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

SECURITIES EXCHANGE ACT OF 1934 Release No. 83364 / June 4, 2018

ADMINISTRATIVE PROCEEDING File No. 3-14993

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In the Matter of :

MIDDLECOVE CAPITAL, LLC and : NOTICE OF PROPOSED NOAH L. MYERS : PLAN OF DISTRIBUTION

AND OPPORTUNITY
FOR COMMENT

: FOR COMMENT

Respondents.

Notice is hereby given, pursuant to Rule 1103 of the Securities and Exchange Commission's ("Commission") Rules on Fair Fund and Disgorgement Plans, 17 C.F.R. § 201.1103, that the Division of Enforcement has submitted to the Commission a proposed plan of distribution (the "Plan") for the distribution of monies collected in the above-captioned matter.

On January 16, 2013, the Commission 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, Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940 (the "Order") against MiddleCove Capital, LLC ("MiddleCove") and Noah L. Myers ("Myers") (collectively, the "Respondents"). The Order found, among other things, that from approximately October 2008 through February 2011 (the "relevant period"), Myers engaged in fraudulent trade allocation – "cherry-picking" - at MiddleCove. During the relevant period, MiddleCove was a registered investment adviser. Myers executed his cherry-picking scheme by unfairly allocating trades that had appreciated in value during the course of the day to his personal and business accounts and allocating trades that had depreciated in value during the day to the accounts of his advisory clients. He did this by purchasing securities in an omnibus account and delaying allocation of the purchases until later in the day (and sometimes the next day), after he saw whether the securities appreciated in value. When a security appreciated in value on the day of purchase, Myers would often sell the security and disproportionately allocate the purchase and the realized day-trading profit to his own accounts or accounts benefiting himself or his family members. In contrast, for securities that did not appreciate on the day of purchase, Myers would disproportionately allocate these purchases to his clients' accounts and his clients would hold the

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<sup>&</sup>lt;sup>1</sup> Exchange Act Rel. No. 68669 (Jan. 16, 2013).

position for more than one day. Myers carried out his cherry-picking scheme with regard to several securities, but was most active with an inverse and leveraged exchange traded fund called ProShares UltraShort Financials or SKF. Neither MiddleCove nor Myers disclosed to clients that they were engaged in cherry-picking and that they would favor Myers's accounts in the allocation of appreciated securities. As a result of his fraud, Myers realized ill-gotten gains of \$462,022. The Order required Respondents to pay disgorgement of \$462,022, prejudgment interest of \$26,096, and a civil money penalty of \$300,000. Neither MiddleCove nor Meyers made any payment toward their monetary obligations, accordingly, on March 20, 2013, the Commission filed an Application for an Order Compelling Respondents to Show Cause Why a Judgment Should Not Be Entered Against Them Pursuant to Section 21(e) of the Securities Exchange Act of 1934 with the United States District Court for the District of Connecticut (Case No. 13-mc-00045). MiddleCove and Myers failed to appear, plead, or otherwise defend the District Court action, thus, on June 28, 2013 the Commission filed a Motion for Default Judgment. On July 11, 2013, the court issued an order that entered a Default Judgment against MiddleCove and Meyers. To date, the Commission has collected \$33,086.05 towards the Respondents' Default Judgment (the "Distribution Fund").

The Distribution Fund is subject to the continuing jurisdiction and control of the Commission and the Distribution Fund has been deposited at the United States Department of Treasury's ("U.S. Treasury") Bureau of the Fiscal Service ("BFS") for investment. Other than potential interest income from the BFS investment, the Commission does not anticipate that the Distribution Fund will receive additional funds.

## **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 <a href="http://www.sec.gov/litigation/fairfundlist.htm">http://www.sec.gov/litigation/fairfundlist.htm</a>. Interested persons may also obtain a written copy of the Plan by submitting a written request to Michael S. Lim, Esq., United States Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-5876. 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 (<a href="http://www.sec.gov/litigation/fairfundlist.htm">http://www.sec.gov/litigation/fairfundlist.htm</a>); or
- 3. by sending an e-mail to <u>rule-comments@sec.gov</u>.

Comments submitted should include "Administrative Proceeding File No. 3-14993" in the subject line. Comments received will be publicly available. Persons should submit only information that they wish to make publicly available.

## THE PLAN

The Net Distribution Fund is comprised of the monies collected from the Respondents, plus any accumulated interest, less any federal, state, or local taxes and fees and expenses. The Plan provides for distribution of the Net Distribution Fund to certain harmed parties previously identified by Commission staff in accordance with paragraph 7 of the Plan.

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

Brent J. Fields Secretary