

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 89096 / June 18, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-18760

In the Matter of	:	ORDER AUTHORIZING THE TRANSFER
	:	TO THE U.S. TREASURY OF THE
	:	REMAINING FUNDS AND ANY FUNDS
Harbour Investments, Inc.	:	RETURNED TO THE FAIR FUND IN THE
	:	FUTURE AND TERMINATING THE FAIR
Respondent.	:	FUND
	:	

On September 13, 2018, the Commission issued an Order,¹ which instituted settled administrative and cease-and-desist proceedings against the Respondent. The matter concerned violations of the securities laws arising from certain failures by the Respondent, a registered investment adviser.

The Commission found that from at least 2012 through 2016, Harbour failed to fully and fairly disclose to its advisory clients compensation it received under a marketing services agreement with a third-party broker-dealer (“Custodian A”) that provided custody and clearing services to Harbour and the conflicts of interest arising from that compensation. This arrangement created incentives for Harbour to favor Custodian A over other custodians when giving investment advice to its advisory clients about where to custody assets.

The Commission also found that during the same period, Harbour invested some of its advisory clients in mutual fund share classes with 12b-1 fees when lower cost share classes of the same fund were available. In its capacity as a broker-dealer, Harbour received 12b-1 fees from some investments in these share classes, which created a conflict of interest that Harbour did not fully and fairly disclose to its advisory clients. Investing in a more expensive share class over a less expensive one in the same fund was also inconsistent with Harbour’s duty to seek best execution for its advisory clients.

The Commission further found that Harbour did not implement certain of its policies and procedures designed to manage the above conflicts.

¹ Order Instituting Administrative and Cease-and-Desist Proceeding Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order, Exchange Act Rel. No. 84115 (Sept. 13, 2018).

Based on the conduct above, the Commission found that Harbour willfully violated Sections 206(2), 206(4) and 207 of the Investment Advisers Act of 1940 and Rule 206(4)-7 thereunder.

Among other things, the Commission ordered Harbour to pay disgorgement of \$157,327, prejudgment interest of \$9,152, and a \$75,000 civil money penalty, for a total of \$241,479. The Order created the Fair Fund, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, so the penalties, along with the disgorgement and prejudgment interest, could be distributed to harmed investors.

Sections IV.C.2 and 4 of the Order placed responsibility for the administration of the Fair Fund with the Respondent by, among other things, requiring it to deposit the full amount ordered into an escrow account for the purpose of making payments to current or former advisory clients (“Affected Clients”). Pursuant to Section IV.C.9 of the Order, the Respondent was responsible for any and all tax compliance responsibilities and any other administrative costs and expenses.

The Respondent sent checks from the Fair Fund to Affected Clients, representing the proportion of each affected client’s payments of 12b-1 fees during the relevant period compared to the 12b-1 fees paid by all other Affected Clients during the relevant period. An amount of \$10.00 or less was considered *de minimis* and was not paid to any such Affected Client, but was distributed on a *pro rata* basis to Affected Clients owed greater than \$10.00. The Respondent issued 538 checks that were received and cashed by Affected Clients, totaling \$239,099.24, which constituted 99% of the total losses. Distribution payments ranged from \$11.05 to \$11,864.93. The remaining \$2,379.76 in the Fair Fund that the Respondent has returned to the Commission consists of uncashed checks.

The Order further requires the Respondent to provide a final accounting to the Commission staff for submission to the Commission for approval. Upon approval of the final accounting, all remaining amounts in the Fair Fund, and any funds returned in the future, are to be sent to the U.S. Treasury. The final accounting has been submitted to the Commission for approval, as required by the Order, and has been approved.

Accordingly, it is ORDERED that:

- A. The remaining funds in the amount of \$2,379.76 and any future funds returned to the Fair Fund, shall be transferred to the U.S. Treasury, subject to Section 21F(g)(3) of the Securities Exchange Act of 1934, 15 U.S. Code § 78u-6(g)(3); and
- B. The Fair Fund is terminated.

By the Commission.

Vanessa A. Countryman
Secretary