

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-19494

In the Matter of

HCR Wealth Advisors

Respondent.

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PROPOSED PLAN OF DISTRIBUTION

I. Overview

1. *Purpose.* The Division of Enforcement (“Division”) submits this proposed plan of distribution (the “Plan”) pursuant to Rule 1101 of the Commission’s Rules on Fair Fund and Disgorgement Plans (the “Commission’s Rules”), 17 C.F.R. § 201.1101. The Plan provides for the distribution of the civil money penalty paid by HCR Wealth Advisors (“HCR” or the “Respondent”) in the captioned administrative proceeding. As described in more detail below, this Plan seeks to compensate the one remaining harmed investor for losses sustained as a result of the Respondent’s conduct, plus reasonable interest.

2. *Background.* On September 23, 2019, the Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (the “Order”)¹ against the Respondent. In the Order, the Commission found that HCR failed to reasonably supervise Jeremy Joseph Drake (“Drake”), formerly an investment adviser representative of HCR, and failed to implement reasonable compliance-related policies and procedures in response to red flags about Drake’s handling of client accounts. From 2012 to July 2016, Drake defrauded two HCR clients, a married couple, out of approximately \$1.2 million in management fees, approximately \$900,000 of which Drake received as incentive-based compensation from HCR. During the same period, Drake misappropriated over \$200,000 from the accounts of four HCR clients, including the married couple and two other individuals, to support a struggling restaurant in which Drake held a minority ownership interest.

The Commission ordered the Respondent to pay a civil money penalty of \$220,000 to the Commission. The Order provided that the Commission may distribute the civil money penalties

¹ Advisers Act Rel. No. 5361 (Sept. 23, 2019).

if, in its discretion, the Commission orders the establishment of a Fair Fund pursuant to 15 U.S.C. § 7246, Section 308(a) of the Sarbanes-Oxley Act of 2002.

The Respondent has paid a total of \$220,000.00 pursuant to the Order.

Prior to entry of the Order, HCR paid the married couple \$300,000. Drake also paid the married couple \$600,000 in partial satisfaction of a criminal restitution order entered against him. Drake additionally reimbursed the third client from the restaurant account that he controlled. In connection with the issuance of the Order, Respondent voluntarily undertook to pay the married couple an additional \$328,912.20, which fully compensated them for the \$1.2 million in losses resulting from Drake's management-fee fraud. The fourth individual, who was defrauded on June 18, 2014 ("Relevant Date") when Drake transferred \$100,000 from her account to the restaurant's account, remains uncompensated.

On December 2, 2021, the Commission issued an order establishing a Fair Fund (the "Fair Fund"), pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, so the civil money penalty paid by HCR can be distributed to the remaining harmed investor.²

The Fair Fund is currently deposited in a Commission-designated account at the United States Department of the Treasury. Other than potential interest income from any investment, the Commission does not anticipate that the Fair Fund will receive additional funds. If any additional funds are received, those funds will be sent to the U.S. Treasury.

3. *Jurisdiction and Control.* The assets of the Fair Fund are subject to the continuing jurisdiction and control of the Commission. The Plan is subject to approval by the Commission, and the Commission retains jurisdiction over its implementation.

II. Administration of the Plan

4. *Costs.* All costs of administering the Fair Fund, including taxes, fees, and expenses of administration ("Costs") shall be paid by the Fair Fund, first from the interest earned on the Fair Fund, and if the interest is not sufficient, from the corpus of the Fair Fund.

5. *Fund Administrator.* Nancy Chase Burton is proposed to serve as the fund administrator for the Fair Fund (the "Fund Administrator"). As a Commission employee, the Fund Administrator shall receive no compensation, other than her regular salary as a Commission employee, for her services in administering the Fair Fund. In accordance with Rule 1105(c) of the Commission's Rules,³ no bond is required since the Fund Administrator is a Commission employee.

The Fund Administrator will be responsible for, among other things: overseeing the administration of the Fair Fund, obtaining accurate mailing information for the Harmed Investor (as defined below), preparing accountings, cooperating with the Tax Administrator in providing

² Order Establishing a Fair Fund, Exchange Act Rel. No. 93706 (Dec. 2, 2021).

³ 17 C.F.R. § 201.1105(c).

the information necessary to accomplish income tax compliance, and distributing money from the Fair Fund in accordance with the Plan.

6. *Tax Administrator.* On August 31, 2022, the Division, pursuant to delegated authority, appointed Miller Kaplan Arase LLP as the tax administrator (the “Tax Administrator”) of the Fair Fund.⁴ The Tax Administrator will be compensated for all reasonable fees and expenses from the Fair Fund in accordance with its 2022-2024 Letter Agreement with the Commission.⁵

7. *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. The Tax Administrator is the administrator of such QSF for purposes of Treas. Reg. § 1.468B-2(k)(3)(I) and shall satisfy the tax-related administrative requirements imposed by Treas. Reg. § 1.468B-2, including, but not limited to: obtaining a taxpayer identification number; requesting funds necessary for the timely payment of all applicable taxes, the payment of taxes for which the Tax Administrator has received funds, and the filing of applicable returns; and fulfilling any information reporting or withholding requirements imposed on distributions from the Fair Fund.

III. Plan Procedures

8. *No Claims Process.* Based on information obtained by the Commission staff during its investigation and the review and analysis of applicable records, the Commission staff has reasonably concluded that it has all records necessary to determine and calculate harm. As a result, the Fair Fund is not being distributed according to a claims-made process, so procedures for making and approving claims in accordance with Rule 1101(b)(4) of the Commission’s Rules, 17 C.F.R. § 201.1101(b)(4), are not applicable.

9. *Specification of Harmed Investors.* Persons able to receive a payment pursuant to this Plan are limited to only those persons who were investment advisory clients of Drake, and who suffered a loss amount as a result of the conduct described in the Order and have not been compensated for their loss (“Harmed Investors”). The Plan seeks to compensate a single Harmed Investor for the full harm suffered due to the misappropriation of funds by Drake. Based on information obtained during the Commission’s investigation and in accordance with the methodology for determining harm in paragraph 10, the Commission staff have identified one (1) Harmed Investor⁶ who suffered a loss and has not been compensated for the loss.

10. *Determining Distribution Amount.* It is anticipated that there will be one distribution. The Harmed Investor’s loss is the total amount of funds misappropriated minus any recoveries (“Net Loss”). The Fair Fund, plus interest, less Costs (the “Net Available Fair Fund”)

⁴ Order Appointing Tax Administrator, Exchange Act Rel. No. 95641 (Aug. 31, 2022).

⁵ See Omnibus Order Directing the Engagement of Two Tax Administrators for Appointment on a Case-by-Case Basis in Administrative Proceedings that Establish Distribution Funds, Exchange Act Rel. No. 94845 (May 4, 2022).

⁶ The Harmed Investor identified by Commission staff is now deceased. Distribution to this investor will be made to the Estate of the Harmed Investor (the “Estate”) and all communications will be directed to the representative of the Estate.

exceeds the Net Loss suffered by the Harmed Investor. Accordingly, the Harmed Investor will receive full reimbursement of its Net Loss, plus reasonable interest calculated using the Short-term Applicable Federal Rate plus three percent (3%), compounded quarterly from the Relevant Date through the approximate date of the disbursement of the funds.

In the view of the Commission staff and the Fund Administrator, this constitutes a fair and reasonable disposition of the Fair Fund to compensate the Harmed Investor for its harm.

12. *Plan Notice and Harmed Investor's Obligation with Respect to the Plan Notice.* Within thirty (30) days of Commission approval of the Plan, the Fund Administrator will send to the representative of the Estate via electronic mail a notice (the "Plan Notice") regarding the Commission's approval of the Plan.

The Plan Notice will include a link to the approved Plan posted on the Commission's website and a copy of the Plan; the calculated Net Loss for the Harmed Investor; and specify all the information and documentation required to be returned to the Fund Administrator in order to receive its Distribution Payment.

13. *Distribution Timing.* The Fund Administrator will use her best efforts to start the distribution within thirty (30) days of receipt of the Harmed Investor's response to the Plan Notice described in paragraph 12 above.

14. *Disbursement of the Fair Fund.* The Fund Administrator will compile the payee information and prepare a payment file to make the disbursement. The completed payment file, and support, will be processed in accordance with the appropriate procedures. Pursuant to Rule 1101(b)(6) of the Commission's Rules, 17 C.F.R. § 201.1101(b)(6), the Fund Administrator will obtain an order from the Commission to disburse the Fair Fund. The Fund Administrator is responsible for accounting for all payments.

15. *Amendments and Procedural Deadline Extensions.* The Fund Administrator will take reasonable and appropriate steps to distribute the Net Available Fair Fund according to the Plan. If there are any changes needed to the Plan that are determined to be material by the Commission staff, Commission approval is required prior to implementation by amending the Plan. Immaterial changes may be made by the Fund Administrator. For good cause shown, the Fund Administrator may extend any of the procedural deadlines set forth in the Plan.

16. *Procedures for Disputing Net Loss.* Disputes will be limited to questions regarding the calculation of Net Loss. Within thirty (30) days of the date of the Plan Notice, the Fund Administrator must receive a written communication detailing the dispute along with any supporting documentation. The Fund Administrator will investigate the dispute, and such investigation will include a review of the written dispute as well as any supporting documentation. Within thirty (30) days of receipt of the written dispute, the Fund Administrator will notify any Harmed Investor of her resolution of the dispute, which will be final.

17. *Residual and Disposition of Undistributed Funds.* A residual account within the Fair Fund will be established for any amounts remaining after the final disbursement to the

Harmed Investor from the Fair Fund (the “Residual”). The Residual may include, but is not limited to, undistributed funds, distribution checks that have not been cashed, Fair Fund tax refunds for overpayment or for waiver of IRS penalties. If any funds remain in the Residual account after completion of all distributions and the payment of all Costs, those funds shall be transferred to the U.S. Treasury, subject to Section 21F(g)(3) of the Securities Exchange Act of 1934 (the “Exchange Act”), after the final accounting is approved by the Commission.

18. *Accountings.* When all funds have been disbursed, except for the Residual, the Fund Administrator will submit a final accounting pursuant to Rule 1105(f) of the Commission’s Rules, 17 C.F.R. § 201.1105(f), for the approval of the Commission prior to termination of the Fair Fund and discharge of the Fund Administrator. Since the funds are being held in a Commission designated account at the U.S. Treasury and the Fund Administrator is a Commission employee, no interim accountings will be made.

19. *Termination of the Fair Fund.* Following the final disbursement from the Net Available Fair Fund to the Harmed Investor, the Fund Administrator will arrange for the final payment of all Costs and will submit a final accounting to the Commission. The Fair Fund will be eligible for termination and the Fund Administrator discharged after the following have occurred: (a) a final accounting, appearing on the standard accounting form supplied by the Commission staff, has been submitted by the Fund Administrator, and has been approved by the Commission; and (b) all Costs have been paid. Once the Commission has approved the final accounting, Commission staff will seek an order from the Commission authorizing: (a) the transfer of the Residual that is infeasible to return to investors, and any amounts returned to the Fair Fund in the future that is infeasible to return to investors, to the general fund of the U.S. Treasury, subject to Section 21F(g)(3) of the Exchange Act; (b) discharge of the Fund Administrator; and (c) termination of the Fair Fund.

IV. Notice of Proposed Plan and Opportunity for Comment

20. *Notice for Comment.* The Notice of Proposed Plan of Distribution (the “Notice”) will be published on the Commission’s website at <http://www.sec.gov/litigation/fairfundlist.htm>. Any person wishing to comment on the Plan must do so in writing by submitting their comments to the Commission within thirty (30) days from the date of the Notice: (a) to the Office of the Secretary, United States Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090; (b) by using the Commission’s Internet comment form (www.sec.gov/litigation/admin.shtml); or (c) by sending an e-mail to rule-comments@sec.gov. Comments submitted by email or via the Commission’s website should include “Administrative Proceeding File Number 3-19494” in the subject line. Comments received will be publicly available. Persons should only submit comments that they wish to make publicly available.