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

**SECURITIES EXCHANGE ACT OF 1934**
**Release No. 98426 / September 18, 2023**

**ADMINISTRATIVE PROCEEDING**
**File No. 3-21542**

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| **In the Matter of**<br><br>**EXCHANGE TRADED MANAGERS GROUP LLC,**<br><br>**ETF MANAGERS GROUP LLC,**<br><br>**and**<br><br>**SAMUEL R. MASUCCI,**<br><br>**Respondents.** | **ORDER APPOINTING TAX ADMINISTRATOR AND DIRECTING PAYMENT OF CERTAIN FUNDS RECEIVED BY THE COMMISSION AND TRANSFERRING OF REMAINING FUNDS TO THE U.S. TREASURY** |

On August 1, 2023, the Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Section 15(b) of the Securities Exchange Act of 1934, 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 (the "Order")[1] against Exchange Traded Managers Group LLC ("Parent"), ETF Managers Group LLC ("Adviser"), and Samuel R. Masucci ("Masucci") (collectively, the "Respondents"). In the Order, the Commission found that the Respondents entered into a prohibited joint transaction to the detriment of Adviser's client ETFMG Alternative Harvest ETF ("MJ" or "Defrauded Client"). In connection with this prohibited transaction, Masucci and Adviser violated their duty of loyalty to MJ by misleading MJ's Independent Trustees about the Respondents' financial conflicts of interest. Masucci and Advisor also breached their duty of care by knowingly providing advice that favored their own interests over the best interest of their client MJ.

The Commission ordered Masucci to pay a $400,000 civil money penalty; and the Parent and Adviser to jointly and severally pay a $4,000,000 civil money penalty to the Commission, pursuant to a payment plan with the last payment due on or before March 31, 2024. In the Order, the Commission also created a Fair Fund, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, so the civil penalties paid can be distributed to the Defrauded Client harmed by the Respondents' conduct described in the Order (the "Fair Fund").

[1] Exchange Act Rel. No. 98034 (Aug. 1, 2023).

Masucci has paid in full, and the Parent and Adviser have paid the first payment of $200,000 as ordered, which currently comprises the Fair Fund, and any additional payments received pursuant to the Order will be added to the Fair Fund.

The Fair Fund constitutes a qualified settlement fund ("QSF") under Section of 468B(g) of the Internal Revenue Code (IRC), 26 U.S.C. § 468B(g), and related regulations, 26 C.F.R. §§ 1.468B-1 through 1.468B-5. The appointment of a tax administrator to fulfill the tax obligations of the Fair Fund is necessary. The selection and appointment of Miller Kaplan Arase LLP ("Miller Kaplan") is in accordance with the Omnibus Order Directing the Engagement of Two Tax Administrators for Appointment on a Case-By-Case Basis in Administrative Proceedings that Establish Distribution Funds (the "Omnibus Order").[2]

The Fair Fund currently has available for distribution, the $600,000 paid by the Respondents, less a reserve for taxes and administrative expenses (the "Reserve").

Upon the Commission's receipt of further payment made pursuant to the Order, the Commission staff will obtain additional order(s), within 60 days of payment, if distribution is feasible, to disburse any additional available funds collected to the Defrauded Client.

Accordingly, it is ORDERED that:

A. Miller Kaplan, in accordance with the Omnibus Order, is selected and appointed Tax Administrator for the QSF in the above-referenced proceeding and shall work with the Commission staff to establish the Reserve;

B. After withholding the Reserve, the Commission staff shall disburse the remaining available funds to ETFMG Alternative Harvest ETF; and

C. Any amounts remaining in the Fair Fund after completion the final distribution detailed above, that are infeasible to return to the investor, and any amounts returned to the Fair Fund in the future that are infeasible to return to investor, shall be transferred to the general fund of the United States Treasury subject to Section 21F(g)(3) of the Exchange Act, and the Fair Fund shall be terminated after which no further disbursements will be made.

By the Commission.

Vanessa A. Countryman
Secretary

[2] Exchange Act Rel. No. 94845 (May 4, 2022).