

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 90451 / November 18, 2020**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-16389**

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<b>In the Matter of</b>	:	
	:	<b>ORDER AUTHORIZING THE TRANSFER</b>
	:	<b>TO THE U.S. TREASURY OF THE</b>
<b>VCAP Securities, LLC and Brett</b>	:	<b>REMANING FUNDS AND ANY FUNDS</b>
<b>Thomas Graham</b>	:	<b>RETURNED TO THE FAIR FUND IN THE</b>
	:	<b>FUTURE, DISCHARGING THE FUND</b>
<b>Respondents.</b>	:	<b>ADMINISTRATOR, AND TERMINATING</b>
	:	<b>THE FAIR FUND</b>
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On February 19, 2015, the Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Sections 15(b)(4), 15(b)(6), and 21C of the Securities Exchange Act of 1934, Section 203(f) 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 (the “Order”)<sup>1</sup> against VCAP Securities, LLC (“VCAP”) and Brett Thomas Graham (“Graham”) (collectively, the “Respondents”). In the Order, the Commission found that Respondents engaged in a scheme to rig certain auctions for the sale of collateralized debt obligations for which VCAP was acting as the liquidation agent. During the course of this conduct, Respondents made material misrepresentations to the trustees of the various CDOs, that VCAP and its affiliates would not bid in the auctions and would not misuse confidential information and/or bidding information afforded to VCAP as the liquidation agent. In actuality, Graham improperly used the confidential bidding information to benefit funds managed by Vertical Capital, LLC (“Vertical”), VCAP’s affiliated investment adviser. Specifically, Graham arranged for a separate broker-dealer to bid on bonds Graham wanted for Vertical managed funds, at prices slightly higher than the highest bid from other participants. After winning the bonds in the auction, the broker-dealer would immediately sell the bonds to the Vertical funds at a small markup. Through Respondents’ actions, Vertical was able to purchase 23 bonds, worth almost \$12 million, that it otherwise may not have been able to purchase. The Commission ordered VCAP to pay disgorgement of \$1,064,555.00 and prejudgment interest of \$85,044.00, and Graham to pay disgorgement of \$118,284.00, prejudgment interest of \$9,449.00 and a civil money penalty in the amount of \$200,000.00 to the Commission. In the Order, the Commission established a fair fund, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, so the civil penalty, along with the disgorgement and prejudgment interest, collected could be distributed to harmed investors (the “Fair Fund”).

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<sup>1</sup> Exchange Act Rel. No. 74305 (Feb. 19, 2015).

The Respondents paid a total of \$1,477,332.00 pursuant to the Order, comprising the Fair Fund.

On November 24, 2015, the Secretary, pursuant to delegated authority, published a Notice of Proposed Plan of Distribution and Opportunity for Comment (the “Notice”)<sup>2</sup> pursuant to Rule 1103 of the Commission’s Rules on Fair Fund and Disgorgement Plans.<sup>3</sup> The Notice advised interested parties that they could obtain a copy of the proposed Plan of Distribution (the “Plan”) from the Commission’s public website at <http://www.sec.gov/litigation/fairfundlist.htm> or by submitting a written request to Nancy Chase Burton, United States Securities and Exchange Commission, 100 F. Street, NE, Washington, DC 20549-5876.

The Notice also advised that all persons desiring to comment on the Plan could submit their comments, in writing, no later than thirty (30) days from the publication of the 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). The Commission received no comments on the Plan during the comment period. On January 12, 2016, the Secretary, pursuant to delegated authority, issued an order approving the Plan,<sup>4</sup> and simultaneously posted the approved Plan.

The Plan appointed Nancy Chase Burton as the Fund Administrator to oversee the administration and distribution of the Fair Fund. The Plan set forth a methodology for allocating the Net Available Fair Fund comprised of the \$1,477,332.00 and accrued interest earned on the funds received, less taxes, fees and expenses of administering the Plan. The Plan provided for the distribution of the Fair Fund to certain harmed parties previously identified by Commission staff. Any remaining funds following distribution to eligible parties are to be transferred to the U.S. Treasury and the Fair Fund terminated, subject to the Commission’s approval of the Fund Administrator’s final accounting.

As ordered by the Commission, the Fund Administrator distributed a total of \$1,201,706.88 from the Fair Fund to five (5) harmed trusts, pursuant to the Plan,<sup>5</sup> all of which was successfully disbursed and cashed by the recipient investors.

The Fair Fund earned \$17,645.45 in interest; and paid state and federal taxes of \$4,464.00, investment/bank fees of \$75.12, and tax administration expenses of \$12,264.75. The Fair Fund currently holds \$276,466.70, which is comprised of funds that were not needed for distribution and accumulated interest.

The Plan provides that the Fair Fund is eligible for termination and the Fund Administrator discharged after all of the following have occurred: (a) the final accounting has

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<sup>2</sup> Exchange Act Rel. No. 76511 (Nov. 24, 2015).

<sup>3</sup> 17 C.F.R. § 201.1103.

<sup>4</sup> Order Approving Plan of Distribution, Exchange Act Rel. No. 76877 (Jan. 12, 2016).

<sup>5</sup> Exchange Act Rel. No. 79850 (Jan. 19, 2017).

been submitted by the Fund Administrator for approval, and has been approved by the Commission; and (b) all taxes, fees, and expenses have been paid.

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

Accordingly, it is ORDERED that:

- A. the remaining funds in the amount of \$276,466.70, 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, Nancy Chase Burton, is discharged;
- C. the Fair Fund is terminated.

By the Commission.

Vanessa A. Countryman  
Secretary