

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3449 / August 23, 2012

INVESTMENT COMPANY ACT OF 1940
Release No. 30181 / August 23, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-14995

In the Matter of

FRANCES M. GUGGINO
a/k/a FRANCES FAVATA

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS
PURSUANT TO SECTION 203(f) OF THE
INVESTMENT ADVISERS ACT OF 1940
AND SECTIONS 9(b) AND 9(f) OF THE
INVESTMENT COMPANY ACT OF 1940,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A CEASE-
AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”) and Sections 9(b) and 9(f) of the Investment Company Act of 1940 (“Investment Company Act”) against Frances M. Guggino a/k/a Frances Favata (“Guggino” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over her and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to and Section 203(f) of the Investment Advisers Act of 1940 and Sections 9(b) and 9(f) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

Frances M. Guggino, the former CFO and Treasurer of the Fixed Income Funds advised by Legg Mason Partners Fund Advisor, LLC, altered books and records of one of the mutual funds – specifically, a trial balance and Board Meeting Minutes – in order to convince others at Legg Mason & Co. (“Legg Mason”) that the fund had received an advancement in connection with a Commission Fair Fund distribution, when in fact, the fund had not.² Among the documents she altered were investment company documents required to be created and maintained pursuant to the Investment Company Act. Thus, Guggino's alteration of these documents constitutes a violation of Section 34(a) of the Investment Company Act.

Respondent

1. Respondent, aged 54, is a resident of Albrightsville, Pennsylvania. From 1999 until 2005, she was the Treasurer of the Citi and Salomon branded mutual funds at Citigroup, Inc. After these funds were acquired by Legg Mason in 2005, Guggino became the CFO and Treasurer of the Fixed Income Funds advised by Legg Mason Partners Fund Advisor, LLC. Guggino was employed by Legg Mason Partners Fund Advisor, LLC. She resigned in June of 2010, during the course of Legg Mason's internal investigation which ultimately revealed the document alteration. Guggino's married name is Frances Favata.

Facts

2. On May 31, 2005, the Commission instituted settled administrative and cease-and-desist proceedings against Smith Barney Fund Management LLC (“Smith Barney”) and Citigroup Global Markets, Inc. for violations of the federal securities laws. In the May 31, 2005 Order, the Commission found that Smith Barney, which served as investment adviser to the Smith Barney Family of Funds, placed its interest in making a profit ahead of the interests of the mutual funds it served in recommending a transfer agent to the Funds. See In the Matter of Smith Barney Fund Management LLC and Citigroup Global Markets, Inc., Admin. Proc. File No. 3-11935 (May 31, 2005) (“Order”). As part of the settlement of the matter, the Commission ordered the Respondents to pay disgorgement of \$109,004,551, plus prejudgment interest of \$19,055,630, and ordered that Smith Barney pay civil money penalties of \$80,000,000. In the Order, the Commission also

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

² Legg Mason Partners Fund Advisor, LLC is a wholly-owned subsidiary of Legg Mason & Co.

authorized the creation of a Fair Fund to distribute the disgorgement and penalty amounts pursuant to a distribution plan developed by the Respondents.

3. On April 15, 2010, the Plan of Distribution (“Plan”) in connection with this proceeding was approved by the Commission. (Rel. No. 34-61917) On May 12, 2010, the Commission issued an Order Directing Disbursement of a Fair Fund to disburse \$110,782,362.95 from the Fair Fund. (Rel. No. 34-62088).

4. On December 1, 2005, Citigroup Inc. completed the sale of substantially all of its asset management business to Legg Mason. On that date, Smith Barney became a wholly owned subsidiary of Legg Mason. On August 1, 2006, Smith Barney was replaced as investment manager or investment adviser with respect to the Funds for which it served in those capacities by Legg Mason Partners Fund Advisor, LLC, a newly formed entity.³ Legg Mason was the entity responsible for the distribution pursuant to the Plan.

5. The Plan provided for the distribution of disgorgement-related portions of the Fair Fund to mutual funds from the Smith Barney Family of Funds that engaged a Citigroup affiliate, Citicorp Trust Bank fsb or a predecessor entity (collectively, “CTB”), as their transfer agent and paid transfer agent fees to CTB between October 1, 1999, and November 30, 2004, or to successors to such Funds, in proportion to the total transfer agent fees paid to CTB by each fund or class of a Fund (subject to certain adjustments). Pursuant to the Plan, money was distributed to the asset bases of the Citi-related mutual funds through their custodian banks. These payments to the mutual funds were completed by May 26, 2010.

6. According to the Plan, in cases where the mutual funds entitled to a distribution were liquidated during the period when the Plan was still being negotiated, Legg Mason was to advance the money owed to those funds prior to their liquidation. According to representations made by Legg Mason at the time of the Plan’s publication, advancements had been made by Legg Mason to nine liquidating funds (“Subsequently Liquidated Funds”). Therefore, under the Plan, a portion of the distribution was to go to Legg Mason to reimburse it for those advancements. Pursuant to the Plan, the staff requested that a third-party, namely, the custodian bank of the Subsequently Liquidated Funds, provide a confirmation that the advancements had actually been received by those funds. The staff received what purported to be that confirmation, through counsel for Legg Mason, on April 15, 2010.

7. On May 12, 2010, the Commission issued an Order to Disburse \$110,782,362.95 from the Fair Fund (“Order to Disburse”). This amount included approximately \$2,154,125.58 to reimburse Legg Mason for its advancements to the Subsequently Liquidated Funds. After the Commission issued the Order to Disburse, the money from the Fair Fund was transferred to the custodian bank.

8. Shortly thereafter, the Commission staff learned through counsel for Legg Mason that despite having received what appeared to be a confirmation on the letterhead of the custodian bank stating that Legg Mason had advanced all the money to the nine Subsequently Liquidated

³ Smith Barney continued to serve as administrator to three Funds until October 19, 2006, whereupon it was replaced by Legg Mason as investment manager of those Funds.

Funds, not all of the advancements had been made. Specifically, two Subsequently Liquidated Funds, the Legg Mason Partners Capital Preservation II Fund (“Capital Preservation II Fund”) and the Legg Mason Partners Variable Government Portfolio (“Variable Government Fund”) should have received advance payments as described in paragraph 15 of the Plan, but did not.

9. The staff learned that Legg Mason never made the advance payments of approximately \$600,000 to the Capital Preservation II Fund and approximately \$16,000 to the Variable Government Fund as required by the Plan.⁴

10. On June 4, 2010, the staff learned that the custodian bank confirmation that it had received from Legg Mason, through its counsel, had been fabricated by and at the direction of the CFO and Treasurer for Legg Mason’s Fixed Income Funds, Frances Guggino.

11. As CFO and Treasurer for the Fixed Income Funds, Guggino was the person at Legg Mason responsible for ensuring that advances were made to the funds before liquidation; however, in the case of the Capital Preservation II Fund and Variable Government Fund, she failed to do so. Knowing that the Commission staff was seeking confirmation that the payments had been received, Guggino covered up her mistake by directing a subordinate to fabricate a confirmation from the custodian bank that made it appear that all the money had been properly advanced, including to the funds that had failed to receive the advances. Guggino then forwarded that fabricated confirmation to counsel for Legg Mason.

12. In anticipation of receiving the reimbursement from the Fair Fund, Legg Mason’s finance department searched for records indicating how much Legg Mason had advanced to each Subsequently Liquidated Fund. The finance department personnel could find no record of the approximately \$600,000 advancement purportedly made by Legg Mason to the Capital Preservation II Fund. The finance department personnel contacted Guggino for information on the advancement and received her confirmation that the advancement to the Capital Preservation II Fund had been made. In fact, however, as Guggino knew, the advancement had not been made.

13. In the course of her internal communications with Legg Mason employees concerning the advancement to the Capital Preservation II Fund, Guggino offered several different explanations about how the advancement had been made in spite of the fact that there was no evidence of the Capital Preservation II Fund having received the money.

14. In the course of her attempts to persuade finance department personnel that the advancement to the Capital Preservation II Fund had, in fact, been made, Guggino fabricated multiple documents. She altered emails by, for example, cutting and pasting text from one email into another or changing the text that had originally appeared in the email. Among the documents

⁴ The staff also learned that with respect to a third fund, the Legg Mason Partners Variable Equity Index Portfolio, Legg Mason made the advance payment of approximately \$30,500, but made it approximately a month after the fund liquidated so that the advanced money was not in fact included as part of the liquidation to fund investors. It appears another Legg Mason employee was responsible for the fact that this advancement not was not made timely.

she altered was a copy of the Capital Preservation II Fund's trial balance. She added entries to the trial balance to make it appear that the Capital Preservation II Fund had received the missing advancement. She then forwarded this altered trial balance to other Legg Mason employees in an effort to persuade them that the advancement had been made. When that attempt was not successful, she altered a copy of Board Meeting Minutes for the Capital Preservation and Capital Preservation II Funds, again to make it appear that the advancement to the Capital Preservation II Fund had been made. Both of these documents – the trial balance and the Board Meeting Minutes – are required books and records of the Capital Preservation II Fund.

15. Finance department personnel were not persuaded by Guggino's explanations and ultimately escalated the matter internally. Legg Mason hired counsel to conduct an investigation and promptly reported its findings to the staff.

Violations

16. Section 31(a) of the Investment Company Act and the rules promulgated thereunder require investment companies to maintain and preserve certain books and records. Rule 31a-1(b)(8) under the Investment Company Act requires that investment companies maintain trial balances. Rule 31a-1(b)(4) under the Investment Company Act requires investment companies to maintain, among other things, board meeting minutes. Section 34(a) of the Investment Company Act makes it unlawful for any person "willfully to destroy, mutilate, or alter any account, book, or other document the preservation of which has been required pursuant to section 31(a)..." When Guggino altered copies of these required records and forwarded them as accurate, contemporaneous records, she violated Section 34(a) of the Investment Company Act.

17. As a result of the conduct described above, Guggino willfully violated Section 34(a) of the Investment Company Act.

IV.

In view of the foregoing, the Commission deems it appropriate, in the public interest to impose the sanctions agreed to in Respondent's Offer.

Accordingly pursuant to Sections 9(b) and 9(f) of the Investment Company Act and Section 203(f) of the Advisers Act, it is hereby ORDERED that:

- A. Respondent Guggino cease and desist from committing or causing any violations and any future violations of Section 34(a) of the Investment Company Act.
- B. Respondent Guggino be, and hereby is, barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, and is prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor or principal underwriter. Any reapplication for association by Guggino will be subject

to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

C. Respondent Guggino shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of \$15,000 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Frances M. Guggino as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Andrew M. Calamari, Acting Regional Director, Division of Enforcement, Securities and Exchange Commission, 3 World Financial Center, New York, New York 10281.

By the Commission.

Elizabeth M. Murphy
Secretary