

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 83669 / July 19, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-14993

In the Matter of	:	
	:	
	:	
MIDDLECOVE CAPITAL, LLC and	:	ORDER APPROVING
NOAH L. MYERS	:	PLAN OF DISTRIBUTION
	:	
	:	
Respondents.	:	

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”)¹ 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 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 the Respondents to pay disgorgement of \$462,022, prejudgment interest of \$26,096, and a civil money penalty of \$300,000. Neither MiddleCove nor Meyers

¹ Exchange Act Rel. No. 68669 (Jan. 16, 2013).

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").

On June 4, 2018, the Commission published a Notice of Proposed Plan of Distribution and Opportunity for Comment ("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 ("Plan") from the Commission's public website at <http://www.sec.gov/litigation/fairfundlist.htm> or by submitting a written request to Michael S. Lim, Esq., 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/fairfundlist.htm>); or (3) by sending an e-mail to rulecomments@sec.gov. The Commission received no comments on the Plan.

The Net Distribution Fund⁴ 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.

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.

Brent J. Fields
Secretary

² Exchange Act Rel. No. 83364 (June 4, 2018).

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.