



GRANTED

EFiled: Nov 22 2023 12:36PM EST
Transaction ID 71472996
Case No. 2019-0519-NAC



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE MPM HOLDINGS INC.
APPRAISAL AND STOCKHOLDER
LITIGATION

CONSOLIDATED
C.A. No. 2019-0519-NAC

[PROPOSED] SCHEDULING ORDER

WHEREAS, a consolidated stockholder class action and appraisal petition is pending in this Court entitled *In re MPM Holdings Inc. Appraisal and Stockholder Litigation*, Consol. C.A. No. 2019-0519-NAC (the “Action”);

WHEREAS, (i) Lead Plaintiff Frank Funds, on behalf of itself and the Class (“Plaintiff”); (ii) MPM Holdings Inc. (“MPM,”); (iii) John G. Boss, Samuel Feinstein, Robert Kalsow-Ramos, Scott M. Kleinman, Jeffrey M. Nodland, and Marvin O. Schlanger (“Individual Defendants”); and (iv) Defendants Apollo Global Management, Inc. (“AGM”), Apollo Management Holdings GP, LLC, and Euro VI (BC) S.A.R.L. (“Fund VI”) (collectively, “Apollo Defendants,” together with the Individual Defendants, “Defendants,” and Defendants collectively with MPM and Plaintiff, the “Settling Parties”) have determined to settle all class claims asserted against Defendants in the Action and dismiss them with prejudice on the terms and conditions set forth in the Stipulation and Agreement of Settlement, Compromise, and Release entered into by the Settling Parties dated November 17, 2023 (the “Stipulation”);

WHEREAS, on November 13, 2020, the Court granted an Order for Consolidation, Coordination, and to Designate Lead Plaintiffs and Lead Counsel for Class Claims;

WHEREAS, on August 1, 2023, the Court granted an Order Granting Motion to Withdraw as Co-Lead Plaintiffs and Co-Lead Counsel, through which co-lead Plaintiffs for the Class, (i) Highland Global Allocation Fund, Highland Income Fund f/k/a Highland Floating Rate Opportunities Fund, Highland Opportunistic Credit Fund, a series of Highland Funds I, Highland Small-Cap Equity Fund, a series of Highland Funds II, NexPoint Strategic Opportunities Fund f/k/a NexPoint Credit Strategies Fund, and NexPoint Capital, Inc. f/k/a NexPoint Capital LLC; and (ii) Three Court Master L.P., and co-lead counsel for the class, Rolnick Kramer Sadighi LLP and Heyman Enerio Gattuso & Hirzel LLP withdrew as co-lead Plaintiffs and co-lead Plaintiff's counsel for the class;

WHEREAS, on October 18, 2023, the Settling Parties reached agreement on the following class of MPM stockholders (the "Class"):

All record holders and beneficial owners of MPM common stock (except for Excluded Persons, as defined herein) who held such shares as of May 15, 2019 (the date of the Merger's closing), together with their heirs, assigns, transferees, and successors-in-interest. Excluded from the Class are: (i) any Apollo Defendant, Individual Defendant or dismissed party and their immediate family members, investors, partners, limited partners, legal representatives, heirs, estates, successors, or assigns; (ii) any entity in which any Apollo Defendant, Individual Defendant or dismissed party has a majority voting stake; (iii) BCIM Strategic Value Master Fund, LP; (iv) OCM Opps MTIV

Holdings, LLC and any other fund or entity through which Oaktree Capital Management, L.P. held MPM common stock; (v) directors and officers of MPM at any time between September 11, 2018 (the date on which the MPM Board of Directors voted to approve the Merger) and May 15, 2019 (the date of the Merger’s closing) and their immediate family members; and (vi) all record holders or beneficial owners of MPM common stock that held MPM Senior Notes (each an “Excluded Person”). For the avoidance of doubt, the “Class” includes Highland Global Allocation Fund; Highland Income Fund f/k/a Highland Floating Rate Opportunities Fund; Highland Opportunistic Credit Fund, a series of Highland Funds I; Highland Small-Cap Equity Fund, a series of Highland Funds II; NexPoint Strategic Opportunities Fund f/k/a NexPoint Credit Strategies Fund; NexPoint Capital, Inc. f/k/a NexPoint Capital LLC, and Three Court Master L.P (the “Petitioners”).

WHEREAS, in accordance with the Stipulation, the Settling Parties have made an application, pursuant to Court of Chancery Rule 23, for entry of this scheduling order in accordance with the Stipulation, approving the form and content of the notice of the Settlement to the Class, and scheduling the date and time for the Settlement Hearing; and

WHEREAS, the Court having read and considered the Stipulation and the exhibits attached thereto; the Stipulation being sufficient to warrant notice to the Class; and all Settling Parties having consented to the entry of this Order:

NOW THEREFORE, IT IS HEREBY ORDERED, this ___ day of _____, 2023, as follows:

1. **Definitions:** Unless otherwise defined herein, capitalized terms used herein shall have the same meanings given to them in the Stipulation.

2. **Jurisdiction:** The Court has jurisdiction over the subject matter of the Action, and all matters relating to the Settlement, as well as personal jurisdiction over the Settling Parties, and each of the Class Members.

3. **Provisional Certification of Class, Class Representative, and Class Counsel:** Solely for purposes of effectuating the proposed Settlement, and pending the Settlement Hearing (defined below), the putative Class is provisionally certified as a non-opt-out class under Court of Chancery Rules 23(a), 23(b)(1), and 23(b)(2), Frank Funds is preliminarily appointed as Class Representative for the Class, and Labaton Sucharow LLP and Anderson Sleater Sianni LLC are provisionally certified as Co-Lead counsel for the Class.

4. **Settlement Hearing:** The Court will hold a Settlement Hearing (the “Settlement Hearing”) on February 23, 2024 at 11:00 a.m., at the Court of Chancery, Leonard L. Williams Justice Center, 500 North King Street, Wilmington, Delaware 19801, or as may be undertaken via a remote proceeding such as Zoom or by telephone, to:

- (a) determine whether to permanently and finally certify the Class as a non-opt out class under Court of Chancery Rules 23(b)(1) and/or 23(b)(2) for purposes of the Settlement;

(b) determine whether the proposed Settlement on the terms and conditions provided for in the Stipulation is fair, reasonable, and adequate to the Class, and should be approved by the Court;

(c) determine whether a Judgment substantially in the form attached as **Exhibit D** to the Stipulation should be entered dismissing the Class Claims with prejudice against Defendants;

(d) determine whether the proposed Plan of Allocation of the Net Settlement Fund is fair and reasonable, and should therefore be approved;

(e) determine whether the application by Plaintiff's Counsel for an award of attorneys' fees and litigation expenses should be approved;

(f) determine any objections to the proposed Settlement, the certification of the Class, and Plaintiff's Counsel's fee and expense application; and

(g) consider any other matters that may properly be brought before the Court in connection with the Settlement.

Notice of the Settlement and the Settlement Hearing shall be given to Class Members as set forth in Paragraph 6 of this Order.

5. The Court may adjourn the Settlement Hearing without further notice to the Class, and may approve the proposed Settlement with such modifications as the Settling Parties may agree to, if appropriate, without further notice to the Class.

6. **Retention of Settlement Administrator and Manner of Notice:**

Plaintiff's Counsel are hereby authorized to retain A.B. Data, Ltd. as the settlement administrator (the "Settlement Administrator") to provide notice to the Class and administer the Settlement, including the distribution of the Net Settlement Fund.

Notice of the Settlement and the Settlement Hearing shall be given as follows:

(a) Within five (5) business days of the date of entry of this Order, MPM will provide or cause to be provided to Plaintiff's Counsel, at no cost to the Settlement Fund, Plaintiff, Plaintiff's Counsel or the Settlement Administrator, in electronic format, the stockholder register from MPM's transfer agent containing (to the extent available) the names, mailing addresses and email addresses for all record holders of MPM common stock at the Closing (the "Class Member Records") described in Paragraph 2(b) of the Stipulation;

(b) Not later than sixty (60) calendar days prior to the Settlement Hearing (the "Notice Date"), the Settlement Administrator shall cause a copy of the Notice, substantially in the form attached to the Stipulation as **Exhibit B**, to be mailed by first-class mail or other mail service if mailed outside the U.S., postage pre-paid, to all potential Class Members who are record stockholders at their last known address appearing in the Class Member Records; all potential Class Members who are record holders of MPM

common stock on behalf of beneficial owners shall be directed to forward the Notice promptly to the beneficial owners of MPM common stock via electronic mailing;

(c) not later than the Notice Date, the Settlement Administrator shall post a copy of the Notice on the website established for the Settlement;

(d) not later than ten (10) business days after the Notice Date, the Settlement Administrator shall cause a copy of the Summary Notice, substantially in the form attached to the Stipulation as **Exhibit C**, to be published in *Investor's Business Daily* and transmitted over the Business Wire.

(e) not later than ten (10) calendar days prior to the Settlement Hearing, Plaintiff's Counsel shall serve on Defendants' Counsel and file with the Court proof, by affidavit or declaration, of compliance with Paragraph 5(b)-(d) above.

7. **Approval of Form and Content of Notice:** The Court (a) approves, as to form and content, the Notice, attached to the Stipulation as **Exhibit B**, and (b) finds that the mailing, publication, and internet distribution of the Notice and Summary Notice in the manner and form set forth in Paragraph 6 of this Order: (i) are the best notice practicable under the circumstances; (ii) constitute notice that is reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Action, of the effect of the proposed Settlement (including the

Releases to be provided thereunder), the Proposed Plan of Allocation, of Plaintiff's counsel's application for an award of attorneys' fees and litigation expenses, of their right to object to the Settlement, and/or their right to appear at the Settlement Hearing; (iii) constitute due, adequate, and sufficient notice to all persons and entities entitled to receive notice of the proposed Settlement; and (iv) satisfy the requirements of Court of Chancery Rule 23, the United States Constitution (including the Due Process Clause), and all other applicable laws and rules. The date and time of the Settlement Hearing shall be included in the Notice before they are mailed, posted, and published, respectively.

8. **Nominees Procedures:** Brokers and other nominees that held shares of MPM common stock as record holders for the benefit of another person or entity are directed to promptly send the Notice to all beneficial owners by electronic mailing. To the extent a broker or other nominee asserts that it needs additional copies of the Notice for mailing, then the broker or nominee may either (a) within seven calendar days of receipt of the Notice, request from the Settlement Administrator sufficient copies of the Notice to forward to all such beneficial owners and within seven calendar days of receipt of those Notices forward them to all such beneficial owners; or (b) within seven calendar days of receipt of the Notice, send a list of the names, addresses, and, if available, email addresses, of all such beneficial owners to the Settlement Administrator, in which event the Settlement Administrator shall promptly mail or

email the Notice to such beneficial owners; provided that if Plaintiff's Counsel determine that the costs of providing copies of and/or mailing the Notice to beneficial owners pursuant to subparagraphs 8(a) or 8(b) above is economically unreasonable and/or against the interests of the Class, they shall promptly alert the Court and seek relief. Upon full compliance with this Order, such nominees may seek reimbursement of their reasonable expenses actually incurred in complying with this Order by providing the Settlement Administrator with proper documentation supporting the expenses for which reimbursement is sought. In determining whether a nominee's expenses are reasonable, a reimbursement of \$0.05 per mailing or email record provided shall be considered the maximum for any research and administrative costs and \$0.50 per Notice mailed shall be considered the maximum for postage costs for nominees who mail Notices to the beneficial owners. Such properly documented expenses incurred by nominees in compliance with the terms of this Order shall be paid from the Settlement Fund, with any disputes as to the reasonableness or documentation of expenses incurred subject to review by the Court.

9. Brokers and other nominees that hold securities in their name on behalf of a beneficial owner are hereby ordered to provide information deemed necessary by the Settlement Administrator to assist eligible Class Members in connection with determining their entitlement to the Net Settlement Fund and to distribute the Net

Settlement Fund consistent with the terms of the Plan of Allocation (or such other plan of allocation approved by the Court).

10. **Appearance at Settlement Hearing and Objections:** Unless the Court orders otherwise, any Class Member may enter an appearance in the Action, at his, her or its own expense, individually or through counsel of his, her or its own choice, by filing with the Register in Chancery and delivering a notice of appearance to counsel for Plaintiff and Defendants, at the addresses set forth in Paragraph 11 below, such that it is received no later than fifteen calendar days prior to the Settlement Hearing, or as the Court may otherwise direct. Any Class Member who does not enter an appearance will be represented by Plaintiff's Counsel, and shall be deemed to have waived and forfeited any and all rights he, she, or it may otherwise have to appear separately at the Settlement Hearing.

11. Any Class Member may file a written objection to the proposed Settlement, Plan of Allocation, and/or Plaintiff's counsel's application for an award of attorneys' fees and litigation expenses, and appear and show cause, if he, she, or it has any cause why the proposed Settlement, Plan of Allocation, and/or the application for attorneys' fees and litigation expenses should not be approved; *provided, however*, that, unless otherwise directed by the Court for good cause shown, no Class Member shall be heard or entitled to contest the approval of the terms and conditions of the proposed Settlement and/or the application for attorneys'

fees and litigation expenses, unless that person or entity has filed a written objection with the Register in Chancery and served copies of such objection on Plaintiff's Counsel and Defendants' Counsel at the addresses set forth below such that they are received no later than fifteen (15) calendar days prior to the Settlement Hearing, with copies also emailed to such counsel's listed email addresses.

If to Plaintiff or Plaintiff's Counsel: LABATON SUCHAROW LLP
Attn: Ned Weinberger
222 Delaware Avenue, Suite 1510
Wilmington, DE 19801
nweinberger@labaton.com

If to Defendants or MPM: POTTER ANDERSON & CORROON LLP
Attn: Kevin R. Shannon
1313 N. Market Street, 6th Floor
Wilmington, DE 19801
kshannon@potteranderson.com

O'MELVENY & MYERS LLP
Attn: Jonathan Rosenberg
7 Times Square
New York, NY 10036
jrosenberg@omm.com

PAUL, WEISS, RIFKIND, WHARTON &
GARRISON LLP
Attn: Daniel A. Mason
500 Delaware Avenue, Suite 200
P.O. Box 32
Wilmington, DE 19899
dmason@paulweiss.com

12. Any objections, filings, and other submissions by the objecting Class Member: (a) must state the name, address, and telephone number of the person or entity objecting and, if represented by counsel, the name, address, and telephone number of his, her, or its counsel; (b) must be signed by the objector; (c) must contain a written, specific statement of the Class Member's objection or objections, and the specific reasons for each objection, including any legal and evidentiary support the Class Member wishes to bring to the Court's attention; (d) must state the objection is being filed with respect to "*In re MPM Holdings Inc. Appraisal and Stockholder Litigation*, Consol. C.A. No. 2019-0519-NAC"; and (e) must include documentation sufficient to prove that the objector is a member of the Class. Documentation establishing membership in the Class must consist of copies of monthly brokerage account statements or an authorized statement from the objector's broker containing the transactional and holding information found in an account statement.

13. Unless the Court orders otherwise, any Class Member who or which does not make his, her, or its objection in the manner provided herein shall (a) be deemed to have waived and forfeited his, her, or its right to object to any aspect of the proposed Settlement, Plan of Allocation, or Plaintiff's counsel's application for an award of attorneys' fees and litigation expenses; (b) be forever barred and foreclosed from objecting to the fairness, reasonableness, or adequacy of the Settlement, the Judgment to be entered approving the Settlement, the Plan of Allocation, or the attorneys' fees

and litigation expenses requested or awarded; and (c) be deemed to have waived and forever barred and foreclosed from being heard, in this or any other proceeding, with respect to any matters concerning the Settlement, the Plan of Allocation, or the requested or awarded attorneys' fees and litigation expenses.

14. **Stay and Temporary Injunction:** Until otherwise ordered by the Court, the Court stays all proceedings, discovery, or activity in the Action (including without limitation any proceedings, discovery, or activity related to Petitioner's breach of fiduciary duty, aiding and abetting breach of fiduciary duty, or appraisal claims) other than proceedings necessary to carry out or enforce the terms and conditions of the Stipulation. Pending final determination by the Court of whether the Settlement should be approved, the Court bars and enjoins Plaintiff, and all other members of the Class, from instituting, commencing, or prosecuting any and all of the Released Plaintiff's Claims against any and all of the Released Defendant Parties.

15. **Settlement Fund:** The Settlement Fund and the Account shall be deemed and considered to be *in custodia legis* of the Court, and shall remain subject to the exclusive jurisdiction of the Court, until such time as the Settlement Fund shall be distributed pursuant to the Stipulation and/or further order(s) of the Court.

16. **Notice and Administrative Costs:** All Notice and Administrative Costs shall be paid as set forth in the Stipulation without further order of the Court.

17. **Taxes:** Plaintiff's Counsel are authorized and directed to prepare any tax returns and any other tax reporting form for or in respect to the Settlement Fund, to pay from the Settlement Fund any Taxes owed with respect to the Settlement Fund, and to otherwise perform all obligations with respect to Taxes and any reporting or filings in respect thereof without further order of the Court in a manner consistent with the provisions of the Stipulation.

18. **Termination of Settlement:** If the Settlement is terminated as provided in the Stipulation, this Order shall be vacated, rendered null and void, and be of no further force and effect, except as otherwise provided by the Stipulation, and this Order shall be without prejudice to the rights of Plaintiff, the other Class Members, and Defendants, and Plaintiff and Defendants shall revert to their respective positions in the Action immediately before October 18, 2023, as provided in the Stipulation.

19. **Supporting Papers:** Plaintiff's Counsel shall file and serve the opening papers in support of the proposed Settlement, Plan of Allocation, and Plaintiff's Counsel's application for an award of attorneys' fees and litigation expenses no later than thirty (30) calendar days prior to the Settlement Hearing. Any objections to the Settlement, Plan of Allocation, and/or the application for an award of attorneys' fees and litigation expense shall be filed and served no later than fifteen (15) calendar days prior to the Settlement Hearing. If any such objections are

received, reply papers are to be filed and served no later than five (5) calendar days prior to the Settlement Hearing.

20. **Retention of Jurisdiction:** The Court retains exclusive jurisdiction to consider all further applications arising out of or connected with the proposed Settlement.

21. **No Admission:** The Stipulation and any and all negotiations, statements, or proceedings in connection therewith are not and shall not be deemed to constitute a presumption, concession, or an admission by any Defendant in the Action of any fault, liability, damages, or wrongdoing as to any facts or claims alleged or asserted in the Action or any other actions or proceeding. The provisions contained in the Stipulation shall not be interpreted, construed, deemed, invoked, offered, or received in evidence or otherwise used by any person in the Action, or in any other action or proceeding, whether civil, criminal, or administrative, except in connection with any proceeding to enforce the terms of the Settlement or to effectuate the releases and dismissal with prejudice contained therein.

22. The Court may, for good cause shown, extend any of the deadlines set forth in this Order without further notice to anyone other than the parties to the Action and any Objectors.

SO ORDERED this ____ day of _____, 2023.

Vice Chancellor Nathan A. Cook

This document constitutes a ruling of the court and should be treated as such.

Court: DE Court of Chancery Civil Action

Judge: Nathan A Cook

File & Serve

Transaction ID: 71462079

Current Date: Nov 22, 2023

Case Number: 2019-0519-NAC

Case Name: CONF ORD ON DISC - CONS W/ 2019-0521-JTL, 2019-0565-JTL, 2020-0130-JTL - IN
RE APPRAISAL OF MPM HOLDINGS INC. APPRAISAL AND STOCKHOLDER
LITIGATION

/s/ Judge Nathan A Cook