

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 98594 / September 28, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-20881

In the Matter of

Kathryn Jane Meredith, d/b/a KM
Advisory Services,

Respondent.

ORDER APPROVING
PLAN OF DISTRIBUTION

ADMINISTRATIVE PROCEEDING
File No. 3-20882

In the Matter of

John Paul Harnish, d/b/a KM
Advisory Services,

Respondent.

On June 6, 2022, the Commission issued two separate but related Orders (the “Orders”) instituting and simultaneously settling administrative and cease-and-desist proceedings against a former registered investment adviser, KM Advisory Services (“KMA”), an unincorporated sole-proprietorship owned by Kathryn Jane Meredith (“Meredith”)¹ from 1994 through February 2020 and purchased by John Paul Harnish (“Harnish”)² in February 2020. In the Orders, the Commission found that since at least January 2016, and continuing through December 2020, KMA breached its fiduciary duties in connection with the receipt of mutual fund fees pursuant to Rule 12b-1 under the Investment Company Act of 1940 and commissions in the form of sales

¹ Corrected Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Sections 203(e), 203(f) 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. 95046 (June 6, 2022), (Admin. Proc. File No. 3-20881).

² Corrected Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Sections 203(e), 203(f) 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. 95047 (June 6, 2022), (Admin. Proc. File No. 3-20882).

“loads” from advisory client investments without fully and fairly disclosing the related conflicts of interest. In the Order, the Commission also found that KMA failed to adopt and implement written compliance policies and procedures reasonably designed to prevent violations of the Investment Advisers Act of 1940 and the rules thereunder in connection with its mutual fund share class and broker-dealer selection practices. Among other remedies, the Commission ordered Meredith to pay \$574,743.53 in disgorgement, \$77,252.39 in prejudgment interest, and a \$100,000.00 civil money penalty and Harnish to pay \$220,097.30 in disgorgement, \$5,549.69 in prejudgment interest, and a \$75,000 civil money penalty, to the Commission. In each of the Orders, the Commission also created a Fair Fund, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002 and further ordered the Fair Funds be combined to form the KM Advisory Fair Fund (the “Fair Fund”), so the penalties paid, along with the disgorgement and interest paid, can be distributed to harmed investors.

The Fair Fund consists of the \$1,052,641.99 paid by the Meredith and Harnish. The assets of the Fair Fund are subject to the continuing jurisdiction and control of the Commission. The Fair Fund has been deposited in a Commission-designated account at the U.S. Department of the Treasury, and any accrued interest will be added to the Fair Fund.

On August 3, 2023, the Division of Enforcement, pursuant to delegated authority, published a Notice of Proposed Plan of Distribution and Opportunity for Comment (the “Notice”),³ pursuant to Rule 1103 of the Commission’s Rules on Fair Fund and Disgorgement Plans (“Commission’s Rules”);⁴ and simultaneously posted the Proposed Plan of Distribution (the “Proposed Plan”). The Notice advised interested persons that they could obtain a copy of the Proposed Plan from the Commission’s public website or by submitting a written request to Joshua Braunstein, 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 Proposed Plan could submit their comments, in writing, within 30 days of the Notice. The Commission received no comments on the Proposed Plan during the comment period.

The Proposed Plan provides for the distribution of the Net Available Fair Fund⁵ to compensate investors for excess fees related to mutual fund 12b-1 fees and/or sales load commissions paid in accounts managed by KMA from January 1, 2016 through December 31, 2020.

The Division of Enforcement now requests that the Commission approve the Proposed Plan.

³ Exchange Act Rel. No. 98049 (Aug. 3, 2023).

⁴ 17 C.F.R. § 201.1103.

⁵ All capitalized terms used herein but not defined shall have the same meanings ascribed to them in the Proposed Plan.

Accordingly, it is hereby ORDERED, pursuant to Rule 1104 of the Commission's Rules,⁶ that the Proposed Plan is approved, and the approved Plan of Distribution shall be posted simultaneously with this order on the Commission's website at www.sec.gov.

For the Commission, by the Division of Enforcement, pursuant to delegated authority.⁷

Vanessa A. Countryman
Secretary

⁶ 17 C.F.R. § 201.1104.

⁷ 17 C.F.R. § 200.30-4(a)(21)(iv).