

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 82882 / March 15, 2018**

**ADMINISTRATIVE PROCEEDING**  
**FILE No. 3-11676**

---

<b>In the Matter of</b>	:	<b>ORDER AUTHORIZING THE</b>
	:	<b>TRANSFER TO THE U.S.</b>
	:	<b>TREASURY OF THE REMAINING</b>
<b>JOHN W. ADAMS and AIP, LLC,</b>	:	<b>FUNDS AND ANY FUNDS</b>
	:	<b>RETURNED TO THE</b>
<b>Respondents.</b>	:	<b>DISGORGEMENT FUND IN THE</b>
	:	<b>FUTURE, DISCHARGING THE</b>
	:	<b>PLAN ADMINISTRATOR,</b>
	:	<b>CANCELING THE PLAN</b>
	:	<b>ADMINISTRATOR'S BOND, AND</b>
	:	<b>TERMINATING THE</b>
	:	<b>DISGORGEMENT FUND</b>

---

This matter arose out of the June 2002 issuer tender offer in which Hawaiian Airlines, Inc. (“Hawaiian”) repurchased \$25 million of stock from its shareholders (the “Tender Offer”). On September 23, 2004, the United States Securities and Exchange Commission (“Commission”) issued an Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing a Cease-and-Desist Order Pursuant to Section 21C of the Securities Exchange Act of 1934 (the “Order”)<sup>1</sup> against John W. Adams (“Adams”), the former Chairman and Chief Executive Officer of Hawaiian, and AIP, LLC (“AIP”), a partnership managed by Adams and the majority shareholder of Hawaiian (collectively, the “Respondents”), for failing to provide updated negative financial information to shareholders prior to the Tender Offer. Certain shareholders did not tender their stock and suffered losses when the negative financial information became public (the “Eligible Investors”). The Commission ordered the Respondents to pay a combined total of \$2,470,471.00 in disgorgement and prejudgment interest. The Respondents satisfied this obligation in full and the funds (the “Disgorgement Fund”) ultimately were transferred to an interest-bearing account with the United States Department of the Treasury (the “U.S. Treasury”).

By order dated February 20, 2009, the Commission approved publication of a Notice of Proposed Distribution Plan and Opportunity for Comment; appointed Gilardi & Co., LLC as the Plan Administrator (the “Plan Administrator”); and approved the Plan Administrator’s bond in

---

<sup>1</sup> Exchange Act Rel. No. 50427 (Sept. 23, 2004).

the amount of \$2.5 million.<sup>2</sup> Pursuant to the February 20, 2009 order, on February 23, 2009, the Commission published Notice of Proposed Plan of Disgorgement Distribution and Opportunity for Comment pursuant to Rule 1103 of the Commission's Rules of Fair Fund and Disgorgement Plans<sup>3</sup> ("Commission's Rules"), 17 C.F.R. § 201.1103. The Commission received no comments on the proposed plan of distribution and on May 6, 2009, the Commission issued an Order Approving Distribution Plan of a Disgorgement Fund.<sup>4</sup>

Under the Plan, the Plan Administrator would use a claims process to determine the Eligible Investors. The Plan Administrator would then allocate the Disgorgement Fund to Eligible Investors *pro rata*, based on the number of non-tendered shares claimed by the Eligible Investor and approved by the Plan Administrator as compared to the total number of valid claimed non-tendered shares. Upon completion of distributions under the Plan, any remaining funds in the Disgorgement Fund would be transferred to the U.S. Treasury.

On January 25, 2013, the Commission ordered the disbursement of approximately \$2.6 million of the Disgorgement Fund for distribution by the Plan Administrator to Eligible Investors pursuant to the Plan.<sup>5</sup> After the initial disbursement of the Disgorgement Fund through four hundred fifty-six checks (456), eighty-three (83) checks valued at approximately \$78,000 remained uncashed. The Plan Administrator performed additional outreach on the outstanding checks, resulting in the cashing of an additional thirteen (13) checks valued at approximately \$24,000. On May 7, 2015, the Commission ordered the distribution of approximately \$47,000 in residual funds first to Eligible Investors who filed claims after the claim deadline under the Plan, and then to Eligible Investors who cashed the checks sent to them during the initial distribution.<sup>6</sup> Twenty-four (24) checks valued at approximately \$5,000 remained uncashed after the initial mailing. Subsequent outreach efforts resulted in the negotiation of an additional twelve (12) checks valued at approximately \$4,600.

Ultimately, the Plan Administrator distributed approximately \$2.62 million of the \$2.68 million disbursed (approximately 98%) to Eligible Investors. The Plan Administrator also paid approximately \$87,000 in plan and tax administration costs, taxes of approximately \$128,000, and investment fees of approximately \$1,800. The Disgorgement Fund currently has a balance of \$3,776.28.

---

<sup>2</sup> Order Approving Publication of Notice of Proposed Distribution Plan and Opportunity for Comment, Approving Plan Administrator, and Approving Administrator Bond, Exchange Act Rel. No. 59431 (Feb. 20, 2009).

<sup>3</sup> Exchange Act Rel. No. 59433 (Feb. 23, 2009).

<sup>4</sup> Exchange Act Rel. No. 59870 (May 6, 2009). The Commission subsequently issued two orders modifying the plan as approved, replacing all references to "Wells Fargo Bank, N.A." with "Huntington National Bank" and allowing for a residual distribution to Eligible Investors prior to transferring remaining funds to the U.S. Treasury. As used in this Order, "Plan" refers to the approved distribution plan as modified. *See* Order Modifying Distribution Plan and Directing Disbursement of Disgorgement Fund, Exchange Act Rel. No. 68736 (Jan. 25, 2013) and Order Modifying the Modified Distribution Plan and Directing Disbursement of Disgorgement Fund, Exchange Act Rel. No. 74905 (May 7, 2015).

<sup>5</sup> Order Modifying Distribution Plan and Directing Disbursement of Disgorgement Fund, Exchange Act Rel. No. 68736 (Jan. 23, 2013).

<sup>6</sup> Order Modifying the Modified Distribution Plan and Directing Disbursement of Disgorgement Fund, Exchange Act Rel. No. 74905 (May 7, 2015).

The Plan provides that the Disgorgement Fund is eligible for termination and the Plan Administrator discharged after all of the following have occurred: (1) the final accounting has been submitted by the Plan Administrator for approval of, and has been approved by the Commission; (2) all taxes, fees, and expenses have been paid; and (3) any amount remaining in the Disgorgement Fund has been received by the Commission. The Plan further provides that the staff shall seek an order from the Commission approving the final accounting and the transfer of any amount remaining in the Disgorgement Fund to the U.S. Treasury, and shall arrange for the termination of the Disgorgement Fund. A 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, is now approved. The staff has verified that all taxes, fees, and expenses have been paid, and the amount remaining in the Disgorgement Fund has been received by the Commission.

Accordingly, it is ORDERED that:

- A. The remaining Disgorgement Fund balance of \$3,776.28 and any funds returned to the Disgorgement Fund in the future shall be transferred to the general fund of the U.S. Treasury, subject to Section 21F(g)(3) of the Securities Exchange Act of 1934;
- B. The Plan administrator's bond is to be released and canceled immediately;
- C. The Plan administrator, Gilardi & Co., LLC, is discharged; and
- D. The Disgorgement Fund is terminated.

By the Commission.

Brent J. Fields  
Secretary