

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 97496 / May 12, 2023**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-16175**

<b>In the Matter of</b>	:	<b>ORDER AUTHORIZING THE TRANSFER</b>
	:	<b>TO THE U.S. TREASURY OF THE</b>
	:	<b>REMAINING FUNDS AND ANY FUNDS</b>
<b>Kenneth C. Meissner, James Doug</b>	:	<b>RETURNED TO THE FAIR FUND IN THE</b>
<b>Scott, Mark S. "Mike" Tomich,</b>	:	<b>FUTURE, DISCHARGING THE PLAN</b>
	:	<b>ADMINISTRATOR, AND TERMINATING</b>
<b>Respondents.</b>	:	<b>THE FAIR FUND</b>

On September 25, 2014, the Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 and Section 9(b) of the Investment Company Act of 1940 (the “Order”)<sup>1</sup> against Kenneth C. Meissner, James Doug Scott, and Mark S. "Mike" Tomich (collectively, the “Respondents”). In the Order, the Division of Enforcement (the “Division”) alleged that from August 2011 to January 2013, Gary Snisky (“Snisky”) recruited the Respondents to solicit prospective investors with false promises of no-risk, profitable alternatives to traditional annuities, when in fact, Snisky made no legitimate investments with investor funds. None of the Respondents were registered with the Commission as a broker or associated with a registered broker-dealer during this time.

On December 23, 2014, the Commission accepted Tomich’s settlement offer and issued an Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 and Section 9(b) of the Investment Company Act of 1940 as to Mark S. “Mike” Tomich (the “Settled Order”)<sup>2</sup> to which Tomich consented without admitting or denying the findings, except as to jurisdiction and for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523. In the Settled Order, the Commission found that Tomich willfully violated Section 15(a) of the Exchange Act. The Commission ordered Tomich to pay disgorgement of \$48,327.00, prejudgment interest of \$2,976.87, and a civil penalty of \$48,000.00. The Settled Order provided that the Commission could distribute the penalties collected, if in its discretion, it establishes a Fair Fund pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002.

By Initial Decisions filed on April 7, 2015 and August 4, 2015, respectively, an Administrative Law Judge (“ALJ”) adjudicated the allegations against Meissner and Scott on

<sup>1</sup> Exchange Act Rel. No. 73226 (Sept. 25, 2014).

<sup>2</sup> Exchange Act Rel. No. 73925 (Dec. 23, 2014).

motions for summary disposition filed by the Division. In both, the ALJ found the respondent willfully violated Section 15(a)(1) of the Exchange Act. The ALJ ordered Meissner to disgorge \$19,268.70, and ordered Scott to disgorge \$26,297.84 and pay prejudgment interest of \$2,294.22 and a civil penalty of \$15,000. By orders issued on May 20, 2015 (“Meissner Finality Order”) and September 28, 2015 (“Scott Finality Order”), respectively, the Initial Decisions became final and effective.<sup>3</sup>

On August 14, 2017, the Commission issued an order<sup>4</sup> that created a Fair Fund, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, so the penalties paid, along with the disgorgement and interest paid, could be distributed to harmed investors (the “Fair Fund”).

The Respondents paid a total of \$110,274.63 pursuant to the Order, comprising the Fair Fund.

On August 21, 2017, the Commission published a Notice of Proposed Plan of Distribution and Opportunity for Comment (“Notice”),<sup>5</sup> pursuant to Rule 1103 of the Commission’s Rules on Fair Fund and Disgorgement Plans (“Commission’s Rules”);<sup>6</sup> 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 Catherine E. Pappas, United States Securities and Exchange Commission, One Penn Center, 1617 JFK Blvd., Ste. 520, Philadelphia, PA 19103. 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. On September 25, 2017, the Commission issued an order approving the Proposed Plan, appointing a Plan administrator, and authorizing the transfer of Fair Fund funds,<sup>7</sup> and posted the approved Plan of Distribution (the “Plan”).

The Plan appointed Catherine E. Pappas, a Commission employee, as the Plan Administrator to oversee the administration and distribution of the Fair Fund. The Plan set forth a methodology for allocating the \$110,274.63. Pursuant to Rule 1102(a) of the Rules, 17 C.F.R. § 201.1102(a), the Plan proposed to transfer all funds in the Fair Fund, and any additional funds collected, less any taxes and expenses, to the Court Registry Investment System (the “CRIS”) account established in the related criminal action, *United States v. Snisky*, No. 13-cr-00473 (D. Colo.) (the “Criminal Action”), for distribution to harmed investors in accordance with the restitution process in the Criminal Action. The Plan further provided that distributions would continue until collections ceased for a period of six (6) months or more, or the Criminal Action was closed.

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<sup>3</sup> Exchange Act Rel. Nos. 75005 (May 20, 2015) and 76001 (Sept. 28, 2015), respectively.

<sup>4</sup> Order Establishing Fair Fund, Exchange Act Rel. No. 81385 (Aug. 14, 2017).

<sup>5</sup> Exchange Act Rel. No. Exchange Act Rel. No. 81449 (Aug. 21, 2017).

<sup>6</sup> 17 C.F.R. § 201.1103.

<sup>7</sup> See Order Approving Plan of Distribution, Appointing a Distribution Plan Administrator, and Authorizing Transfer of Fair Fund Funds, Exchange Act Rel. No. 81696 (Sept. 25, 2017).

As ordered by the Commission, the Plan Administrator distributed the Fair Fund pursuant to the Plan in three (3) tranches for a total distribution of \$99,273.11 to the CRIS account for distribution to harmed investors through the restitution process.<sup>8</sup>

The Fair Fund paid state and federal taxes of \$1,841.94 and tax administration expenses of \$8,317.28. The Fair Fund currently holds \$842.30 and no collections or payments have been received for more than six (6) months. Taxes and tax administration costs of another distribution will exceed the balance in the Fair Fund.

The Plan provides that the Fair Fund is eligible for termination and the Plan Administrator discharged after all of the following have occurred: (a) the final accounting has been submitted by the Plan Administrator for approval, and has been approved by the Commission; (b) all taxes, fees, and expenses have been paid; and (c) any amount remaining in the Fair Fund has been received by the Commission.

The Commission staff has confirmed that the Plan Administrator has completed the distribution process 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 that are infeasible to return to investors, in the amount of \$842.30, and any funds returned to the Fair Fund or collected in the future that are infeasible to return to investors, 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 Plan Administrator, Catherine E. Pappas, is discharged; and
- C. the Fair Fund is terminated.

By the Commission.

Vanessa A. Countryman  
Secretary

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<sup>8</sup> Exchange Act Rel. Nos. 81696 (Sept. 25, 2017), 85173 (Feb. 22, 2019), and 91115 (Feb. 11, 2021).