

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 89200 / June 30, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-17300

In the Matter of	:	ORDER AUTHORIZING THE TRANSFER
	:	TO THE U.S. TREASURY OF THE
	:	REMAINING FUNDS AND ANY FUNDS
Apex Fund Services (US), Inc.,	:	RETURNED TO THE FAIR FUND IN THE
	:	FUTURE, DISCHARGING THE FUND
Respondent.	:	ADMINISTRATOR, AND TERMINATING
	:	THE FAIR FUND

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, so the penalty, along with the disgorgement and interest, paid could be distributed to harmed investors

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

(the “Fair Fund”). Apex paid the money ordered in full and the money was deposited in an interest-bearing account at the United States Department of Treasury.

On April 30, 2018 the Commission published the Plan Notice,² pursuant to Rule 1103 of the Commission’s Rules on Fair Fund and Disgorgement Plans (“Rules”).³ The Commission received a comment in response to the Plan Notice during the comment period. On October 12, 2018, the Commission published the Amended Notice,⁴ and simultaneously posted the Proposed Amended Plan of Distribution.

The Commission received no negative comments on the Amended Plan during the comment period. On November 16, 2018, the Secretary, pursuant to delegated authority, issued an Order Approving Amended Plan of Distribution,⁵ and simultaneously posted the approved Amended Plan.

Under the Amended Plan, Catherine E. Pappas, a Commission employee, was appointed as the Fund Administrator to oversee the administration and distribution of the Fair Fund. 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.

On April 5, 2019, the Commission ordered the disbursement of \$162,007.35 from the Fair Fund to Eligible Investors as provided for in the Amended Plan.⁷ All of the money was successfully disbursed and cashed by Eligible Investors.

The Fair Fund earned \$3,621.68 in interest; and paid \$11,624.17 was paid out to satisfy taxes, expenses, and fees: \$10,527.35 to the Tax Administrator, \$4.82 for investment costs, and \$1,092.00 in District of Columbia taxes. The Fair Fund currently holds \$1,826.17.

The Amended Plan provides that the Fair Fund is eligible for termination after all of the following have occurred: (a) the final accounting has been submitted by the Fund Administrator for approval of, and has been approved by the Commission; and (b) all Administrative Costs have been paid.

The Commission staff has confirmed that the Amended Plan has been fully implemented in accordance with the Commission’s orders and that all taxes, fees, and expenses have been paid. The final accounting, which was submitted to the Commission for approval as required by

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 Exchange Act Rel. No. 84609 (Nov. 16, 2018).

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

⁷ Order Directing Disbursement of Fair Fund, Exchange Act Rel. No. 85528 (Apr. 5, 2019).

Rule 1105(f) of the Commission's Rules, 17 C.F.R. § 201.1105(f), and as set forth in the Amended Plan, has been approved.

Accordingly, it is ORDERED that:

- A. The \$1,826.17 remaining in the Fair Fund, and any funds returned to the Fair Fund in the future, 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);
- B. The Fund Administrator, Catherine E. Pappas, is discharged; and
- C. The Fair Fund is terminated.

By the Commission.

Vanessa A. Countryman
Secretary