UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 102119 / January 6, 2025

ADMINISTRATIVE PROCEEDING
File No. 3-20448

In the Matter of	:	**ORDER AUTHORIZING THE TRANSFER TO THE U.S. TREASURY OF THE REMAINING FUNDS AND ANY FUNDS RETURNED TO THE FAIR FUND IN THE FUTURE AND TERMINATING THE FAIR FUND**
First Heartland Consultants, Inc.,	:	
Respondent.	:	

On August 2, 2021, the Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to 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 (the "Order")[1] against First Heartland Consultants, Inc. (the "Respondent"). In the Order, the Commission found that the Respondent, a registered investment adviser, breached its fiduciary duty to advisory clients by failing to disclose three types of compensation paid to Respondent's affiliated broker. According to the Order, since at least January 2014, Respondent's affiliated broker received revenue sharing payments from an unaffiliated clearing broker ("Clearing Broker") because of Respondent's advisory clients' investments in certain mutual funds, including certain cash sweep money market mutual funds. The mutual funds and money market funds that resulted in revenue sharing payments were generally more expensive than lower-cost options available to clients, including in many instances when there were lower-cost share classes of the same mutual funds available to clients that did not result in any revenue sharing. The Commission also found that, since at least January 2014, Respondent's affiliated broker received compensation resulting from the mark-up of several Clearing Broker fees charged to Respondent's advisory clients. According to the Order, the Respondent did not adequately disclose to advisory clients both revenue sharing and fee mark-ups that were paid to its affiliated broker as well as the associated conflicts of interest. Further, the Commission found that the Respondent breached its duty to seek best execution by causing certain advisory clients to invest in share classes of mutual funds that paid revenue sharing when share classes of the same funds were available to the clients that presented a more favorable value for these clients under the circumstances in place at the time of the transactions. Finally, the Commission found that Respondent failed to adopt and implement written compliance policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder in

[1] Advisers Act Rel. No. 5812 (Aug. 2, 2021).

connection with its mutual fund share class selection, money market cash sweep revenue sharing, and fee mark-up practices.

The Commission ordered the Respondent to pay $745,941.91 in disgorgement, $99,586.41 in prejudgment interest, and a $200,000.00 civil money penalty, for a total of $1,045,528.32. The Commission also created a Fair Fund, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, so the civil penalty, along with the disgorgement and prejudgment interest, could be distributed to harmed investors (the "Fair Fund").

Pursuant to the Order, the Respondent was responsible for administering the Fair Fund at its own expense pursuant to a calculation specified in the Order. After removing *de minimis* payments aggregating to $6,745.31, the Respondent distributed $1,038,783.01 to 7,669 Affected Advisory Clients of which $1,001,368.66 was successfully distributed to 7,369 Affected Advisory Clients. The residual in the Fair Fund after these efforts is $44,159.66, comprised of $6,745.31 in *de minimis* payments, $16,500.52 in undelivered funds, and $20,913.83 in uncashed checks.

The Order further required the Respondent to provide a final accounting of the Fair Fund to the Commission staff for submission to the Commission for approval. According to the Order, upon approval of the final accounting by the Commission, all remaining amounts in the Fair Fund that are infeasible to return to investors, and any funds returned in the future that are infeasible to return to investors, are to be sent to the general fund of the U.S. Treasury. The final accounting has been submitted to the Commission for approval, as required by the Order, and has been approved.

Accordingly, it is ORDERED that:

A. the remaining funds in the amount of $44,159.66 that are infeasible to return to investors, and any funds returned to the Fair Fund in the future that are infeasible to return to investors, shall be transferred to the U.S. Treasury, subject to Section 21F(g)(3) of the Securities Exchange Act of 1934; and

B. the Fair Fund is terminated.

By the Commission.

Vanessa A. Countryman
Secretary