



**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

B.E. CAPITAL MANAGEMENT )  
FUND LP, )  
                                  Petitioner, )  
                                  ) )  
                                  - against - ) C.A. No. 12843-VCL  
                                  ) )  
FUND.COM INC., )  
                                  ) )  
                                  Respondent. )

**RECEIVER'S INITIAL REPORT**

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Thomas Braziel, as Receiver (“Receiver”) of Fund.com Inc. (the “Company”) submits this initial report pursuant to Rule 161.

### **THE COMPANY**

Fund.com Inc. (the “Company”) was a vehicle for a pump-and-dump scheme perpetrated by Jason Galanis, a securities fraud recidivist, between 2007 and 2011. The Company stated in its SEC filings that it was formed in September 2007 and was capitalized with a \$20 million CD held at an Antiguan Bank and the fund.com URL (the “URL”) which it purchased in October 2007 for \$10 million. The Company marketed its publicly traded Class A shares by holding itself out as a well-capitalized FinTech company, but in reality the Company was just a holding company for the URL and several financial services companies it purchased interests in, most notably AdvisorShares Investments, LLC, an ETF sponsor it purchased a 60% stake of in October 2008 and which now has approximately \$1.2 billion under management.

The price of the Company’s Class A shares climbed as high as \$546/share in July 2008. However, subsequently the share price collapsed, the Company announced the CD would need to be written down and its financial statements had to be restated, the Company failed to restate its financials and ceased companying with SEC reporting obligations, and the SEC commenced an investigation into whether the CD was fictitious.

## **PROCEDURAL HISTORY**

B.E. Capital Management Fund LP commenced this action in October 2016 because David Berke, the Company's purported sole director and officer, settled litigation the Company commenced against AdvisorShares in New York County Supreme Court (Index No. 650321/2012) in October 2015, consented to the sealing of the settlement, and refused to tell public shareholders whether or when they would receive settlement proceeds. Upon the filing of a petition for the appointment of a receiver, Berke consented to the relief sought therein, and an order granting B.E. Capital's default judgment motion and appointing the Receiver was entered on November 29, 2016.

## **ACTIONS TAKEN BY RECEIVER**

### **I. MARSHALLING OF BOOKS AND RECORDS**

Efforts undertaken by the Receiver and his counsel to marshal the Company's books and records include reviewing the Company's SEC filings, reviewing court filings in other actions involving Galanis and persons associated with the Company, reviewing Berke's e-mails and hard copy documents provided by Berke concerning the Company, reviewing Company-related records and e-mails in the possession of its counsel in the AdvisorShares litigation, reviewing other records provided to the Receiver by the Company's former professionals, and interviewing and e-mailing with Berke, the Company's former directors, officers, and professionals, and persons identified in the SEC filings.

## **II. RULE 151 INVENTORY AND LISTS; BAR DATE**

The Receiver filed the inventory and lists required by Rule 151, as modified by orders of this Court, and obtained entry of an order setting a deadline for filing claims in this proceeding. Copies of the inventory and lists, bar date order, and other court filings have been posted on the website established by the Receiver to keep stakeholders apprised of this proceeding, <http://www.fndmreceivership.com>.

## **III. URL INVESTIGATION**

Either shortly before or promptly after Berke's "appointment" in March 2014,<sup>1</sup> Galanis caused the URL to be transferred to a company he owned and controlled, and then caused that company to flip the URL to a third party shell controlled by a known Galanis associate, Fund Alliance Corporation, which purchased the URL using borrowed money, to raise cash to pay attorneys' fees Galanis owed to his criminal defense attorneys, Murphy, Pearson, Bradley & Feeney, Inc., a Professional Corporation. The Receiver intends to seek recovery of the URL or the value thereof from its current owner.

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<sup>1</sup> Berke's "appointment" was ineffective because it was effected pursuant to instruments signed by Robert Levin, the predecessor sole director and officer who Galanis attempted to install for the purpose of initiating the AdvisorShares litigation. The instruments purporting to effect Levin's (and Berke's) appointment were ineffective because they did not satisfy the requirements of Delaware law.

#### **IV. ADVISORSHARES**

Pursuant to the AdvisorShares settlement signed by Berke, AdvisorShares agreed to make four payments to the Company: a \$700,000 “initial” payment made on or about October 29, 2015, a \$1.3 million “installment 1 payment” made on or about March 12, 2016, and two subsequent payments of \$1.5 million and \$1 million. The engagement letter between the Company and its counsel of record in the AdvisorShares action (Gross & Klein LLP), signed on the Company’s behalf by Levin and Berke, provides for such counsel to be paid a 33% contingent fee from gross recoveries.

From the initial payment, \$662,500 was used to repay a litigation finance lender, LexStone Fund L.P. \$8,000 was paid to Berke individually, with the balance paid to Gross & Klein.

On February 29, 2016, just two weeks before the installment 1 payment deadline, Murphy Pearson sent Berke a letter demanding he turn over the AdvisorShares settlement proceeds to satisfy the Company’s purported indebtedness to IP Global Investors, Ltd., a purported lender to the Company that Galanis owned and controlled. Then on March 10, 2016, Murphy Pearson e-mailed Berke a form of unanimous written consent for him to execute, purporting to authorize the disbursement of settlement proceeds to IP Global, together with “sample irrevocable payment instructions” to send to Gross & Klein, as initial settlement proceeds

recipients. On the same date, Berke sent Gross & Klein purportedly irrevocable payment instructions directing them to distribute \$633,643.93 to themselves, \$197,000 to Berke, and approximately \$470,000 to IP Global. The letter instructions further provided all IP Global payments should be made directly to Murphy Pearson.

On his appointment, the Receiver revoked the foregoing payment instructions, which included instructions concerning the disbursement of future payments. In addition, following his appointment the Receiver moved to unseal the AdvisorShares settlement. The motion has been fully submitted. The hearing on the motion, which was held in December 2016, has been continued, and no decision has been rendered.

## **V. EQUITABLE SUBORDINATION OF GALANIS CLAIMS AND INTERESTS**

On February 8, 2017, the Receiver moved to equitably subordinate Galanis's right to payment on account of his loan claims and Preferred and Class B shares to that of Class A shareholders, on the grounds that Galanis abused his position as controlling shareholder to defraud Class A shareholders and loot the Company in contravention of his fiduciary duties. The relief, if granted, would result in the effective disallowance of the loan claims and Preferred and Class B shares. The motion was served on Galanis and his counsel of record in various civil and criminal actions then pending, and no opposition has been filed to date.<sup>2</sup>

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<sup>2</sup> On February 15, 2017, Galanis was sentenced to more than 11 years in prison for perpetrating another pump-and-dump scheme involving the stock of Gerova

## **ASSET RECOVERY**

The Receiver is investigating means for recovering the URL or the value thereof, as noted above. In addition, the Company's SEC filings stated it holds a 100% ownership interest in Vensure Employer Services, Inc., Weston Capital Management, LLC, and Whyte Lyon Socratic Inc., and an ownership interest in National Holdings Corporation. The Receiver is investigating the value of these interests and whether they can be monetized. For the avoidance of doubt, this disclosure is without prejudice to the Receiver's right to commence litigation against third parties to recover monetary damages or other property.

## **FINANCIAL**

### **I. RECEIVERSHIP BANK ACCOUNT**

The Receiver has opened one bank account for the receivership estate. Two deposits have been made to the receivership account to date: a roughly \$10,000 deposit from AdvisorShares settlement proceeds Berke paid himself, and \$335,000 in additional proceeds paid under the settlement. The Receiver expects to receive additional payments under the AdvisorShares settlement, as noted above.

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Financial Group, Ltd. Galanis has yet to be sentenced for his role in a \$60 million fraud involving Native American tribal bond debt.

## **II. FEES AND EXPENSES OF RECEIVER AND PROFESSIONALS**

The Company is a public shell and has no ownership expenses, save payment obligations to a transfer agent. The Receiver and his counsel have spent many hours engaged in the administration of the receivership estate. They have submitted an application for compensation and expenses totaling \$93,962.02 for the period November 29, 2016 through January 31, 2017, which application was approved by the Court on February 16, 2017. The Receiver's attorneys are also entitled to payment of up to \$20,000 for fees and expenses incurred in commencing the receivership action and obtaining a default judgment. In addition, the Receiver anticipates having to engage a tax accountant.

## CONCLUSION

Considerable progress has been made in the three months since the Receiver's appointment, although there is significant additional work to be done. The Receiver has and will continue to administer the receivership estate in a manner designed to maximize stakeholder recoveries.

Dated: February 27, 2017

KLEIN LLC

/s/ Julia B. Klein

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