



engaged in improper accounting—prematurely recognizing revenue and understating expenses from at least fiscal year (“FY”) 2015 through FY 2017. As a result, SMC filed with the Commission materially misstated financial statements in its annual, quarterly and current reports during the period.

Also on August 25, 2020, in a related matter, the Commission issued a Corrected Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (“Hideshima Order”) against Howard Hideshima (“Hideshima”),<sup>2</sup> the former Chief Financial Officer of SMC. The Commission determined that Hideshima engaged in improper accounting and caused internal accounting controls failures, which resulted in SMC systematically prematurely recognizing and reporting revenue and understating expenses from at least FY 2015 through FY 2017. The Commission further determined that, from at least FY 2015 through FY 2017, Hideshima signed, and/or approved, annual, quarterly and current reports with the Commission that contained materially misstated financial statements.

As a result of the conduct described in the SMC Order and Hideshima Order (collectively, the “Orders”), the Commission ordered SMC to pay a civil money penalty of \$17,500,000.00, and Hideshima to pay disgorgement of \$260,844.00, prejudgment interest of \$40,212.00, and a civil money penalty of \$50,000.00 to the Commission. In the SMC Order, the Commission created a Fair Fund (the “Fair Fund”), pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, so the collected civil penalty could be distributed to investors harmed by the conduct described in the Orders. In the Hideshima Order, the Commission also established a Fair Fund, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002 and ordered it to be added to the Fair Fund established in the SMC Order, so the collected civil penalty, along with collected disgorgement and prejudgment interest, would be combined into one fund for distribution to investors harmed by the conduct described in the Orders.

The Fair Fund is comprised of the \$17,851,056.00 paid by SMC and Hideshima, pursuant to the Orders, and has been deposited in an interest-bearing account at United States Department of Treasury's Bureau of the Fiscal Service (“BFS”).

The assets of the Fair Fund are subject to the continuing jurisdiction and control of the Commission. All BFS fees will be paid from the Fair Fund. Interest and any additional funds received pursuant to Commission or Court order, agreement, or otherwise will be added to the Fair Fund for disbursement to investors in accordance with the Plan.

## **OPPORTUNITY FOR COMMENT**

Pursuant to this Notice, all interested persons are advised that they may obtain a copy of the Plan from the Commission’s public website at <http://www.sec.gov/litigation/fairfundlist.htm>. Interested persons may also obtain a written copy of the Plan by submitting a written request to

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<sup>2</sup> Exchange Act Rel. No. 89657 (Aug. 25, 2020). The Hideshima Order was corrected from its original form to add the established Fair Fund to the Fair Fund established in the SMC Order for distribution. See Paragraph IV.C. of the Hideshima Order

Catherine E. Pappas, United States Securities and Exchange Commission, One Penn Center, 1617 JFK Blvd., Ste. 520, Philadelphia, PA 19103. All persons who desire to comment on the Plan may submit their comments, in writing, no later than thirty (30) days from the date of this 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).

Comments submitted by email or via the Commission's website should include "Administrative Proceeding File Nos. 3-19927 and 3-19928" in the subject line. Comments received will be publicly available. Persons should submit only information they wish to make publicly available.

## **THE PLAN**

The Net Available Fair Fund<sup>3</sup> is comprised of the \$17,851,056.00 paid by SMC and Hideshima pursuant to the Orders, plus accrued interest, less amounts expended or reserved for Administrative Costs. The Plan proposes to distribute the Net Available Fair Fund to investors who purchased the Security during the Relevant Period and suffered an Eligible Loss Amount as calculated under the Methodology used in the Plan of Allocation.

For the Commission, by its Secretary, pursuant to delegated authority.

Vanessa A. Countryman  
Secretary

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<sup>3</sup> All capitalized terms used herein but not defined shall have the same meanings ascribed to them in the Plan.