

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 81910 / October 19, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-15134

In the Matter of

**ALADDIN CAPITAL MANAGEMENT
LLC AND ALADDIN CAPITAL LLC,**

Respondents.

**PROPOSED PLAN OF
DISTRIBUTION**

ADMINISTRATIVE PROCEEDING
File No. 3-15135

In the Matter of

JOSEPH A. SCHLIM,

Respondent.

I. Overview

1. The Division of Enforcement (“Division”) submits this proposed 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 Distribution Plan provides for the distribution of the disgorgement, prejudgment interest, and civil penalties paid by Aladdin Capital Management LLC (“ACM”), Aladdin Capital LLC (“Aladdin Capital”), and Joseph A. Schlim (“Schlim”) (collectively, the “Respondents”) in settlement of the captioned administrative proceedings.

2. On December 17, 2012, the Commission issued an Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Section 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing a Cease-and-Desist Order against ACM and Aladdin Capital (the “Aladdin Order”)¹, finding that Aladdin Capital violated

¹ Securities Act Rel. No. 9374 (Dec. 17, 2012).

Section 17(a)(2) of the Securities Act of 1933 (“Securities Act”) and ACM violated Section 206(2) of the Investment Advisers Act of 1940 (“Advisers Act”) by making misrepresentations to investors that ACM would co-invest with its clients in two collateralized debt obligations.

3. Also on December 17, 2012, the Commission issued an Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Section 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing a Cease-and-Desist Order against Schlim, a former principal and CFO of ACM and Aladdin Capital (the “Schlim Order”)², finding that Schlim violated Section 17(a)(2) of the Securities Act, and caused Aladdin Capital’s violations of Section 17(a)(2) of the Securities Act and ACM’s violation of Section 206(2).

4. As a result of the conduct described in the Aladdin Order and Schlim Order (collectively, the “Orders”), the Commission ordered Aladdin Capital and ACM to jointly and severally disgorge \$900,000, pay prejudgment interest of \$268,831, and pay a civil penalty of \$450,000, for a total of \$1,618,831; and ordered Schlim to pay a civil penalty of \$50,000. In each of the Orders, the Commission established a fair fund pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, for the distribution of the disgorgement, prejudgment interest and civil penalties ordered.

5. On May 22, 2017, the Commission issued a Corrected Order Consolidating Fair Funds,³ consolidating into one Fair Fund (the “Fair Fund”) the assets held in the two fair funds established under the Orders, for distribution to harmed investors.

6. On or about December 31, 2012, the Respondents paid a total of \$1,668,831 pursuant to the Orders. The Fair Fund is currently deposited in an interest bearing account at the United States Department of the Treasury. No additional funds are expected other than interest. The assets of the Fair Fund are subject to the continuing jurisdiction and control of the Commission. The Distribution Plan is subject to approval by the Commission, and the Commission retains jurisdiction over its implementation.

II. Administration of the Distribution Plan

7. Authority and Purpose. The Distribution Plan has been developed pursuant to the Orders and the Commission’s Rules on Fair Fund and Disgorgement Plans, 17 C.F.R. § 201.1100, *et seq.* The purpose of the Distribution Plan is to distribute the Fair Fund to ACM clients harmed by the Respondents’ misconduct (collectively, the “Harmed Investors”).

8. Costs. All costs of administering the Fair Fund, including taxes, fees, and expenses of administration (“Costs”), shall be paid by the Fair Fund, first from the interest earned on the funds, and if the interest is not sufficient, from the corpus of the Fair Fund.

² Securities Act Rel. No. 9375 (Dec. 17, 2012).

³ Exchange Act Rel. No. 80742 (May 22, 2017).

9. Fund Administrator. Catherine E. Pappas, a Senior Adviser in Division of Enforcement, is proposed to be the fund administrator for the Distribution Plan (“Fund Administrator”). As a Commission employee, the Fund Administrator shall receive no compensation, other than her regular salary as a Commission employee, for her services in administering the Fair Fund. In accordance with Rule 1105(c) of the Rules,⁴ no bond is required since the Fund Administrator is a Commission employee.

The Fund Administrator will be responsible for, among other things: overseeing the administration of the Fair Fund, obtaining accurate mailing information for the Harmed Investors, preparing accountings, cooperating with the Tax Administrator in providing the information necessary to accomplish income tax compliance, and distributing money from the Fair Fund in accordance with the Distribution Plan.

10. Tax Administrator. Pursuant to the Omnibus Order Directing the Appointment of Tax Administrator in Administrative Proceedings that Establish Distribution Funds governing calendar years 2013-2015,⁵ the Commission appointed Damasco & Associates LLP⁶ as the tax administrator (the “Tax Administrator”) for the fund comprised of the money paid pursuant to the Orders, now the Fair Fund.⁷

11. Qualified Settlement Fund. The Fair Fund constitutes a Qualified Settlement Fund 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.

III. Distribution Plan Procedures

12. No Claims Process. Based on information obtained by the Commission staff during its investigation and the review and analysis of applicable records, the Commission staff has identified three (3) Harmed Investors, calculated their losses, and confirmed the calculated losses with each of the Harmed Investors. The Fair 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.

13. Methodology for Determining Distribution Amounts/Minimum Distribution. The Fair Fund less Costs (the “Net Fair Fund”) is substantially less than the total harm suffered by the Harmed Investors. Accordingly, and subject to paragraph 16, below, each Harmed Investor will receive its *pro rata* share of the Net Fair Fund, where that *pro rata* share is determined as the ratio of each Harmed Investor’s loss to the total loss of all Harmed Investors (the “Distribution Amount”). The loss for each Harmed Investor is measured by its investment amount, less any distributions received from the CDOs and any payment received at the liquidation of the CDO investment. In the view of the Fund Administrator, this methodology constitutes a fair and reasonable allocation of the Fair Fund to compensate an investor’s harm. It

⁴ 17 C.F.R. § 201.1105(c).

⁵ Exchange Act Rel. No. 68683 (Jan. 17, 2013).

⁶ As of October 1, 2016, Damasco & Associates LLP became a part of Miller Kaplan Arase LLP.

⁷ Exchange Act Rel. No. 68988 (Feb. 26, 2013).

is anticipated that there will be one distribution to Harmed Investors, which will take place as described herein.

14. Distribution to Harmed Investors. Distribution to the identified Harmed Investors will occur as follows:

- a. Harmed Investor 1 is an individual investor, now deceased. Distribution to this investor will be made in accordance with the provisions in the April 7, 2016 Order closing the Estate of Harmed Investor 1 for distribution of property of the Estate acquired or discovered after the closing of the Estate;
- b. Harmed Investor 2 is a retirement plan for a municipal agency. Distribution will be made to the plan administrator of Harmed Investor 2 for deposit into the plan's asset base because the investment losses of the CDOs did not affect the benefit amounts or payouts of the plan participants at the time of the misconduct; and
- c. Harmed Investor 3 is a pension plan for employees of a chain of retail stores. Distribution will be made to the plan administrator of Harmed Investor 3 for deposit into the plan's account for paying plan expenses, as opposed to directly to plan participants. Distribution directly to pension plan participants at the time of the Respondents' conduct is not feasible given the size of the distribution amount; and the amount of effort that would be required to identify and locate plan participants that have left the pension plan, measure the effect of the CDO losses on the value of plan participants' defined contribution pension payments, and properly allocate the Net Fair Fund among plan participants.

15. Distribution Plan Notice and Harmed Investor Obligations with Respect to the Plan Notice. Within thirty (30) calendar days of Commission approval of the Distribution Plan, the Fund Administrator will send to each Harmed Investor via electronic mail to their representative a notice (the "Plan Notice") regarding the Commission's approval of the Distribution Plan, including:

- a. A link to the approved Distribution Plan posted on the Commission's website and a copy of the Distribution Plan;
- b. Specification of any information needed from the Harmed Investor; and
- c. The currently calculated Distribution Amount for the Harmed Investor, subject to change depending on, among other things, costs, interest accrual, and calculation adjustments.

The Fund Administrator will coordinate with the Tax Administrator to request in the Plan Notice information from each Harmed Investor that is needed to accomplish the distribution in

accordance with applicable tax requirements relating to the Fair Fund. Any Harmed 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.

16. Failure of a Harmed Investor to Provide Information Requested in the Plan Notice. If a Harmed Investor has been requested to provide information in the Plan Notice and the Harmed Investor fails to provide the Fund Administrator such information by correspondence postmarked within sixty (60) calendar days of approval of the Distribution Plan, the Fund Administrator shall make two (2) attempts to contact the Harmed Investor telephonically or by electronic mail. If a last known telephone number or electronic mail address is not located or still good, the Fund Administrator will attempt to make contact by first class mail. If a Harmed Investor fails to respond to the Fund Administrator's contact attempts as described in this paragraph within fourteen (14) calendar days of the last contact attempt that Harmed Investor will be deemed an "Unresponsive Investor" and will not be eligible for a distribution under the Distribution Plan. Subject to paragraph 21, below, the Unresponsive Investor's Distribution Amount will be returned to the Net Fair Fund for distribution to responsive Harmed Investors.

17. Checks/Electronic Transfers. The Fund Administrator will make a payment to each of the Harmed Investors that is not an Unresponsive Investor. The Fund Administrator may elect to make payment of any distribution amount to a Harmed Investor by check or electronic transfer. The payment will be preceded by or accompanied with a communication that includes, as appropriate: (a) a statement characterizing the distribution; (b) a description of the tax information reporting and other related tax matters; (c) identification of the date at which the checks will be void (non-negotiable) (the "Stale Date"); and (d) the name of a person to contact with questions concerning the distribution. Distribution checks, on their face, or in the accompanying communication will clearly indicate that the money is being distributed from a Fair Fund established by the Commission pursuant to the Orders. Checks that are not negotiated prior to the stale date shall be voided. Electronic payments will be made only to cash equivalent accounts (*e.g.*, checking or savings accounts).

18. Implementation of the Fair Fund Distribution. The disbursement to the Harmed Investors will be implemented through the United States Department of the Treasury's Bureau of the Fiscal Service ("BFS"), by electronically transferring funds through the Automated Clearing House or mailing a check to the payee. The Fund Administrator will compile the information, prepare a payment file, and verify the payment file's completeness and accuracy for submission to Commission staff who will make the disbursements through BFS upon the issuance of an order to disburse pursuant to Rule 1101(b)(6).⁸ The Fund Administrator will use her best efforts to start the Commission disbursement approval process within one hundred and fifty (150) calendar days of the Plan's approval.

19. Returned Checks/Electronic Transfer Procedures. As soon as practicable, upon BFS's receipt of the payment file, payments will be made to Harmed Investors. The Fund Administrator will make her best efforts to research and reconcile all errors that result in non-delivery and shall submit a supplemental file for payment of the returned items that can be

⁸ 17 C.F.R. § 201.1101(b)(6).

corrected. The Fund Administrator will work with Commission staff to account for all payments. If any checks issued are not cashed on or before the Stale Date, the Fund Administrator will work with BFS to identify all uncashed checks.

20. Accounting. Once all payments are disbursed, the Fund Administrator will submit a final accounting in the standardized accounting form provided by the Commission staff for approval by the Commission prior to termination of the Fair Fund and discharge of the Fund Administrator. Because the funds are being held in a Commission designated account at the U.S. Treasury and a Commission employee has been appointed as Fund Administrator, no interim accountings are required.

21. Undisbursed Amounts. A residual account within the Fair Fund is established for any amounts remaining after distribution of the Fair Fund to Harmed Investors, as described above. The residual account may include, but is not limited to, funds reserved for Costs; the funds underlying uncashed, undelivered, or returned checks; and tax refunds. If, in the estimation of the Fund Administrator, an additional distribution is feasible, undistributed funds in the residual account after payment of all Costs will be distributed to responsive Harmed Investors. If any funds remain in the residual account after completion of all distributions and the payment of all Costs, those funds shall be transferred to the U.S. Treasury after the final accounting is approved by the Commission.

22. Termination of the Fair Fund. Upon distribution of the Fair Fund, the Fund Administrator shall make arrangement for the final payment of taxes and Tax Administrator fees and expenses, and shall submit a final accounting to the Commission. The Fair Fund shall be eligible for termination, and the Fund Administrator shall be discharged, after all of the following have occurred: (a) a final accounting, in an SEC standard accounting format provided by the Commission staff, has been submitted by the Fund Administrator for approval, and has been approved, by the Commission, and (b) all Costs have been paid. After the Commission has approved the final accounting, the Commission staff shall seek an order from the Commission to approve the transfer of any amount remaining in the Fair Fund to the U.S. Treasury, and to terminate the Fair Fund and discharge the Fund Administrator.

23. Amendments. The Fund Administrator shall take reasonable and appropriate steps to distribute the Fair Fund according to the Distribution Plan. Where the Fund Administrator deems necessary, the Fund Administrator may implement immaterial changes to the Distribution Plan to effectuate its general purposes. If a change is deemed material by the Fund Administrator after consultation with Commission staff, Commission approval is required prior to implementation by amending the Distribution Plan, which may be done upon the motion of any party, the Fund Administrator, or upon the Commission's own motion.

24. Deadline Extensions. The Fund Administrator may extend any procedural deadline contained in the Distribution Plan for good cause shown.

V. Notice and Comment Period

25. The Notice of the Proposed Plan of Distribution and Opportunity for Comment (“Notice”) will be published in the SEC Docket and on the Commission’s website at <https://www.sec.gov/litigation/fairfundlist.htm>. Any person wishing to comment on the Distribution Plan must do so in writing by submitting their comments to the Commission within thirty (30) calendar 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 email to rule-comments@sec.gov. Comments submitted by email or via the Commission’s website should include “Administrative Proceeding File Numbers 3-15134 and 3-15135” in the subject line. Comments received will be publicly available. Persons should only submit comments that they wish to make publicly available.