

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

**SECURITIES EXCHANGE ACT OF 1934**

**Release No.**

**ADMINISTRATIVE PROCEEDING**

**File No. 3-14893**

**In the Matter of**

**QUANTEK ASSET MANAGEMENT, LLC,  
BULLTICK CAPITAL MARKETS  
HOLDINGS, LP, JAVIER GUERRA and  
RALPH PATINO,**

**Respondents.**

**PROPOSED PLAN OF  
DISTRIBUTION**

**I. Overview**

1. The Division of Enforcement (“Division”) proposes the following plan of distribution (“Distribution Plan”) pursuant to Rule 1101 of the Commission’s Rules on Fair Fund and Disgorgement Plans (“Rules”), 17 C.F.R. § 201.1101, and Rule 1102(b) of the Rules, 17 C.F.R. § 201.1102(b). If approved, the Distribution Plan would provide for the transfer of the funds directly to the general fund of the United States Treasury and terminate the Fair Fund. As explained below, the Division has concluded that distributing the Fair Fund to investors would not be feasible.

2. On May 29, 2012, the Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, 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, Making Findings, and Imposing Remedial Sanctions and Cease-and-Desist Orders (“Order”) <sup>1</sup> against Quantek Asset Management, LLC (“Quantek”), Bulltick Capital Markets Holdings, LP (“Bulltick”), Javier Guerra (“Guerra”), and Ralph Patino (“Patino”) (collectively, the “Respondents”). The Commission found that, from 2006 through 2008, Quantek, a Latin American-focused hedge fund adviser, misled investors about three important attributes of funds that it managed: (1) whether management had “skin in the game;” (2) the funds’ investment process, and (3) certain related-party transactions.

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<sup>1</sup> Securities Act Rel. No. 9326.

3. As a result of the conduct described in the Order, the Commission ordered Quantek and Guerra to jointly and severally disgorge \$2,056,446, and pay prejudgment interest in the amount of \$219,585. The Commission also ordered that Quantek pay a civil money penalty of \$375,000; Bulltack pay a civil penalty of \$300,000; Guerra pay a civil penalty of \$150,000; and that Patino pay a \$50,000 civil penalty. The Commission also ordered that a Fair Fund (the “Quantek Fair Fund”) be created pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002 for the disgorgement, interest, and penalties paid by the Respondents. The Respondents made the payments as required by the Order, with the exception of Patino, who has an outstanding balance of \$58.33. A total of \$3,151,031 is currently being held at the United States Department of the Treasury’s Bureau of the Fiscal Service for investment.

## **II. The Distribution Plan**

4. Rule 1102(b) of the Rules provides, “[w]hen, in the opinion of the Commission or the hearing officer, the cost of administering a plan of disgorgement relative to the value of the available disgorgement funds and the number of potential claimants would not justify the distribution of the disgorgement funds to injured investors, the plan may provide that the disgorgement funds and any civil penalty shall be paid directly to the general fund of the United States Treasury.”<sup>2</sup>

5. The Division, in consultation with the Division of Economic and Risk Analysis (“DERA”), has determined that a distribution of the Fair Fund is not feasible. The Division does not have records sufficient to calculate each investor’s losses and their *pro rata* share of the fund. Quantek has been de-registered and out of business since the Commission’s action in 2012 and there is no way for the Commission staff to obtain these records. Without such records, the Division cannot develop a fair and reasonable method for distributing the funds. See generally, *Official Committee of Unsecured Creditors of WorldCom, Inc. v. SEC*, 467 F.3d 73, 81-83 (2d Cir. 2006) (“once the district court satisfies itself that the distribution of proceeds in a proposed SEC disgorgement plan is fair and reasonable, its review is at an end”) (citing *SEC v. Wang*, 944 F.2d 80,85 (2d Cir. 1991)). Any alternate distribution methodology not based on the pro rata return of management fees would be speculative. Furthermore, the Division does not have sufficient contact information in order to locate and notify the harmed investors and, for the reasons listed above, cannot obtain this information from Quantek. The staff has only a partial list of the harmed investors and their addresses, but many of the harmed investors were institutional investors, all but 30 of which were located in foreign countries, that have been liquidated and the address information is stale. The fact that the harmed investors are located in foreign countries, makes the effort to update investor address and confirm operating status more challenging. The Division and DERA have expended a significant amount of staff resources considering the alternatives, but have concluded that the Fair Fund should be paid to the general fund of the United States Treasury.

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<sup>2</sup> See also *FTC v. Bronson Partners, LLC*, 654 F.3d 359, 373 (2d Cir. 2011) (“[w]hile agencies may, as a matter of grace, attempt to return as much of the disgorgement proceeds as possible, the remedy is not, strictly speaking, restitutionary at all, in that the award runs in favor of the Treasury, not of the victims.”).

6. Within thirty (30) calendar days of Commission approval of the Distribution Plan, the funds will be paid to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3).

### **III. Notice and Comment Period**

7. The Notice of the Proposed Plan of Distribution and Opportunity to Comment (“Notice”) will be published on the Commission’s website at <http://www.sec.gov/litigation/fairfundlist.htm>. Any person wishing to comment on the Distribution Plan must do so in writing by submitting their comments to the Commission within thirty (30) days of 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 (<http://www.sec.gov/litigation/admin.shtml>); or (c) by sending an email 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 Number 3-14893” in the subject line. Comments received will be publicly available. Persons should only submit comments that they wish to make publicly available.