

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No.

ADMINISTRATIVE PROCEEDING
File No. 3-17791

In the Matter of :
 :
Orthofix International N.V. :
 :
Respondent. :

PLAN OF DISTRIBUTION

ADMINISTRATIVE PROCEEDING
File No. 3-17792

In the Matter of :
 :
Jeffrey Hammel, CPA :
 :
Respondent. :

ADMINISTRATIVE PROCEEDING
File No. 3-17793

In the Matter of :
 :
Brian McCollum :
 :
Respondent. :

ADMINISTRATIVE PROCEEDING
3-17794

In the Matter of :
 :
Kenneth Mack and Bryan McMillan :
 :
Respondents. :

I. OVERVIEW

1. *Purpose and Background.* This Plan of Distribution (the “Plan”) has been developed pursuant to Rule 1101 of the Commission’s Rules on Fair Fund and Disgorgement Plans (“Rules”), 17 C.F.R. § 201.1101. The Plan provides for a distribution of the funds collected in the above-referenced proceedings from Orthofix International N.V. (“Orthofix”), Jeffrey Hammel, CPA (“Hammel”), Bryan McCollum (“McCollum”), Kenneth Mack (“Mack”), and Brian McMillan (“McMillan”) (collectively, the “Respondents”) to investors who purchased shares of Orthofix International common stock at inflated prices during the period from March 2, 2010, through August 7, 2013, inclusive (“Recovery Period”) and who suffered losses in the value of their investments subsequent to disclosures by the Respondents.

On January 18, 2017, the Commission issued an Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Orthofix Order”)¹ against Orthofix. The Orthofix Order required Orthofix to pay an \$8,250,000.00 civil money penalty, and created a Fair Fund, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, so the penalty could be distributed to harmed investors (the “Orthofix Fair Fund”). The Orthofix Order further provided that the Orthofix Fair Fund could receive funds from and/or be combined with fair funds established for civil penalties paid by other respondents for conduct arising in relation to the violative conduct at issue in the Orthofix Order.

The Commission simultaneously issued three settled orders in related matters (collectively, the “Related Matters”) against Hammel,² McCollum,³ and Mack and McMillan.⁴ Hammel’s order required him to pay a \$20,000.00 civil money penalty, and McCollum’s order required him to pay a \$35,000.00 civil penalty. Mack and McMillan’s order required them to pay a \$40,000.00 and \$25,000.00 civil money penalty, respectively. Each order created a fair fund and provided that it could be added or combined with the Orthofix Fair Fund and/or may be added to or combined with fair funds established for the civil penalties paid by other respondents for conduct arising in relation to the violative conduct at issue in the order, so that the combined fair funds could be distributed to harmed investors affected by the same violative conduct.

Orthofix has paid \$8,250,000.00 as ordered into the Orthofix Fair Fund, and a total of \$120,023.32 has been paid, as ordered, in the Related Matters, which has been combined with the Orthofix Fair Fund, for a total of \$8,370,023.02, for distribution to harmed investors

¹ Securities Act Rel. No. 10281 (Jan. 18, 2017).

² See Order Instituting Public Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Sections 4C and 21C of the Securities Exchange Act of 1934, and Rule 102(e) of the Commission’s Rules of Practice, Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order, Securities Act Rel. No. 10282 (Jan. 18, 2017), Admin. Proc. File No. 3-17792.

³ See Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Cease-and-Desist Orders and Remedies, Exchange Act Rel. No. 79819 (Jan. 18, 2017), Admin. Proc. File No. 3-17793.

⁴ See Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Cease-and-Desist Orders and Penalties, Exchange Act Rel. No. 79820 (Jan. 18, 2017), Admin. Proc. File No. 3-17794.

(hereinafter, the “Fair Fund”).⁵ The Fair Fund has been deposited with the United States Department of the Treasury’s Bureau of the Fiscal Services and invested in interest earning securities.

2. *Fund Administrator.* On December 27, 2017, the Commission appointed Strategic Claims Services, Inc. as fund administrator (“Fund Administrator”) and set the bond at \$8,370,000.00, in accordance with Rules 1105(a) and 1105(c) of the Commission’s Rules on Fair Fund and Disgorgement Plans (“Rules”).⁶ The Fund Administrator will, among other things: oversee the administration of the Fair Fund, confirm mailing information for the Eligible Investors as defined in paragraph 7 below, distribute money from the assets of the Fair Fund in accordance with the Plan, resolve disputes, prepare a final accounting with assistance from the tax administrator, and provide the tax administrator with funds to pay tax liabilities and tax compliance fees and costs, pursuant to the Omnibus Order Directing the Appointment of Tax Administrator in Administrative Proceedings that Establish Distribution Funds (Exchange Act Rel. No. 81057 (June 31, 2017)).

3. *Qualified Settlement Fund.* The Fair Fund constitutes a Qualified Settlement Fund (“QSF”) under Section 468B(g) of the Internal Revenue Code, 26 U.S.C. § 468B(g), and related regulations, 26 C.F.R. §§ 1.468B-1 through 1.468B-5.

4. *Tax Administrator.* The Commission has appointed Miller Kaplan Arase LLP as the tax administrator (“Tax Administrator”) of the Orthofix Fair Fund (Exchange Act Rel. Nos. 81257, 81271-73 (July 31, 2017)). The Fund Administrator will cooperate with the Tax Administrator in providing information necessary to accomplish income tax compliance of the QSF. The Tax Administrator will be compensated for all reasonable costs and expenses from the Orthofix Fair Fund in accordance with its Revised 2017-2018 Engagement Letter Agreement with the Commission. The Orthofix Fair Fund’s taxes will be paid out of the Orthofix Fair Fund.

III. DEFINED TERMS

5. *Claim Form.* The Form designed by the Fund Administrator for the filing of claims in accordance with the Distribution Plan.

6. *Claims Bar Date.* The date by which a potentially Eligible Investor’s Claim Form must postmarked to participate in any distribution of the Orthofix Fair Fund. The Claims Bar date shall be ninety (90) days from the earliest date of the Summary Notice publication.

7. *Eligible Investors.* Eligible investors are persons who invested in Orthofix common stock at inflated prices during the Recovery Period and who suffered a loss on their investments subsequent to disclosures by the Respondents.

⁵ See Order Consolidating Fair Funds, Appointing Fund Administrator, and Setting Administrator Bond Amount, Exchange Act Rel. No. 82410 (Dec. 27, 2017).

⁶ *Id.*

8. *Plan Notice.* The written notice from the Fund Administrator to potentially Eligible Claimants informing them of the Orthofix Fair Fund and the eligibility requirements, and explaining how to submit a Claim Form.

9. *Recognized Loss.* The amount of loss an Eligible Investor has incurred through the investment in Orthofix common stock during the Recovery Period, to be calculated in accordance with the Plan of Allocation.

10. *Summary Notice Publication.* The notice published on an Internet based-newswire service with national distribution. Such notice shall include, at a minimum, a statement that the Orthofix Fair Fund relates to the purchases and sales of Orthofix common stock during the Recovery Period.

IV. ORTHOFIX FAIR FUND ADMINISTRATION

11. *Methodology for Determining Distribution Amounts.* The Plan of Allocation is designed to compensate Eligible Investors based on their losses on Orthofix common stock purchased during the Recovery Period due to the disclosures made by the Respondents. Investors who did not purchase any Orthofix common stock during the Recovery Period did not purchase shares at prices inflated by Respondents' violative conduct and do not have any Recognized Losses. The Commission staff determined the amount to be distributed to each Eligible Investor as follows.

- a. For shares of Orthofix common stock that were:
 - i. *Held at the close of trading on March 1, 2010 ("Beginning Holding Date"), and either sold during the Recovery Period, or held through the close of trading on the End Holding Date, the Recognized Loss per share is \$0.00.*
 - ii. *Purchased in the period from March 2, 2010, through and including July 29, 2013 ("First Inflation Period"), and*
 - a. *Sold during the First Inflation Period, the Recognized Loss per share is \$0.00.*
 - b. *Sold in the period from July 30, 2013 through and including August 7, 2013 ("Second Inflation Period"), the Recognized Loss per share is equal to the purchase price per share minus \$22.94⁷, up to a maximum loss of \$4.34⁸ per share. If the purchase price is less than or equal to \$22.94, the Recognized Loss per share is \$0.00. If the purchase price less the sale price is greater than \$4.34, the Recognized Loss per share is \$4.34.*
 - c. *Held at the close of trading on August 7, 2013 ("End Holding Date"), the Recognized Loss per share is equal to the purchase price per share less sale price per share, up to a maximum of \$5.42.⁹ If the sale price*

⁷ This amount represents the closing price on July 30, 2013.

⁸ This amount represents the maximum price drop based on the closing price on the first corrective disclosure date of July 29, 2013.

⁹ This amount represents the maximum price drop based on the closing price on the second corrective disclosure date of August 7, 2013.

is greater than or equal to the purchase price, the Recognized Loss per share is \$0.00. If the purchase price less the sale price is more than \$5.42, the Recognized Loss per share is \$5.42.

- iii. *Purchased during the Second Inflation Period and*
 - a. Sold during the Second Inflation Period, the Recognized Loss per share is \$0.00.
 - b. Held at the close of trading on the End Holding Date, the Recognized Loss per share is equal to the purchase price less \$22.63, up to a maximum of \$1.08 per share. If the purchase price is less than or equal to \$22.63, the Recognized Loss per share is 0.00. If the purchase price less the sale price is greater than \$1.08, then the Recognized Loss per share is \$1.08 per share.

For example, a share purchased on April 8, 2011 at \$33.05, would have a Recognized Loss of \$0.00 if it were sold on July 15, 2013 at \$28.33; or a maximum Recognized Loss of \$4.34 if it were held through the close of trading on July 30, 2013 and sold before August 7, 2013.

- b. All prices mentioned in the calculations exclude all fees and commissions. Purchases and sales shall be deemed to have occurred on the “contract” or “trade” date as opposed to the “settlement” or “payment” date.
- c. FIFO Methodology: For each investor who made multiple purchases and sales of Orthofix common stock during the Recovery Period, the transactions will be calculated according to the first-in, first-out (“FIFO”) method. The “contract” or “trade” date will be treated as the purchase or sale date for Orthofix shares, not the “settlement” or “payment” date. The earliest sales during the Recovery Period will be matched first against any holdings at the opening of the Recovery Period. Once the beginning holdings have all been matched, or in the event that the investor had no beginning holdings, then any further sales would be matched against the earliest Recovery Period purchases and chronologically thereafter.
- d. Short Sales: If the sale date for a share falls before the purchase date (“Short Sale”), then the share has a Recognized Loss of \$0.00.
- e. Acquisitions: The receipt or grant to the investor by gift, devise, inheritance, or operation of law of Orthofix common stock during the Recovery Period is not considered an eligible purchase if the original purchase did not occur during the Recovery Period. Such shares will be excluded from the calculation of the investor’s Eligible Loss Amount (defined below).
- f. Eligible Loss Amount: An investor’s Eligible Loss Amount will be calculated as the sum of Recognized Losses, as explained in paragraph 11, on all shares purchased and sold during the Recovery Period.

- g. Market Loss Limitation: If an investor's actual losses in Orthofix common stock incurred during the Recovery Period were less than the Eligible Loss Amount, then the investor's Eligible Loss Amount shall be limited to the actual loss amount. Investors whose total proceeds from sales of Orthofix common stock during the Recovery Period exceeded the total purchase amount for the shares purchased during the Recovery Period shall have an Eligible Loss Amount of \$0.00.
- h. Pro Rata Distribution: If sufficient funds remain in the Fair Fund after the addition of interest from investment and the deduction of taxes and administration expenses (the "Net Fair Fund"), each Eligible Investor will receive a distribution payment equal to the amount of his, her, or its Eligible Loss Amount. If the Net Fair Fund is not sufficient to pay the full Eligible Loss Amount for all Eligible Investors, then each Eligible Investor will receive the amount that his, her, or its Eligible Loss Amount bears in proportion to the total Eligible Loss Amounts of all Eligible Investors ("Pro-Rata Share").
- i. Minimum Distribution Amount: If an Eligible Investor's calculated distribution payment is less than \$10.00, that investor will not receive a payment and the funds will be distributed to other Eligible Investors whose distribution payments are greater than \$10.00.

12. *Procedures for Locating and Notifying Eligible Investors*. Based upon records obtained in its capacity as Claims Administrator for *Plumbers & Pipefitters National Pension Fund v. Orthofix International N.V., et al.*, Case No.: 1:13-cv-5696-JGK (S.D.N.Y.) ("Orthofix Securities Settlement"), the Fund Administrator will send an email to all claimants from the Orthofix Securities Settlement containing a copy of the Summary Notice and a link to the website established specifically for the Fair Fund ("Fair Fund's website"), notifying them (a) of the establishment of the Orthofix Fair Fund and the administrative process being undertaken to distribute it; and (b) that all eligible claimants from the Orthofix Securities Settlement will be automatically included in the distribution of the Orthofix Fair Fund.

To serve sufficient notice for those potential Eligible Investors who did not file a claim for the Orthofix Securities Settlement or who purchased Orthofix common stock during the Second Inflation Period and thus were ineligible for the Orthofix Securities Settlement, the Fund Administrator will, within thirty (30) days of the issuance of the Order approving the Plan:

- a. Send a letter to banks, brokerage firms, institutions, and other nominees who may have purchased Orthofix common stock for the beneficial interest of their clients ("Nominee Purchasers"), and who did not respond to a similar request for the Orthofix Securities Settlement, requesting that, within ten (10) days of the letter, such Nominee Purchasers (i) provide the Fund Administrator with the name and last known address of each person for whom purchased Orthofix common stock during the Recovery Period, or (ii) request copies of the Plan Notice and Claim Form sufficient for the Nominee Purchasers to mail directly to the potential Eligible Investors within ten (10) days after the Nominee Purchasers receive the Plan Notices and Claim Forms.

- b. Send a letter to Nominee Purchasers who responded to a previous request for the Orthofix Securities Settlement requesting that, within ten (10) days of the letter, such Nominee purchasers (a) provide the Fund Administrator with the name and last known address of each person for whom they purchased Orthofix during the period from July 30, 2013, through August 7, 2013, both dates inclusive, which the portion of the Recovery Period not included in the Orthofix Securities Settlement, or (b) request copies of the Plan Notice and Claim Form sufficient for the Nominee Purchasers to mail directly to beneficiaries of potential Eligible Investors during the period from July 30, 2013, through August 7, 2013, both dates inclusive, within ten (10) days after the Nominee Purchasers receive the Plan Notices and Claim Forms.
- c. Mail, by first-class mail, copies of the Plan Notice and Claim Form to each potential Eligible Investor whom it can reasonably identify at his, her, or its last known mailing address and who has not already submitted a claim in the Orthofix Securities Settlement, and who will not receive a mailing directly from a Nominee Purchaser.
- d. Cause the Summary Notice to be published on an internet business newswire with national distribution.
- e. Cause the Plan Notice and Claim Form to be posted on the Fair Fund's website.

For those Summary Notices or Plan Notices and Claim Forms which are returned to the Fund Administrator as undeliverable, the Fund Administrator will attempt to obtain updated address information via Experian and will promptly re-mail the Summary Notices or Plan Notices and Claim Forms for which updated address information is available.

13. *Distribution Timing.* The Fund Administrator will use its best efforts to start the Commission's distribution payment disbursement process within one hundred eighty (180) days of the issuance of the Order approving the Plan.

14. *Validation and Approval of Disbursement of the Fair Fund.* The Fund Administrator will process Claim Forms upon receipt. Within thirty (30) days of the Claims Bar Date, the Fund Administrator will mail by first-class mail a determination letter ("Determination Letter") to each claimant at the address reported on his, her, or its Claim Form, stating whether the claim is accepted, partially ineligible, fully ineligible, or contains deficient information. A claimant will have fourteen (14) days from the date on the Determination Letter to submit a response to the Fund Administrator curing any deficiencies. If the Fund Administrator does not receive a response curing the deficiency within fourteen (14) days from the date on the Determination Letter, the claimant will be sent a determination of partial or complete ineligibility due to deficient documentation ("Final Determination Letter"). The claimant will have fourteen days from the date of the Final Determination Letter to submit a response to the Fund Administrator. In the interest of achieving substantial justice, the Fund Administrator may extend the response time for claimants at its discretion or at the direction of the Commission.

Within fourteen (14) days after the time to contest any Final Determination Letters has expired, the Fund Administrator will provide the Commission with a declaration and a letter of

assurance regarding the claims process for the distribution of the Fair Fund. The Fund Administrator will also provide the Commission with the *Pro-Rata* Share amount of each Eligible Investor's claim against the Fair Fund ("Distribution List").

Upon issuance of the Commission's order authorizing distribution of the Fair Fund, the Fund Administrator will distribute by check or electronic transfer to each Eligible Investor his, her, its, or their Pro-Rata Share amount, as reported to the Commission on the Distribution List, at the most recent address reported by the Eligible Investor. Checks issued pursuant to the Distribution List will state that they are valid for ninety (90) days from the date of issuance. Any dispute regarding a check must be received by the Fund Administrator prior to the expiration of the check.

The Fund Administrator will track checks which are returned as undeliverable, uncashed checks, requests for checks to be reissued, and other deficiencies which may occur after distribution. In the event that any checks are returned as undeliverable, the Fund Administrator will attempt to contact the Eligible Investor at the phone number or e-mail address reported on his, her, its, or their Claim Form, and the Fund Administrator will search Experian in the event that any Eligible Investor cannot be reached via phone or e-mail for an updated address. No fewer than forty-five (45) days prior to the expiration date of the checks, the Fund Administrator will send letters to any Eligible Claimants who have not cashed their checks to remind them of the deadline, and the Fund Administrator will search Experian for updated addresses in the event that any reminder letters are returned undeliverable.

15. *Expenses of Administration.* Fees and other expenses of administering the Plan will be paid from the Orthofix Fair Fund.

16. *Accountings.* The Fund Administrator will provide Commission staff with an accounting within ten (10) days after the end of each quarter detailing all monies earned or received and all monies spent in connection with the administration of the plan of disgorgement, and a final report with a final accounting once the distribution is complete. The final report will be submitted by Commission staff to the Commission for approval.

Progress reports shall inform the Commission of the activities and status of the Orthofix Fair Fund during the reporting period, and shall specify, at a minimum, the location of the account(s) comprising the Orthofix Fair Fund, the value of those account(s), all monies earned or received into the account(s), monies distributed to claimants under the Plan, and any monies expended to satisfy fees, expenses, and taxes incurred. The final report shall include, amongst other things, a final accounting as described in paragraph 21.

17. *Amendments and Deadline Extensions.* The Fund Administrator will take reasonable and appropriate steps to distribute funds from the Orthofix Fair Fund according to the Plan. Immaterial changes may be made by the Fund Administrator in consultation with the Commission staff. If there are any changes to the Plan that are determined to be material, Commission approval is required prior to implementation by amending the Plan.

18. *Procedures to Request Plan Notice.* A person that does not receive a Plan Notice and believes that he or she should have received a Plan Notice after becoming aware of the Plan (e.g., through other Eligible Investors or on www.sec.gov) must submit documentation to the Fund Administrator to establish that the individual is in fact eligible to receive a Plan Notice within seventy-five (75) days after the Commission's approval of this Plan.

19. *Applicable Law.* When administering this Distribution Plan, the Administrator, and/or each of their designees, agents and assigns, may rely on: all applicable law; orders issued by the Commission, including orders issued by delegated authority; orders issued by an administrative law judge, if any, appointed in this proceeding; and any records, including records containing investor information, provided by Commission staff.

20. *Residual Funds and Disposition of Undistributed Funds.* A residual within the Orthofix Fair Fund will be established for any amounts remaining after all assets have been disbursed. The residual may include, among other things, funds reserved for future taxes and for post distribution related contingencies, amounts from Distribution Payment checks that have not been cashed, amounts from Distribution Payment checks that were not delivered or accepted upon delivery, and tax refunds. In the event there is a residual of undistributed Fair Fund funds that in the Commission staff's view would warrant consideration of an additional disbursement from the Fair Fund, the Commission may exercise its discretion to enter an order for an additional distribution to investors who cashed their distribution checks or received an electronic payment in the initial disbursement of the Distribution Fund and remain eligible to receive additional funds. All funds remaining in the Orthofix Fair Fund will be transferred to the U.S. Treasury after the final accounting (as described in paragraph 21 below) is approved by the Commission.

21. *Final Accounting, Termination of Fair Fund, and Discharge of the Fund Administrator.* Following the distribution of the Orthofix Fair Fund to Eligible Investors, the Fund Administrator will make arrangements for the final payment of taxes and Tax Administrator fees and will submit a final accounting of all monies received, earned, spent, and distributed in connection with the administration of the Plan, and a request for approval of any unpaid taxes, fees, and/or expenses to the Commission. The final accounting will be in a format provided by Commission staff. When the Commission has approved the final accounting, Commission staff will seek an order from the Commission: (a) to transfer the remaining funds and any funds returned in the future to the U.S. Treasury; (b) terminate the Fair Fund; (c) discharge the Fund Administrator; and (d) to cancel the bond.

22. *Records Retention.* The Fund Administrator will maintain all paper documents for one (1) year and all electronic documents, including documents in any media, six (6) years after approval of the final accounting and thereafter will transfer the documents to the Commission, pursuant to Commission direction.