

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-19123

In the Matter of

DENNIS GIBB and
SWEETWATER INVESTMENTS,
INC.

Respondents.

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PROPOSED PLAN OF
DISTRIBUTION

I. OVERVIEW

1. The Division of Enforcement (“Division”) has developed this Proposed Plan of Distribution (the “Plan”) pursuant to Rule 1101 of the Commission’s Rules on Fair Fund and Disgorgement Plans (“Rules”), 17 C.F.R. § 201.1101, for the distribution of the assets in the disgorgement fund established by the Commission in the captioned proceeding (the “Disgorgement Fund”). The Plan, pursuant to Rule 1102(a) of the Rules, 17 C.F.R. § 201.1102(a),¹ provides for the Disgorgement Fund, net any costs and expenses of administration, to be paid to the Court Registry Investment System (“CRIS”) account established in the related criminal action, *US v. Gibb*, 19-cr-059 (RSM) (W.D. Wash.) (the “Criminal Action”), for distribution to harmed investors in accordance with the restitution process in the Criminal Action. Distribution through the restitution process in the Criminal Action is fair and reasonable and a more efficient use of resources than would two separate distribution processes. The Plan is subject to approval by the Commission, and the Commission retains jurisdiction over the implementation of the Plan.

II. THE ADMINISTRATIVE PROCEEDING

2. On March 28, 2019, the Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to 8A of the Securities Act of 1933, Section 21C of the Securities Exchange Act of 1934, Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (the “Order”)² against

¹ Rule 1102(a) provides that “a plan for the administration of a . . . disgorgement fund may provide for payment of funds into a court registry . . . in any case pending in federal or state court against a respondent or any other person based upon a complaint alleging violations arising from the same or substantially similar facts as those alleged in the Commission’s order instituting proceedings.”

² Securities Act Rel. No. 10623 (Mar. 28, 2019).

Sweetwater Investments, Inc. (“Sweetwater”), a registered investment adviser, and Dennis Gibb (“Gibb”), Sweetwater’s founder and sole owner. In the Order, the Commission found that, from July 2007 to September 2018, Gibb stole more than \$3 million from Sweetwater Income Flood LP (“Income Flood”), a private fund managed by Sweetwater. The Commission found that, among other misrepresentations, Gibb inflated account values and Income Flood holdings in account statements and tax documents sent to investors, and in Forms ADV filed with the Commission. The Commission determined that, by this conduct, Gibb and Sweetwater (the “Respondents”) willfully violated, among other things, the antifraud provisions of the Securities Act of 1933, the Securities Exchange Act of 1934, and the Investment Advisers Act of 1940. The Commission ordered the Respondents to pay, jointly and severally, disgorgement of \$1,144,000 and prejudgment interest of \$20,747.40 to the Commission, but offset Gibb’s obligation by the amount of any criminal order of restitution entered against him.³ The Commission established the Disgorgement Fund so that any collected disgorgement and prejudgment interest could be distributed to harmed investors in accordance with a distribution plan to be approved by the Commission.

3. In the Order, Gibb voluntarily undertook to liquidate the securities in Income Flood’s brokerage account and cause Income Flood to gift all assets in the liquidated account to the Disgorgement Fund, pursuant to Section 308(b) of the Sarbanes-Oxley Act of 2002.

4. The Respondents have not paid any of the ordered disgorgement or prejudgment interest, but Gibb has completed his undertaking, resulting in a Disgorgement Fund balance of approximately \$1.77 million.

III. THE DISGORGEMENT FUND

5. The Disgorgement Fund is comprised of the \$1.77 million resulting from Gibb’s voluntary undertaking. Although the Commission does not expect any additional funds, any additional funds paid pursuant to the Order will become part of the Disgorgement Fund. The Disgorgement Fund is subject to the continuing jurisdiction and control of the Commission and is currently on deposit in a non-interest bearing account at the United States Department of Treasury (“U.S. Treasury”).

IV. THE CRIMINAL ACTION

6. On March 25, 2019, the United States Attorney for the Western District of Washington (“USAO”) filed an Information against Gibb in the Criminal Action, charging him with wire fraud in violation of 18 U.S.C. § 1343 and falsification of records in connection with a Commission Examination, 18 U.S.C. § 1519 (the “Information”). The allegations of the underlying fraud counts are substantially similar to the Commission’s findings in the Order, namely that Gibb was executing a scheme to defraud that resulted in his misappropriation of more than \$3 million from Income Flood investors.

³ Gibb’s sentencing in the Criminal Action is scheduled for June 28, 2019.

V. JOINT DISTRIBUTION OF THE DISGORGEMENT FUND AND CRIMINAL RESTITUTION FUND

7. In accordance with Rule 1102(a) of the Rules, 17 C.F.R. § 201.1102(a), the allegations in the Criminal Action arise from the same or substantially similar facts as those alleged in the Order. Both actions address the fraud perpetuated by Gibb through Income Flood. The harm addressed and the investors harmed in both actions are the same. The Division concludes that distributing the Disgorgement Fund through the Criminal Action's restitution process is fair and reasonable, because it reduces administrative costs, employs a more efficient use of resources to benefit investors harmed as a result of the Respondents' misconduct than would two separate distribution processes, and it should not materially increase the amount of time to return funds to injured investors.⁴

VI. PLAN ADMINISTRATION

8. Catherine E. Pappas, a Senior Adviser in the Commission's Division of Enforcement, will act as the fund administrator of the Plan (the "Fund Administrator"). As a Commission employee, the Fund Administrator shall receive no compensation from the Disgorgement Fund for her services in administering the Plan. In accordance with Rule 1105(c) of the Rules, 17 C.F.R. § 201.1105(c), no bond is required because the Fund Administrator is a Commission employee. The Fund Administrator will, among other things, oversee the administration of the Plan. In carrying out her duties, the Fund Administrator may be assisted by other Commission staff acting under her supervision.

9. The Fund Administrator shall cause all fees and expenses, if any, incurred in the administration of the Disgorgement Fund ("Administrative Costs") to be paid by the Disgorgement Fund.

10. Upon Commission approval of the Plan and issuance of an order authorizing transfer, the Fund Administrator will take all necessary steps to transfer the Disgorgement Fund net Administrative Costs to the CRIS account established in the Criminal Action for distribution to harmed investors in accordance with the restitution process in the Criminal Action. If the Disgorgement Fund receives additional funds, upon issuance of orders authorizing transfer, the Fund Administrator will take necessary steps to effect transfers of the additional funds, net Administrative Costs, to the CRIS account established in the Criminal Action for distribution to harmed investors until the Criminal Action is closed or no longer distributing funds to harmed investors.

⁴ Consistent with the approach used by district courts when considering whether to approve a distribution plan, the Commission's objective is to distribute the Disgorgement Fund in a fair and reasonable manner, taking into account relevant facts and circumstances. *See Official Committee of Unsecured Creditors of WorldCom, Inc. v. SEC*, 467 F.3d 73, 82 (2d Cir. 2006) (citing *SEC v. Wang*, 944 F.2d 80, 88 (2d Cir. 1991)). In *Wang*, the court held that "unless the consent decree specifically provides otherwise once the district court satisfies itself that the distribution of proceeds in a proposed SEC disgorgement plan is fair and reasonable, its review is at an end." *Wang*, 994 F.2d at 85 (citing *SEC v. Certain Unknown Purchasers of the Common Stock and Call Options for the Common Stock of Santa Fe Int'l Corp.*, 817 F.2d 1018, 1021 (2d Cir.1987)).

11. A residual account within the Disgorgement Fund is established for any amounts remaining after the completion of all distributions pursuant to paragraph 10 above, including any funds not sent to the Criminal Action or any funds returned to the Commission because of the completion of distributions in the Criminal Action. All funds remaining in the residual account will be transferred to the U.S. Treasury after the final accounting is approved by the Commission.

VII. TERMINATION OF THE DISGORGEMENT FUND

12. Upon completion of the final distribution to the CRIS account pursuant to paragraph 10, above, the Fund Administrator shall make arrangements for the payment of any unpaid Administrative Costs. The Disgorgement Fund shall be eligible for termination after all of the following have occurred: (a) a final accounting, in the Commission's standard accounting format, has been submitted by the Fund Administrator for approval, and has been approved, by the Commission; (b) all Administrative Costs have been paid; and (c) any amount remaining in the Disgorgement Fund has been received by the Commission. When the Commission has approved the final accounting, the Commission staff shall seek an order from the Commission to approve the: (a) transfer to the U.S. Treasury of any remaining funds in the Disgorgement Fund and any funds returned to the Disgorgement Fund in the future; (b) termination of the Disgorgement Fund; and (c) discharge of the Fund Administrator.

VIII. NOTICE AND COMMENT PERIOD

13. Notice of the Proposed Plan of Distribution and Opportunity for Comment ("Notice") will be published on the Commission website at <http://www.sec.gov/litigation/fairfundlist.htm>. Any person wishing to comment on the Plan must do so in writing by submitting their comments to the Commission within thirty (30) days of the date of the Notice: (a) to the Office of the Secretary, United States Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090; (b) by using the Commission's Internet comment form (<http://www.sec.gov/litigation/admin.shtml>); or (c) by sending an e-mail to rule-comments@sec.gov. Comments submitted by email or via the Commission's website should include "Administrative Proceeding File No. 3-19123" in the subject line. Comments received will be publicly available. Persons should only submit comments that they wish to make publicly available.