

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**

**Release No. 89024 / June 5, 2020**

**ADMINISTRATIVE PROCEEDING**

**File No. 3-18909**

<b>In the Matter of</b>	:	
	:	<b>ORDER APPROVING</b>
	:	<b>APPLICATION OF FUND</b>
	:	<b>ADMINISTRATOR FOR PAYMENT</b>
<b>Fifth Street Management, LLC</b>	:	<b>OF FEES AND EXPENSES AND</b>
	:	<b>APPROVAL OF FUTURE FEES AND</b>
	:	<b>EXPENSES</b>
<b>Respondent.</b>	:	

On December 3, 2018, the Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Section 21C of the Securities Exchange Act of 1934, Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, and Section 9(f) of the Investment Company Act of 1940 Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (the “Order”)<sup>1</sup> against Fifth Street Management, LLC (“Fifth Street”). In the Order, the Commission found, in relevant part, that, in 2013 and 2014, Fifth Street improperly allocated to Fifth Street’s former BDC clients -- Fifth Street Finance Corp. (“FSC”) and Fifth Street Senior Floating Rate Corp. (“FSFR”) (collectively, the “BDC Clients”) -- rent and other overhead expenses, and certain compensation expenses that Fifth Street should have paid. The Commission ordered Fifth Street to pay disgorgement of \$1,999,115.86, prejudgment interest of \$334,545.65, and a civil money penalty of \$1,650,000.00, and created a Fair Fund (the “Fair Fund”), pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, so the penalties, along with the disgorgement and prejudgment interest, paid could be distributed to investors harmed by the Respondent’s conduct described in the Order.

Fifth Street has paid in full and the funds have been deposited in an interest-bearing account at the U.S. Treasury’s Bureau of Fiscal Service. The Fair Fund, comprised of the disgorgement, prejudgment interest, and civil money penalty paid, together with interest, currently holds approximately \$4 million.

On April 18, 2019, the Commission issued an order appointing Epiq Class Action & Claims Solutions, Inc. as the Fund Administrator of the Fair Fund (“Epiq” or “Fund Administrator”) and setting the administrator’s bond at \$3,983,661.51.<sup>2</sup>

<sup>1</sup> Securities Act Rel. No. 10581 (Dec. 3, 2018).

<sup>2</sup> Order Appointing Fund Administrator and Setting Administrator Bond Amount, Exchange Act Rel. No.85684 (Apr. 18, 2019).

On June 24, 2019, the Secretary, pursuant to delegated authority, published a Notice of Proposed Plan of Distribution and Opportunity for Comment,<sup>3</sup> and simultaneously posted the Proposed Plan of Distribution (the “Proposed Plan”), pursuant to Rule 1103 of the Commission’s Rules on Fair Fund and Disgorgement Plans (the “Commission’s Rules”).<sup>4</sup> The Notice provided a 30-day comment period. The Commission received no comments and on August 1, 2019, the Commission issued an order approving the Plan<sup>5</sup> and simultaneously posted the approved Plan.

The Plan contemplates that the Fund Administrator’s fees and expenses will be paid from the Fair Fund.<sup>6</sup> In accordance with Rule 1105(d) of the Commission’s Rules, 17 C.F.R. § 201.1105(d), the Fund Administrator has submitted to the Commission staff four invoices for services rendered from its appointment in April 2019 through January 2020, totaling \$318,766.00. The Commission staff has reviewed the Fund Administrator’s invoices, confirmed that the services have been provided, and finds the fees and expenses of \$318,766.00 to be reasonable. The Commission staff has requested that the Commission authorize the Office of Financial Management (“OFM”) to pay the Fund Administrator’s current fees and expenses of \$318,766.00 from the Fair Fund.

Additionally, to expedite and streamline the process for future payments, the Commission staff has requested that the Commission authorize OFM, at the direction of the Assistant Director of the Office of Distributions, to pay the Fund Administrator’s future fees and expenses 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, pursuant to Rule 1105(d) of the Commission’s Rules, 17 C.F.R. § 201.1105(d), that OFM pay the Fund Administrator’s current fees and expenses of \$318,766.00 from the Fair Fund. Further, OFM is authorized to pay, at the direction of the Assistant Director of the Office of Distributions, any future fees and expenses of the Fund Administrator 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.

By the Commission.

Vanessa A. Countryman  
Secretary

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<sup>3</sup> Exchange Act Rel. No. 86190 (June 24, 2019).

<sup>4</sup> 17 C.F.R. § 201.1103.

<sup>5</sup> Exchange Act Rel. No. 86551 (Aug. 1, 2019).

<sup>6</sup> Plan, <https://www.sec.gov/litigation/admin/2019/34-86551-dp.pdf>, at ¶ 6.