

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 96757 / January 26, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-17892

In the Matter of	:	
	:	
	:	
ADVANCED EMISSIONS	:	ORDER ESTABLISHING A FAIR
SOLUTIONS, INC.	:	FUND AND TRANSFERRING FUNDS
	:	TO DISTRICT COURT
Respondent.	:	
	:	

On March 29, 2017 the Securities and Exchange Commission (“Commission”) issued a settled order¹ against Advanced Emissions Solutions, Inc. (“ADES”), finding that the company had committed violations of the antifraud provisions of the Securities Act of 1933 (“Securities Act”), and the books and records and internal controls provisions of the Securities Exchange Act of 1934 (“Exchange Act”). In its order, the Commission enjoined ADES from violations of the federal securities laws and ordered ADES to pay a \$500,000 civil penalty to the Commission. The order also provided that the penalty will be held pending a decision whether the Commission, in its discretion, will seek to distribute the funds, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002 or transfer the funds to the U.S. Treasury. ADES has paid in full.

The Commission filed a contemporaneous complaint in the U.S. District Court for the District of Columbia against Mark McKinnies (“McKinnies”), the Chief Financial Officer of

¹ See Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order, Securities Act Rel. No. 10329 (Mar. 29, 2017).

ADES throughout the relevant period.² The complaint alleged that McKinnies signed periodic reports containing material misstatements and registration statements that incorporated the misleading filings. McKinnies, a CPA, was instrumental in the decisions that resulted in ADES's departures from applicable accounting standards. The Commission's complaint also alleged that: (1) McKinnies failed to act reasonably in determining and assessing ADES's accounting positions that were not in accordance with GAAP and (2) he was also responsible for designing and testing ADES's internal controls, which were ineffective.

On April 19, 2017, the Court entered a consent final judgment against McKinnies finding that he violated Section 17(a)(2) and (3) of the Securities Act and Rule 13b2-1 under the Exchange Act. McKinnies was ordered to pay disgorgement of \$126,808 plus prejudgment interest of \$11,884 and a civil penalty of \$100,000. McKinnies has paid in full.

On January 25, 2022, the Court entered an order that granted the Commission's motion to establish a Fair Fund, appoint Miller Kaplan Arase LLP as Tax Administrator, and to appoint Strategic Claims, Inc. as the Distribution Agent of the Fair Fund in the McKinnies District Court Action.

The Commission's Order against ADES and the McKinnies District Court Action relate to the same underlying conduct and the same harmed investors. Therefore, the Division of Enforcement now recommends that the Commission (1) establish a Fair Fund (the "Fair Fund") pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley Act"), for the civil penalty paid by ADES; and, (2) transfer the Fair Fund to the McKinnies District Court Action so it can be combined with the McKinnies District Court Action Fair Fund for distribution to harmed investors, pursuant to a distribution plan to be approved by the Court.

² *SEC v. Mark McKinnies*, 1:17-cv-0566 (D. D.C. March 29, 2017) ("McKinnies District Court Action").

Accordingly, IT IS HEREBY ORDERED, that:

- A. pursuant to Section 308(a) of the Sarbanes-Oxley Act, the Fair Fund is established for the civil money penalties paid by ADES; and
- B. the funds in the Fair Fund shall be transferred to the related district court case, *SEC v Mark McKinnies*, No. 1:17-cv-0566 (D. D.C. March 29, 2017), for distribution to harmed investors through an existing Fair Fund.

By the Commission.

Vanessa A. Countryman
Secretary