliminary List into their limited partner accounts at Covenant, including transfers from other limited partner(s) account.

⁵ Bankruptcy Proceeding, Dkt. No. 163.

⁶ Bankruptcy Proceeding, Dkt. No. 185.

16. “Aggregate Payments Out”: During the Relevant Period, the sum of all monetary withdrawals or transfers from the Covenant limited partner accounts of all Investors on the Preliminary List.

17. “Distribution Payment”: the payment made to an Eligible Investor in accordance with the Plan. No Distribution Payment shall be made under the Plan for less than \$20.00 (“*De Minimis* Amount”). The Plan anticipates there may be more than one distribution to Eligible Investors, if and when additional funds are paid into the Distribution Fund and the Fund Administrator determines subsequent distribution(s) are feasible. The first Distribution Payment is referenced herein as the “Initial Distribution Payment.”

18. “Eligible Investor”: any Investor whose Payments In exceed their Payments Out; who is not (a) an Unresponsive Investor, (b) a Respondent, or (c) an entity controlled by a Respondent; whose Initial Distribution Payment or any subsequent Distribution Payment under the Plan equals or exceeds the *De Minimis* Amount; and who is determined eligible for a payment under the methodology described below, ¶ 33. An Investor who is an Eligible Investor with respect to one distribution under the Plan may not be an Eligible Investor with respect to another distribution under the Plan (and *vice versa*).

19. “Investor”: any person or entity identified by the Fund Administrator from the records of the Trustee, records provided to the Commission staff by Covenant, or records obtained through the Plan Notice process, who/which held equity in Covenant as a limited partner during the Relevant Period.

20. “Net Distribution Fund”: the Distribution Fund less Administrative Costs.

21. “Payments In”: calculated by the Fund Administrator from the records of the Trustee, records provided to the Commission staff by Covenant, or records obtained through the Plan Notice process, refers to the sum of monetary payments made by an Investor into their limited partner accounts at Covenant, including transfers from another limited partner account during the Relevant Period. Payments In do not include dividends, interest, or any funds that did not originate with an Investor.

22. “Payments Out”: calculated by the Fund Administrator from the records of the Trustee, records provided to the Commission staff by Covenant, or records obtained through the Plan Notice process, refers to the sum of monetary withdrawals or transfers from the Covenant limited partner accounts of an Investor during the Relevant Period.

23. “Preliminary List”: the list of Investors whose Payments In exceed their Payments Out and who are not (a) Unresponsive Investors, (b) Respondents, or (c) entities controlled by a Respondent. The Fund Administrator will apply the methodology set forth below, ¶ 33, to the limited partner accounts of the Investors on the Preliminary List to determine whether they qualify as Eligible Investors.

24. “Recovery Ratio”: a calculation of Investors’ payments received, in the form of Aggregate Payments Out and aggregate Distribution Payments, as a fraction of Aggregate

Payments In. Interim calculations of the Recovery Ratio will change until the Fund Administrator has identified all Eligible Investors and their Payments In and Payments Out.

25. “Tentative Distribution”: an interim calculated distribution amount under ¶ 33 of the Plan below.

26. “Unresponsive Investor”: an Investor whose address the Fund Administrator has not been able to verify and/or who does not timely respond to the Fund Administrator’s attempts to obtain information, including any information sought in the Plan Notice (*see* ¶¶ 35 and 37). Unresponsive Investors will be excluded from the Preliminary List and will not be eligible for a distribution under the Plan.

VI. TAX ISSUES AND ADMINISTRATION OF THE PLAN

27. Tax Administrator. On December 8, 2016, the Commission appointed Damasco & Associates LLP⁷ as the tax administrator of the Distribution Fund (the “Tax Administrator”).⁸ The Tax Administrator will be compensated for reasonable costs and expenses from the Distribution Fund in accordance with its 2016-2018 Engagement Letter Agreement with the Commission, and tax obligations will be paid out of the Distribution Fund.

28. Qualified Settlement Fund. The Distribution Fund constitutes a Qualified Settlement Fund (“QSF”) under Section 468B(g) of the Internal Revenue Code, 26 U.S.C. § 468B(g), and related regulations, 26 C.F.R. §§ 1.468B-1 through 1.468B-5.

29. Fund Administrator. Catherine E. Pappas, Senior Adviser in the Commission’s Division of Enforcement, is proposed to act as the administrator of the Distribution Fund (the “Fund Administrator”). As a Commission employee, the Fund Administrator shall receive no compensation from the Distribution Fund for her services in administering the Distribution Fund. In accordance with Rule 1105(c) of the Rules, 17 C.F.R. § 201.1105(c), no bond is required because the Fund Administrator is a Commission employee. In carrying out her duties, the Fund Administrator may be assisted by other Commission staff acting under her supervision.

The Fund Administrator will, among other things: oversee the administration of the Distribution Fund, distribute money from the assets of the Distribution Fund in accordance with the Plan, resolve disputes, prepare a final accounting with assistance from the Tax Administrator, and take the steps necessary to provide to the Tax Administrator funds to ensure the payment of tax liabilities and tax compliance fees and costs, pursuant to the Omnibus Order Directing the Appointment of Tax Administrator in Administrative Proceedings that Establish Distribution Funds.⁹ The Fund Administrator and the Tax Administrator will work together to accomplish their respective obligations under the Plan.

⁷ Damasco & Associates LLP is now part of Miller Kaplan Arase LLP.

⁸ Order Appointing Tax Administrator, Exchange Act Rel. No. 79511 (Dec. 8, 2016).

⁹ Exchange Act Rel. No. 77016 (Feb. 2, 2016).

30. Fund Administrator Contact Information. Unless directed otherwise by the Plan Notice or other correspondence or notices sent pursuant to the Plan, the Fund Administrator can be contacted by receipted mail directed to the following address:

Fund Administrator
Covenant Partners Distribution Plan
c/o Melissa Mitchell
United States Securities and Exchange Commission
Office of Distributions
100 F. Street, NE
Washington, DC 20549

VII. THE DISTRIBUTION

31. No claims-made process. The Distribution Fund is not being distributed according to a claims-made process, so the procedures for providing notice and for making and approving claims are not applicable.

32. Locating Investors. Subject to ¶ 37 below regarding each Investor's obligation to communicate changes in contact information to the Fund Administrator, the Fund Administrator will use her best efforts to ensure that communications are properly directed to Investors. Review of the information provided by the Trustee, Covenant, and Investors to the Fund Administrator, and use of commercial computer databases regularly available to the Division of Enforcement shall constitute best efforts to locate and communicate with Investors.

33. Methodology for Determining Eligible Investors and Distribution Payments. The objective of the methodology described below is to distribute the Net Distribution Fund so that the payments received, in the form of Payments Out and Distribution Payment, as a fraction of Payments In, is the same for all Eligible Investors. The Fund Administrator will identify Eligible Investors, and the amount to be distributed to each Eligible Investor, in the following manner:

- (a) The Fund Administrator will create the Preliminary List as defined above, ¶ 23;¹⁰
- (b) Using the Preliminary List, the Fund Administrator will calculate the Recovery Ratio as defined above, ¶ 24;
- (c) For each Investor on the Preliminary List, the Fund Administrator will calculate the Investor's Tentative Distribution by multiplying the Recovery Ratio by the Investor's Payments In, and subtract from that product the Investor's Payments Out;

¹⁰ For the purposes of calculations described in in this paragraph and paragraph 23, where an Investor fully transferred all assets in the Investor's account to the account of another Investor, the Payments In and Payments Out of the account of the transferring Investor will be combined with the Payments In and Payments Out of the account of the receiving Investor.

- (d) If for any Investor, the Tentative Distribution is less than the *De Minimis* Amount, the Investor will be removed from the Preliminary List, and steps (b) through (d) will be repeated until each remaining Investor's Tentative Distribution is equal to or greater than the *De Minimis* Amount. Such amount will be the Investor's Distribution Payment and each remaining Investor on the Preliminary List will be deemed an Eligible Investor.

In the view of Fund Administrator, this methodology constitutes a fair and reasonable allocation of the Net Distribution Fund.

34. Plan Notice and Investor Obligations with Respect to the Plan Notice. Within thirty (30) days of Commission approval of the Plan, the Fund Administrator will send to each Investor at the Investor's last known address a notice (the "Plan Notice") by United States Postal Service regarding the Commission's approval of the Plan, including:

- (a) A link to the approved Plan posted on the Commission's website and a copy of the Plan;
- (b) Specification of any information needed from the Investor;
- (c) Objection procedures;
- (d) Contact information for the Fund Administrator;
- (e) A unique Investor number by which the Investor will be referenced in any public filings or notices and on schedules sent to multiple Investors (the "Investor Number");
- (f) The Fund Administrator's preliminary classification of the Investor's status as a Respondent or entity controlled by a Respondent, by which the Investor will be excluded from the Preliminary List;
- (g) The Investor's Payments In and Payments Out, as calculated by the Fund Administrator, which will be the basis for excluding an Investor from the Preliminary List if the Investor's Payments Out exceed their Payments In, and which otherwise will be the basis for the calculation of the Investor's Distribution Payment, if any; and
- (h) An interim Recovery Ratio, calculated by the Fund Administrator (*see* ¶ 33(b)) under the assumptions that the Fund Administrator's preliminary classification of Investors as Respondents or entities controlled by a Respondent is correct and that no Investors are Unresponsive Investors.

The Fund Administrator will coordinate with the Tax Administrator to request in the Plan Notice information from each Eligible Investor that is needed to accomplish the distribution in accordance with applicable tax requirements relating to the Distribution Fund. Investors must

timely provide to the Fund Administrator the information requested in the Plan Notice in order to be considered for classification, or to retain their existing status, as an Eligible Investor.

35. Identification of Unresponsive Investors. If an Investor has been requested to provide information in the Plan Notice and the Investor fails to provide the Fund Administrator such information by correspondence postmarked within sixty (60) days of approval of the Plan, the Fund Administrator shall make two (2) attempts to contact the Investor telephonically or by electronic mail. If a last known telephone number or electronic mail address is not located, the Fund Administrator will attempt to make contact by first class mail. If an Investor fails to respond to the Fund Administrator's contact attempts as described in this paragraph within fourteen (14) days of the last contact attempt that Investor will be deemed an Unresponsive Investor, will be excluded from the Preliminary List, and will not be eligible for a distribution under the Plan.

36. Objections to Classification and the Preliminary Calculation. Any and all objection(s) to information specific to the Investor provided in the Plan Notice, and in particular, to the information that follows, must be set forth with specificity, in writing, pursuant to the instructions provided in the Plan Notice:

- (a) The Fund Administrator's classification of an Investor as a "Respondent or entity controlled by a Respondent," which will be the basis for excluding an Investor from the Preliminary List; and/or
- (b) The Fund Administrator's calculation of the Investor's Payments In and Payments Out, which will be the basis for excluding an Investor from the Preliminary List if the Investor's Payments Out exceed their Payments In, and which otherwise will be the basis for the calculation of Distribution Payments for Investors so not excluded.

The objection must demonstrate, under penalty of perjury, the grounds for the objection, and be accompanied by documentation sufficient to prove the claimed inaccuracy or omission. This can be done by setting forth in detail the basis for the objection and including at the end of the statement (if true) the phrase: "I declare under penalty of perjury that the foregoing is true and correct," and signing and dating the document. All objections submitted pursuant to this paragraph must be postmarked within sixty (60) days of approval of the Plan and be in accordance with the instructions set forth in the Plan Notice, and must include current contact information, including a telephone number and, if applicable, an electronic mail address, for the objecting person or entity. Any objections not timely submitted in accordance with the Instructions in the Plan Notice will be deemed waived.

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. Any such resolution shall be final.

37. Investor Change of Address or Contact Information after Receipt of Plan Notice. Any Investor who relocates or otherwise changes contact information after receipt of the Plan

Notice must promptly communicate any change in address or contact information to the Fund Administrator (*see* ¶ 31). Any Investor who fails to comply with this paragraph will be deemed an Unresponsive Investor, will be excluded from the Preliminary List, and will not be eligible for a distribution under the Plan.

38. Validation and Approval of Disbursement of the Distribution Fund. The Fund Administrator will compile the payee information and prepare a payment file in a Commission-approved format for submission to United States Treasury's Bureau of the Fiscal Service ("BFS"). Pursuant to Rule 1101(b)(6) of the Rules,¹¹ the Fund Administrator will obtain an order from the Commission to disburse the Distribution Fund. BFS will disburse the Distribution Fund to Eligible Investors by mailing checks or electronically transferring funds to each Eligible Investor as instructed by the Fund Administrator. The Fund Administrator will use her best efforts to start the Commission disbursement approval process for the Initial Distribution Payments within one hundred and fifty (150) days of the Plan's approval.

The Fund Administrator will work with BFS to obtain information about uncashed checks, any returned items due to non-delivery, insufficient addresses and/or other deficiencies. The Fund Administrator will make additional outreach efforts to Eligible Investors for whom the Fund Administrator has contact information and who have not negotiated their payment, including at least one (1) telephone call to the Eligible Investor's last known telephone number and one (1) outreach mailing. The Fund Administrator is responsible for researching and reconciling errors and reissuing payments when possible. The Fund Administrator also is responsible for accounting for all payments.

Checks issued by BFS will state on their face that they are valid for one (1) year. The amount of all uncashed checks will be credited to the Distribution Fund and may be distributed to other Eligible Investors in a subsequent distribution or sent to the U.S. Treasury as residual in accordance with ¶ 43.

39. Accountings. When all funds have been disbursed except for the residual described in ¶ 43, the Fund Administrator will submit a final accounting for approval of the Commission prior to termination of the Distribution Fund and discharge of the Fund Administrator. Because the funds are being held in a Commission designated interest bearing account at the U.S. Treasury, and an SEC employee will be appointed as Fund Administrator, no interim accountings will be submitted.

40. Expenses of Administration. Administrative Costs shall be paid from the Distribution Fund.

41. Amendments and Procedural Deadline Extensions. The Fund Administrator will take reasonable and appropriate steps to distribute the Distribution Fund according to the Plan. If a change to the Plan is determined material, Commission approval is required prior to implementation by amending the Plan, which may be done upon the motion of any party, the Fund Administrator, or upon the Commission's own motion. Immaterial changes may be made

¹¹ 17 C.F.R. § 201.1101(b)(6).

by the Fund Administrator and for good cause the Fund Administrator may extend any of the procedural dates set forth in the Plan.

42. Procedures for the Receipt of Additional Funds. It is anticipated that the Distribution Fund may receive additional funds from the Bankruptcy Proceeding and through post-judgment collection activities. At any time after the issuance of Initial Distribution Payments and before the termination of the Distribution Fund, if the Fund Administrator, in consultation with the Tax Administrator, determines the amount in the Net Distribution Fund is sufficient for one or more subsequent distributions, the Fund Administrator will take the steps necessary to make such subsequent distribution(s) in accordance with the Plan.

43. Residual Account. A residual account within the Distribution Fund is established for any amounts remaining after the completion of all distributions to Eligible Investors under the Plan. The residual account may include funds reserved for Administrative Costs, funds from checks that have not been cashed or from funds returned to the Commission, tax refunds for overpayment or for waiver of IRS or other penalties, and any interest accrued after the final distribution. All funds remaining in the residual account will be transferred to the U.S. Treasury after the final accounting is approved by the Commission.

44. Termination of the Distribution Fund. Upon final distribution of the Net Distribution Fund to Eligible Investors, the Fund Administrator shall make arrangement for the final payment of taxes and Tax Administrator fees and shall submit a final accounting to the Commission. The Distribution Fund shall be eligible for termination after all of the following have occurred: (a) a final accounting, in the Commission's standard accounting format, has been submitted by the Fund Administrator, and has been approved by the Commission; and, (b) all Administrative Costs have been paid. When the Commission has approved the final accounting, the Commission staff shall seek an order from the Commission to approve the: (a) transfer of the residual and any funds returned to the Distribution Fund in the future to the U.S. Treasury; (b) termination of the Distribution Fund; and (c) discharge of the Fund Administrator.

VIII. NOTICE AND COMMENT PERIOD

45. Notice of the Proposed Plan of Distribution and Opportunity for Comment ("Notice") will be published in the SEC Docket and on the Commission website at <http://www.sec.gov/litigation/fairfundlist.htm>. Any person wishing to comment on the Plan must do so in writing by submitting their comments to the Commission within thirty (30) days of the date of the Notice: (a) to the Office of the Secretary, United States Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090; (b) by using the Commission's Internet comment form (<http://www.sec.gov/litigation/admin.shtml>); or (c) by sending an e-mail to rule-comments@sec.gov. Comments submitted by email or via the Commission's website should include "Administrative Proceeding File No. 3-16829" in the subject line. Comments received will be publicly available. Persons should only submit comments that they wish to make publicly available.