

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 90924 / January 14, 2021

ADMINISTRATIVE PROCEEDING
File No. 3-19715

In the Matter of

Fortress Investment Management, LLC
and William M. Malloy, III,

Respondents.

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ORDER APPROVING
PLAN OF DISTRIBUTION

On February 27, 2020, the Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to 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 a Cease-and-Desist Order (the “Order”)¹ against Fortress Investment Management, LLC and William M. Malloy (“Malloy”) (collectively, the “Respondents”). In the Order, the Commission found that from approximately January 2014 through 2016, Malloy violated the federal securities laws by failing to fully disclose all material facts to advisory clients, including the receipt of fees from Aequitas Enterprise (“Aequitas”) for consulting and business development services that included introducing prospective investors to Aequitas. Those payments created a conflict of interest that Malloy did not disclose to clients who invested in Income Opportunity Capital, LLC (“IOC”), a private fund managed and controlled by Malloy, which in turn, invested heavily in securities issued by Aequitas. Clients did receive information broadly identifying a potential conflict of interest, but it was not sufficient to allow them to provide informed consent to the actual conflict that existed. Malloy also violated the federal securities laws by allowing an investment advisory firm controlled by Malloy, to remain improperly registered with the Commission.

The Commission ordered the Respondents to pay a total of \$154,097 (disgorgement of \$45,040, prejudgment interest of \$9,057 and a civil penalty of \$50,000 by Fortress, and a civil penalty of \$50,000 by Malloy) to the Commission. In the Order, the Commission established a fair fund, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, so that the civil penalties, along with the disgorgement and prejudgment interest, can be distributed to harmed investors (the “Fair Fund”).

¹ Advisers Act Rel. No. 5452 (Feb. 27, 2020).

The Respondents have paid in full the amounts ordered. The Fair Fund, consisting of the \$154,097 paid by the Respondents pursuant to the Order, has been deposited in an interest-bearing account at the United States Treasury Department's Bureau of the Fiscal Service ("BFS"). The assets of the Fair Fund are subject to the continuing jurisdiction and control of the Commission.

On November 23, 2020, the Commission published a Notice of Proposed Plan of Distribution and Opportunity for Comment (the "Notice")² pursuant to Rule 1103 of the Commission's Rules on Fair Fund and Disgorgement Plans.³ The Notice advised interested parties that they could obtain a copy of the proposed Plan of Distribution (the "Plan") from the Commission's public website at <http://www.sec.gov/litigation/fairfundlist.htm> or by submitting a written request to Noel Gittens, United States Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-5876.

The Notice also advised that all persons desiring to comment on the Plan could submit their comments, in writing, no later than thirty (30) days from the publication of the 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 (<http://www.sec.gov/litigation/admin.shtml>); or (3) by sending an e-mail to rule-comments@sec.gov. The Commission received no comments on the Plan during the comment period.

The Plan provides for the distribution of the Net Available Fair Fund⁴ to compensate each Eligible Investor for the management Fees Paid, plus Interest, in addition to a *pro rata* distribution based on each Eligible Investor's Investment Loss.

The Division of Enforcement now requests that the Commission approve the Plan.

Accordingly, it is hereby ORDERED, pursuant to Rule 1104 of the Commission's Rules on Fair Fund and Disgorgement Plans,⁵ that the Plan is approved, and posted simultaneously with this order on the Commission's website at www.sec.gov.

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

Vanessa A. Countryman
Secretary

² Exchange Act Rel. No. 90483 (Nov. 23, 2020).

³ 17 C.F.R. § 201.1103.

⁴ Capitalized terms used herein, but not defined shall have the same meanings ascribed to them in the Plan.

⁵ 17 C.F.R. § 201.1104.