

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 87173 / September 30, 2019**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-15471**

**In the Matter of**

**Sarkauskas and Associates, Inc.**

**and**

**James M. Sarkauskas**

**Respondents.**

**ORDER AUTHORIZING THE TRANSFER  
OF REMAINING FUNDS AND ANY  
FUTURE FUNDS RETURNED TO THE  
FAIR FUND TO THE U.S. TREASURY,  
DISCHARGING FUND ADMINISTRATOR,  
CANCELLING ADMINISTRATOR'S BOND,  
AND TERMINATING THE FAIR FUND**

On September 13, 2013 the Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Section 15(b) 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 (“Order”)<sup>1</sup> against Sarkauskas and Associates, Inc. (“Adviser”) and James M. Sarkauskas (“Sarkauskas”) (collectively, the “Respondents”).

The Order found, among other things, that the Respondents violated Sections 206(1) and (2) of the Investment Advisers Act of 1940 when they purchased unit investment trust (“UIT”) units bearing transactional sales charges in their clients’ accounts without disclosing that identical UIT units sold at net asset value (“NAV”) with no transactional sales charges (“no-load”) were available for purchase and that the purchase of the units bearing transactional sales charges substantially increased the Respondents’ compensation, thereby creating a conflict of interest. The Order required the Respondents to pay, jointly and severally, disgorgement of \$331,433.98 and prejudgment interest of \$18,403.22. The Order also required Sarkauskas to pay a civil money penalty of \$100,000. The Order also created a Fair Fund, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, so the penalty, along with the disgorgement and interest, collected could be distributed to those investors harmed by the Respondents’ conduct described in the Order (the “Fair Fund”).

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<sup>1</sup> Exchange Act Rel. No. 70388 (Sept. 13, 2013).

On May 21, 2015, the Division of Enforcement, pursuant to delegated authority, issued an Order Appointing Fund Plan Administrator and Setting Administrator Bond Amount, appointing Rust Consulting, Inc. as the Fund Administrator of the Fair Fund and setting its bond at \$449,837.20.<sup>2</sup>

On December 24, 2015, the Secretary, pursuant to delegated authority, published a Notice of Proposed Plan of Distribution and Opportunity for Comment (“Notice”), pursuant to Rule 1103 of the Commission’s Rules of Fair Fund and Disgorgement Plans (the “Commission’s Rules”), 17 C.F.R. § 201.1103.<sup>3</sup> The Notice provided a 30-day comment period; however, no comments were received in response to the Notice. On February 3, 2016, the Secretary, pursuant to its delegated authority, issued an order approving the Plan of Distribution (the “Plan”).<sup>4</sup>

The Plan seeks to fully compensate investors identified by Commission staff during its investigation of the underlying securities violation that paid inflated or excessive management and administrative fees as a result of the Respondents’ conduct described in the Order. The Plan further provides for harmed investors to be compensated for the time value of money on their harm, if sufficient funds are available after the payment of administration costs. Any residual funds following distribution to investors are to be transferred to the U.S. Treasury, subject to the Commission’s approval of the Fund Administrator’s final accounting.

The Fair Fund received \$449,837.20 in disgorgement, prejudgment interest, and civil money penalty from the Respondents for which it earned \$6,149.49 in interest for a total of \$455,986.69.

On August 17, 2017, the Commission issued an order directing disbursement of \$362,571.15 from the Fair Fund for distribution by the Fund Administrator in accordance with the Plan; directing disbursement of \$30,978.23 from the Fair Fund to the Fund Administrator to pay outstanding fees and expenses; and authorized the payment of the Fund Administrator’s future fees and expense from the Fair Fund, up to, but not to exceed, \$25,000 per monthly invoice so long as it does not exceed the total amount of the cost proposal submitted by the Fund Administrator.<sup>5</sup>

Of the \$362,571.15 disbursed from the Fair Fund to harmed investors in accordance with the Plan, \$358,894.83 was negotiated. The Fair Fund paid out a total of \$50,939.39 in administration costs: \$16,978.09 in tax administrator fees and expenses, \$32,330.04 in fund administrator’s fees and expenses, \$41.58 in investment fees and expenses, and \$1,589.68 in District of Columbia taxes. The Fair Fund currently holds \$46,152.47.

The Plan provides that the Fair Fund will be eligible for termination, and the Fund Administrator can be discharged, after: (1) the final accounting has been submitted and

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<sup>2</sup> Order Appointing Fund Plan Administrator and Setting Administrator Bond Amount, Exchange Act Rel. No. 75034 (May 21, 2015).

<sup>3</sup> Exchange Act Rel. No. 76775 (Dec. 24, 2015).

<sup>4</sup> Order Approving Plan of Distribution, Exchange Act Rel. No. 77048 (Feb. 3, 2016).

<sup>5</sup> Order Directing Disbursement of Fair Fund, Payment of Fund Administrator’s Fees and Approval for Future Fees and Expenses, Exchange Act Rel. No. 81416 (Aug. 17, 2017).

approved by the Commission; (2) all taxes, fees and expenses have been paid; and (3) any amount remaining in the Fair Fund has been received by the Commission.

The Commission staff has verified that all taxes, fees, and expenses have been paid, and the Commission is in possession of the remaining Fair Fund monies. A final accounting, which has been 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.

Accordingly, IT IS ORDERED that:

- A. The \$46,152.47 remaining in the Fair Fund, and any funds returned to the Fair Fund in the future, shall be transferred to the U.S. Treasury;
- B. The Fund Administrator, Rust Consulting, Inc., is discharged;
- C. The Fund Administrator's bond is cancelled; and
- D. The Fair Fund is terminated.

By the Commission.

Vanessa A. Countryman  
Secretary