

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

BOLTON SECURITIES CORPORATION d/b/a
BOLTON GLOBAL ASSET MANAGEMENT,

Defendant.

C.A. No. 4:19-40143-TSH

FINAL JUDGMENT

The Securities and Exchange Commission having filed an Amended Complaint and Defendant Bolton Securities Corporation d/b/a Bolton Global Asset Management having entered a general appearance; consented to the Court's jurisdiction over Defendant and the subject matter of this action; consented to entry of this Final Judgment without admitting or denying the allegations of the Amended Complaint (except as to jurisdiction); waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from violating Section 206(2) of the Investment Advisers Act of 1940 (the "Advisers Act") [15 U.S.C. § 80b-6(2)] by use of the mails or any means or instrumentality of interstate commerce, while acting as an investment adviser, directly or indirectly, to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from violating Section 206(3) of the Advisers Act [15 U.S.C. § 80b-6(3)] by use of the mails or any means or instrumentality of interstate commerce, while acting as an investment adviser and acting as principal for its own account, directly or indirectly, to knowingly sell securities to or purchase securities from clients without disclosing to clients, in writing, before the completion of the transactions, the capacity in which Defendant is acting and without obtaining the clients' consent to the transactions.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from violating Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-7 thereunder [17 C.F.R. §275.206(4)-7] by use of the mails

or any means or instrumentality of interstate commerce, directly or indirectly, while acting as an investment adviser registered or required to be registered with the Commission, to provide investment advice to clients without adopting or implementing written policies and procedures reasonably designed to prevent violation, by Defendant or Defendant's supervised persons, of the Advisers Act and the rules the Commission has adopted under the Act.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

IV.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for disgorgement of \$190,000, representing net profits gained as a result of the conduct alleged in the Amended Complaint, together with prejudgment interest thereon in the amount of \$34,994.02, and a civil penalty in the amount of \$225,000 pursuant to Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)]. Upon entry of this Final Judgment, the Commission shall file an unopposed motion to establish a Fair Fund pursuant to Section 308 of the Sarbanes-Oxley Act of 2002 for the purpose of distributing these funds to affected investors (the "Motion"). Upon issuance of a Court Order approving the Motion, the Fair Fund shall be established as set forth in the following provisions:

- A. Within ten [10] days of the issuance of this Order, Defendant shall deposit \$449,994.02 (the "Fair Fund") into an escrow account or accounts at a financial institution or institutions not unacceptable to the Commission staff and Defendant shall provide

evidence of such deposit in a form acceptable to the Commission staff. By making this payment, Defendant relinquishes all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to Defendant. If timely payment into the escrow account[s] is not made, post-judgment interest shall accrue pursuant to 28 U.S.C. §1961. The amount ordered to be paid as a civil penalty pursuant to this Judgment shall be treated as a penalty paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Defendant shall not, after offset or reduction of any award of compensatory damages in any Related Investor Action based on Defendant's payment of disgorgement in this action, argue that it is entitled to, nor shall it further benefit by, offset or reduction of such compensatory damages award by the amount of any part of Defendant's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Defendant shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this Judgment. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Defendant by or on behalf of one or more investors based on substantially the same facts as alleged in the Amended Complaint in this action.

- B. Defendant shall be responsible for administering the Fair Fund and may hire a professional at its own cost to assist it in the administration of the distribution. The costs and expenses of administering the Fair Fund, including any such professional services,

shall be borne by Defendant and shall not be paid out of the Fair Fund.

- C. Defendant shall distribute from the Fair Fund an amount representing (1) compensation for 12b-1 fees paid by investors from holdings in Class A shares of mutual funds, when those fees were inadequately disclosed during the period August 2014 to September 2017; and (2) compensation for 12b-1 fees paid by investors from money market fund holdings, which generated inadequately disclosed clearing firm revenue sharing payments to BSC's affiliated broker-dealer during the period August 2014 until June 2016, plus reasonable interest. These distributions will be made pursuant to a disbursement calculation (the "Calculation") that will be submitted to, reviewed, and approved by the Commission staff in accordance with this Subsection IV. The Calculation shall be subject to a *de minimis* threshold. No portion of the Fair Fund shall be paid to any affected investor account in which Defendant, or any of its current or former officers or directors, has a financial interest.
- D. Defendant shall, within ninety [90] days from the date of this Order, submit a calculation to the Commission staff for review and approval. At or around the time of submission of the proposed Distribution Calculation to the staff, Defendant shall make its representatives available, and shall require any third-parties or professionals retained by Defendant to assist in formulating the methodology for its Calculation and/or administration of the distribution to be available, for a conference call with the Commission staff to explain the methodology used in preparing the proposed Calculation and its implementation, and to provide the staff with an opportunity to ask questions. Defendant also shall provide the Commission staff such additional information and supporting documentation as the Commission staff may request for the purpose of its

review. In the event of one or more objections by the Commission staff to Defendant's proposed Calculation or any of its information or supporting documentation, Defendant shall submit a revised Calculation for the review and approval of the Commission staff or additional information or supporting documentation within ten [10] days of the date that the Commission staff notifies Defendant of the objection. The revised Calculation shall be subject to all of the provisions of this Subsection IV.

- E. Defendant shall, within thirty [30] days of the written approval of the Calculation by the Commission staff, submit a payment file (the "Payment File") for review and acceptance by the Commission staff demonstrating the application of the methodology to each affected investor. The Payment File should identify, at a minimum, (1) the name of each affected investor; (2) the net amount of the payment to be made, less any tax withholding; (3) the amount of any *de minimis* threshold to be applied; and (4) the amount of reasonable interest paid to money market fund investors. The Defendant shall exclude from the payee file all payments to payees that appear on the U.S. Treasury Department Specially Designated Nationals List.
- F. Defendant shall disburse all amounts payable to affected investors within ninety [90] days of the date the Commission staff accepts the Payment File, unless such time period is extended as provided in Paragraph K of this Subsection IV. Defendant shall notify the Commission staff of the date[s] and the amount paid in the initial distribution.
- G. Within thirty [30] days of the entry of this Judgment, Defendant shall notify affected investors of the settlement terms of this Judgment by sending a copy of this Judgment to each affected investor via mail, email, or such other method not unacceptable to the

Commission staff, together with a cover letter in a form not unacceptable to the Commission staff.

H. Defendant may make payment to affected investors by deposit electronically (journalized) to existing client accounts or by check to former clients by First Class Mail. If Defendant is unable to distribute or return any portion of the Fair Fund for any reason, including an inability to locate an affected investor or a beneficial owner of an affected investor or any factors beyond Defendant's control, Defendant shall transfer any such undistributed funds to the Commission when the distribution of funds is complete and before the final accounting provided for in Paragraph J of this Subsection IV is submitted to the Commission staff. Payment must be made in one of the following ways:

- a. Defendant may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- b. Defendant may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- c. Defendant may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Bolton Securities Corporation as Defendant in these proceedings, and the caption number of these proceedings; a copy of the cover letter and check or money order must be sent to Robert Baker, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 33 Arch Street, 24th Floor, Boston, MA 02110.

- I. A Fair Fund is a Qualified Settlement Fund (“QSF”) under Section 468B(g) of the Internal Revenue Code (“IRC”), 26 U.S.C. §§ 1.468B.1-1.468B.5. Defendant agrees to be responsible for all tax compliance responsibilities associated with the Fair Fund status as a QSF. These responsibilities involve reporting and paying requirements of the Fund, including but not limited to: (1) tax returns for the Fair Fund; (2) information return reporting regarding the payments to investors, as required by applicable codes and regulations; and (3) obligations resulting from compliance with the Foreign Account Tax Compliance Act (FATCA). Defendant may retain any professional services necessary. The costs and expenses of tax compliance, including any such professional services, shall be borne by Defendant and shall not be paid out of the Fair Fund.
- J. Within one hundred fifty [150] days after Defendant completes the disbursement of all amounts payable to affected investors, Defendant shall return all undisbursed funds to the Commission pursuant to the instructions set forth in Paragraph H of this Subsection IV. The Defendant shall then submit to the Commission staff a final accounting and certification of the disposition of the Fair Fund for the Commission to submit for Court approval, which final accounting and certification shall include, but not be limited to: (1) the amount paid to each payee, with the reasonable interest amount, if any, reported separately; (2) the date of each payment; (3) the check number or other identifier of the

money transferred; (4) the amount of any returned payment and the date received; (5) a description of the efforts to locate a prospective payee whose payment was returned or to whom payment was not made for any reason; (6) the total amount, if any, to be forwarded to the Commission, which will present the Court with a recommendation for disposition of the funds; and (7) an affirmation that Defendant has made payments from the Fair Fund to affected investors in accordance with the Calculation approved by the Commission staff. The final accounting and certification shall be submitted under a cover letter that identifies Defendant and the file number of these proceedings to Robert Baker, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 33 Arch Street, 24th Floor, Boston, MA 02110. Defendant shall provide any and all supporting documentation for the accounting and certification to the Commission staff upon its request and shall cooperate with any additional requests by the Commission staff in connection with the accounting and certification.

K. The Commission staff may extend any of the procedural dates set forth in this Subsection IV for good cause shown. Deadlines for dates relating to the Fair Fund shall be counted in calendar days, except if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein.

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

Dated: 2/25/21, _____

/s/ Timothy S. Hillman

HON. TIMOTHY S. HILLMAN
UNITED STATES DISTRICT JUDGE