

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 89013 / June 4, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-18324

In the Matter of	:	ORDER DIRECTING PAYMENT OF
	:	CERTAIN FUNDS RECEIVED BY THE
TRAIN, BABCOCK ADVISORS LLC,	:	COMMISSION AND DIRECTING
	:	TRANSFER OF REMAINING FUNDS TO
Respondent.	:	THE U.S. TREASURY
	:	

On December 22, 2017, the Commission issued an Order¹ that simultaneously instituted and settled a cease and desist proceeding against Train, Babcock Advisors, LLC (the “Respondent”). These proceedings arise from misconduct by Train, Babcock Advisors LLC (“TBA”), an investment adviser registered with the Commission, in connection with certain client accounts for which TBA’s principals acted as trustee and over which TBA had custody. First, two principals of TBA misappropriated more than \$10 million collectively from two TBA client accounts in separate fraudulent schemes that spanned 12 years. Second, TBA failed to comply with the requirements of Rule 206(4)-2 under the Advisers Act (the “Custody Rule”) because TBA failed to obtain surprise examinations for certain client accounts for which it had custody. Third, TBA failed to adopt and implement policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules, particularly as to the safeguarding of client assets. Finally, TBA made false statements in a number of its Forms ADV filed with the Commission.

In the OIP, the Commission found that TBA willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, Section 206(1) of the Advisers Act, Section 206(2) of the Advisers Act, Section 206(4) of the Advisers Act, and Rules 206(4)-2 and 206(4)-7 promulgated thereunder, and Rule 207 of the Advisers Act. The Commission ordered the Respondent to pay disgorgement of \$331,957, prejudgment interest of \$33,768.23, and a civil money penalty in the amount of \$1,335,000 to the Commission within 10 days of the entry of the OIP and created a Fair Fund, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002.

After receipt of the disgorgement, interest, and penalty amounts referenced above, the Commission staff will distribute a payment to the Kurr Foundation in the amount of the Fair

¹ See Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Section 21C of the Securities Exchange Act of 1934[,] Sections 203(e) 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. 82399 (Dec. 22, 2017) (the “OIP”).

Fund minus a reserve for taxes and related administrative expenses.

The payment of disgorgement, prejudgment interest, and civil penalty constitutes a qualified settlement fund (“QSF”) under Section 468B(g) of the Internal Revenue Code (IRC), 26 U.S.C. Section 468B(g), and related regulations, 26 C.F.R Sections 1.468B-1 through 1.468B-5. The Commission staff will seek the appointment of a tax administrator to establish a reserve for taxes and related administrative expenses. After establishing and withholding the reserve, the remaining amount in the Fair Fund will be transferred to the Kurr Foundation, the entity harmed by the conduct described above.

Accordingly, it is ORDERED that:

- A. After the receipt of the funds simultaneously ordered in this proceeding, a tax administrator will be appointed to establish a reserve for taxes and administrative expenses.
- B. After withholding the reserve amount, the remaining Fair Fund shall be disbursed to the Kurr Foundation.
- C. Any undistributed funds will be remitted to the general fund of the United States Treasury subject to Exchange Act Section 21F(g)(3).

By the Commission.

Vanessa A. Countryman
Secretary