

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 84609 / November 16, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-17300

In the Matter of

APEX FUND SERVICES (US), INC.,

Respondent.

**ORDER APPROVING AMENDED
PLAN OF DISTRIBUTION**

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”)¹ against Apex Fund Services (US), Inc. (“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 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 plus accumulated interest (the “Fair Fund”). Apex has paid the money ordered in full.

¹ Advisers Act Rel. No. 4429 (June 16, 2016).

On April 30, 2018 the Commission published a Notice of Proposed Plan of Distribution and Opportunity for Comment (“Original Notice”),² pursuant to Rule 1103 of the Commission’s Rules on Fair Fund and Disgorgement Plans (“Rules”).³ The Original Notice advised all interested persons that they may obtain a copy of the proposed plan of distribution (“Original Distribution Plan”) from the Commission’s public website at <http://www.sec.gov/litigation/fairfundlist.htm> or by submitting a written request to Catherine E. Pappas, Senior Advisor, United States Securities and Exchange Commission, One Penn Center, 1617 JFK Blvd., Ste. 520, Philadelphia, PA 19103.

The Original Notice also advised that all persons desiring to comment on the Original Distribution Plan could submit their comments, in writing, no later than thirty (30) days from the date of the Original 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 email to rule-comments@sec.gov. The Commission received a comment on the Original Distribution Plan during the comment period and revised the Original Distribution Plan to address that comment as further described in the Notice of Amended Plan of Distribution and Opportunity to Comment (the “Second Notice”).⁴

On October 12, 2018, the Commission published the Second Notice pursuant to Rule 1103 of the Rules.⁵ The Second Notice advised all interested persons that they may obtain a copy of the proposed amended plan of distribution (“Amended Plan”) from the Commission’s public website at <http://www.sec.gov/litigation/fairfundlist.htm> or by submitting a written request to Catherine E. Pappas, Senior Advisor, United States Securities and Exchange Commission, One Penn Center, 1617 JFK Blvd., Ste. 520, Philadelphia, PA 19103.

The Second Notice also advised that all persons desiring to comment on the Amended Plan could submit their comments, in writing, no later than thirty (30) days from the date of the Second 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 email to rule-comments@sec.gov. The Commission received no negative comments on the Amended Plan during the comment period.

The Amended Plan provides for distribution of the Fair Fund, less taxes, fees, and expenses, to the Funds in proportion to the Withdrawals⁶ taken from each Fund, and then allocates each Fund’s share to eligible investors in the respective fund in a manner that ensures, to the extent practicable, that each eligible investor recovers, through a combination of their prior redemptions and any distribution payment, the same percentage of their account balance as other eligible investors in that Fund.

² Exchange Act Rel. No. 83131 (Apr. 30, 2018).

³ 17 C.F.R. § 201.1103.

⁴ Exchange Act Rel. No. 84415 (Oct. 12, 2018).

⁵ 17 C.F.R. § 201.1103.

⁶ All capitalized terms used herein but not defined shall have the same meanings as ascribed in the Amended Plan.

The Division of Enforcement now requests that the Commission approve the Amended Plan.

Accordingly, it is hereby ORDERED, pursuant to Rule 1104 of the Rules,⁷ that the Amended Plan is approved.

For the Commission, by its Secretary, pursuant to delegated authority.

Brent J. Fields
Secretary

⁷ 17 C.F.R. § 201.1104.