

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 98024 / July 31, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-20881

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In the Matter of	:	ORDER APPOINTING
	:	FUND ADMINISTRATOR,
Kathryn Jane Meredith, d/b/a	:	SETTING BOND AMOUNT, AND
KM Advisory Services,	:	AUTHORIZING PAYMENT OF
	:	FEES AND EXPENSES
Respondent.	:	
_____	:	

ADMINISTRATIVE PROCEEDING
File No. 3-20882

_____	:	
In the Matter of	:	
	:	
John Paul Harnish, d/b/a	:	
KM Advisory Services,	:	
	:	
Respondent.	:	
_____	:	

On June 6, 2022, the Commission issued separate, but related administrative and cease-and-desist orders (collectively, the “Orders”) against Kathryn Jane Meredith, d/b/a KM Advisory Services (“Meredith”)¹ and John Paul Harnish, d/b/a KM Advisory Services (“Harnish”)² (collectively, the “Respondents”). In the Orders, the Commission found that former registered

¹ Corrected Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and 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, Exchange Act Rel. No. 95046 (June 6, 2022), (Admin. Proc. File No. 3-20881).

² Corrected Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and 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, Exchange Act Rel. No. 95047 (June 6, 2022), (Admin. Proc. File No. 3-20882).

investment adviser KM Advisory Services (“KMA”), an unincorporated sole-proprietorship owned by Meredith from 1994 through February 2020 and purchased by Harnish in February 2020—breached its fiduciary duties in connection with the receipt of mutual fund fees pursuant to Rule 12b-1 under the Investment Company Act of 1940 (“12b-1 fees”) and commissions in the form of sales “loads” from advisory client investments without fully and fairly disclosing the related conflicts of interest.

Since at least January 2016, and continuing through December 2020, KMA invested the vast majority of its clients’ assets in certain mutual funds that paid 12b-1 fees and charged sales load commissions exclusively through an introducing broker-dealer (the “Introducing Broker-Dealer”), with whom Meredith and later Harnish was a registered representative. As a result, KMA’s clients paid 12b-1 fees and commissions to the Introducing Broker-Dealer, a portion of which were shared with KMA (Meredith and Harnish). KMA failed to fully and adequately disclose this arrangement and the conflicts of interest arising therefrom. KMA also breached its duty of care by not routinely comparing the Introducing Broker-Dealer’s order execution with other broker-dealers, which KMA’s advisory relationship with its clients required. KMA therefore caused its advisory clients to invest through the Introducing Broker-Dealer and in share classes of mutual funds that charged 12b-1 fees when other broker-dealers made available share classes of the same funds to their customers that may have presented a more favorable value for KMA’s clients under the particular circumstances in place at the time of the transactions. Furthermore, KMA failed to adopt and implement written compliance policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder in connection with its mutual fund share class and broker-dealer selection practices. As a result of

the conduct described above, KMA willfully violated Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

Among other remedies, the Commission ordered Meredith to pay \$574,743.53 in disgorgement, \$77,252.39 in prejudgment interest, and a \$100,000.00 civil money penalty and Harnish to pay \$220,097.30 in disgorgement, \$5,549.69 in prejudgment interest, and a \$75,000 civil money penalty, to the Commission. In each of the Orders, the Commission also created a Fair Fund, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002 and further ordered the Fair Funds to be combined to form the KM Advisory Fair Fund (the “Fair Fund”), so the penalties paid, along with the disgorgement and interest paid, can be distributed to harmed investors.

The Fair Fund consists of the \$1,052,641.99 paid by the Respondents. The Fair Fund has been deposited in a Commission-designated account at the U.S. Department of the Treasury, and any accrued interest will be added to the Fair Fund.

The Division of Enforcement (the “Division”) now seeks the appointment of KCC Class Action Services, LLC (“KCC”) as the fund administrator of the Fair Fund and requests that the administrator’s bond be set at \$1,052,641.99. KCC is included in the Commission’s approved pool of administrators.

The Division further requests that the Commission authorize the Office of Financial Management (“OFM”), at the direction of an Assistant Director of the Office of Distributions, to pay the Fund Administrator’s fees and expenses from the Fair Fund, so long as the total amount paid to the Fund Administrator, including the invoice to be paid, does not exceed the total amount of the approved cost proposal submitted by the Fund Administrator.

Accordingly, IT IS HEREBY ORDERED that:

- A. KCC is appointed as the fund administrator, pursuant to Rule 1105(a) of the Commission's Rules on Fair Fund and Disgorgement Plans ("Commission's Rules");³
- B. KCC shall obtain a bond in accordance with Rule 1105(c) of the Commission's Rules,⁴ in the amount of \$1,052,641.99;
- C. the Fund Administrator will submit invoices to the Commission staff for services rendered, in accordance with Rule 1105(d) of the Commission's Rules,⁵ and
- D. at the direction of an Assistant Director of the Office of Distributions, OFM is authorized to pay the Fund Administrator's fees and expenses from the Fair Fund, in accordance with Rule 1105(e) of the Commission's Rules,⁶ so long as the total amount paid to the Fund Administrator, including the invoice to be paid, does not exceed the total amount of the approved cost proposal submitted by the Fund Administrator.

For the Commission, by the Division of Enforcement, pursuant to delegated authority.⁷

Vanessa A. Countryman
Secretary

³ 17 C.F.R. § 201.1105(a).

⁴ 17 C.F.R. § 201.1105(c).

⁵ 17 C.F.R. § 201.1105(d).

⁶ 17 C.F.R. § 201.1105(e).

⁷ 17 C.F.R. § 200.30-4(a)(17) and 17 C.F.R. § 200.30-4(a)(21)(vi).