

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 83131 / April 30, 2018**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-17300**

<p><b>In the Matter of</b></p> <p><b>APEX FUND SERVICES (US), INC.,</b></p> <p><b>Respondent.</b></p>
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**NOTICE OF PROPOSED PLAN OF  
DISTRIBUTION AND  
OPPORTUNITY TO COMMENT**

Notice is hereby given, pursuant to Rule 1103 of the United States Securities and Exchange Commission's ("Commission") Rules on Fair Fund and Disgorgement Plans, 17 C.F.R. § 201.1103, that the Division of Enforcement has submitted to the Commission a proposed plan of distribution ("Distribution Plan") for the distribution of monies paid by Apex Fund Services (US), Inc. ("Apex") in settlement of the above-captioned administrative proceeding.

On June 16, 2016, the Commission issued an Order Instituting Cease-and-Desist Proceedings Pursuant to 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing a Cease-and-Desist Order (the "Order")<sup>1</sup> against Apex. The Commission found that, from May 2012 through June 2014, Apex served as the fund administrator providing accounting and fund administration services to two private funds managed by EquityStar Capital Management, LLC and Steven Zoernack (collectively, the "Managers"): the Momentum Growth Fund, LLC and the Global Partners Fund, LLC (collectively, the "Funds"). According to the Order, the Managers made undisclosed withdrawals of more than \$1 million directly from the Funds in violation of Sections 206(2) and 206(4) of the Investment Advisers Act of 1940 ("Advisers Act") and Rule 206(4)-8 thereunder. The Commission found that Apex improperly classified these withdrawals as receivables without evidence that the Managers were able or willing to repay the withdrawals. The Commission further found that the improper classification of the withdrawals as assets resulted in the overstatement of the value of investor holdings in the Funds in monthly statements sent by Apex to investors. The Commission determined that, by this conduct, Apex was a cause of the Managers' violations of Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder.

The Commission ordered Apex to disgorge \$89,050, and to pay prejudgment interest of \$7,786 and a civil money penalty of \$75,000, for a total payment of \$171,836. The Commission

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<sup>1</sup> Investment Advisers Act Rel. No. 4429 (June 16, 2016).

also created a Fair Fund, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, for the distribution of the monies ordered (the “Fair Fund”). Apex has paid the money ordered in full.

## **OPPORTUNITY FOR COMMENT**

Pursuant to this Notice, all interested persons are advised that they may obtain a copy of the Distribution Plan from the Commission’s public website at <http://www.sec.gov/litigation/fairfundlist.htm>. Interested persons may also obtain a written copy of the Distribution Plan by submitting a written request to Catherine E. Pappas, Esq., United States Securities and Exchange Commission, One Penn Center, 1617 JFK Blvd., Ste. 520, Philadelphia, PA 19103. All persons who desire to comment on the Distribution Plan may submit their comments, in writing, no later than thirty (30) days from the date of this Notice:

1. to the Office of the Secretary, United States Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090;
2. by using the Commission’s Internet comment form (<http://www.sec.gov/litigation/admin.shtml>); or
3. by sending an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov).

Comments submitted should include “Administrative Proceeding File No. 3-17300” in the subject line. Comments received will be publicly available. Persons should submit only information that they wish to make publicly available.

## **THE DISTRIBUTION PLAN**

The Fair Fund holds approximately \$172,000, comprised of disgorgement, prejudgment interest, and civil penalties paid by Apex, and accrued interest. The Distribution Plan proposes to distribute all funds currently in the Fair Fund, less taxes, fees, and expenses, to the investors harmed by the conduct described in the Order in proportion to their respective losses. 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. Catherine E. Pappas, a Senior Adviser in Division of Enforcement, is proposed to be the fund administrator for the Distribution Plan.

By the Commission.

Brent J. Fields  
Secretary