

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 81701 / September 25, 2017

ADMINISTRATIVE PROCEEDING
FILE No. 3-11393

In the Matter of

**MASSACHUSETTS FINANCIAL
SERVICES CO., JOHN W.
BALLEN AND KEVIN R. PARKE**

Respondents.

**ORDER AUTHORIZING THE
TRANSFER TO THE U.S. TREASURY
OF REMAINING FUNDS AND ANY
FUNDS RETURNED TO THE FAIR
FUND IN THE FUTURE,
DISCHARGING THE FUND
ADMINISTRATOR, AND
TERMINATING THE FAIR FUND**

On February 5, 2004, the United States Securities and Exchange Commission (“Commission”) issued an Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 203(e), 203(f), and 203(k) 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 (the “Order”)¹ against Massachusetts Financial Services Co. (“MFS”), John W. Ballen (“Ballen”), and Kevin R. Parke (“Parke”) (collectively, the “Respondents”). The Commission ordered MFS to disgorge \$175 million and pay a civil penalty of \$50 million; Ballen to disgorge \$57,736.56 and pay \$6,322.32 in prejudgment interest and a civil penalty of \$250,000; and Parke to disgorge \$58,853.02 and pay prejudgment interest of \$6,230.97 and a civil penalty of \$250,000. The Order also required certain undertakings by MFS, including the retention of an independent distribution consultant (“IDC”) to develop and implement a distribution plan for the funds paid pursuant to the Order to be distributed to investors injured by late trading and other market timing activity in certain MFS retail funds. The Commission subsequently ordered the establishment of a Fair Fund under Section 308(a) of the Sarbanes-Oxley Act of 2002, for the approximately \$226 million paid by the Respondents pursuant to the Order (the “Fair Fund”).²

¹ Adviser Act Rel. No. 2213 (Feb. 4, 2005).

² Exchange Act Rel. No. 51829 (Jun. 13, 2005).

On September 14, 2006, the Commission published a Notice of Proposed Distribution Plan and Opportunity for Comment.³ Following the receipt and consideration of comments, on July 24, 2007, the Commission issued an Order Approving Modified Distribution Plan, which approved the Distribution Plan (“Plan”) containing certain modifications intended to clarify the distribution process. In this order, the Commission identified an additional \$83 million to be paid into the Fair Fund pursuant to a court order in *SEC v. Daniel Calugar*, No. CV-S-03-1600-RCJ-RJJ (D. Nev. Oct. 16, 2006) and applied as a return of injured investors’ proportionate share of advisory fees;⁴ appointed Rust Consulting, Inc., as the Fund Administrator of the Fair Fund; and waived the Fund Administrator’s bond.⁵

The Plan provided for distribution to all eligible investors of (1) their pro rata share of losses suffered by the fund due to late trading and market timing trading activity and (2) a proportionate share of advisory fees paid by such fund during the period of such late trading.

Between November 5, 2007 and December 3, 2008, the Commission issued thirteen orders directing, in the aggregate, the disbursement of approximately \$312 million to injured investors.⁶ By 2010, approximately \$56.6 million of the disbursement was undistributed due to, among other things, uncashed or undeliverable checks. On November 3, 2010, the Commission further modified the Plan to require the IDC and the Fund Administrator to take additional steps to distribute the residual funds to injured investors. The Commission also ordered the disbursement of \$38.6 million from the Fair Fund’s residual to the affected MFS mutual funds (the “MFS Funds”).⁷

The additional outreach efforts of the IDC and the Fund Administrator resulted in the distribution of an additional, approximately \$10.6 million to eligible investors at a cost of \$206,500 to the Fair Fund. On September 1, 2011, the Commission ordered the disbursement of approximately \$23 million in residual funds to the MFS Funds.⁸

Ultimately, approximately \$329,665,001.85, or 95.5%, of the Fair Fund was distributed, directly or indirectly, to over 1.8 million eligible investors. The Fair Fund earned approximately

³ Exchange Act Rel. No. 54440A (Sept. 14, 2006).

⁴ The Commission instituted an enforcement action against Calugar and his brokerage firm, Security Brokerage, Inc., alleging participation in a scheme to defraud mutual fund shareholders of funds managed by Alliance Capital Management and MFS through improper late trading and market timing. *See* Lit. Rel. No. 18524 (Dec. 24, 2003) and Lit. Rel. No. 19526 (Jan. 10, 2006).

⁵ Exchange Act Rel. No. 56122 (Jul. 24, 2007). On September 25, 2007, the Commission revised certain of the descriptions in the July 24, 2007 order, issuing a Revised Order Approving Modified Distribution Plan. Exchange Act Rel. No. 56527 (Sept. 25, 2007).

⁶ *See* Orders Directing Disbursement of Fair Fund: Exchange Act Rel. Nos. 56743 (Nov. 5, 2007), 56922 (Dec. 6, 2007), 57117 (Jan. 9, 2008), 57276 (Feb. 6, 2008), 57396 (Feb. 28, 2008), 57687 (Apr. 18, 2008), 57783 (May 6, 2008), 57915 (Jun. 4, 2008), 57980 (Jun. 17, 2008), 58090 (July 2, 2008), 58320 (Aug. 6, 2008), 58412 (Aug. 22, 2008), and 59048 (Dec. 3, 2008). In addition, on April 9, 2009, the Commission issued an order approving and ratifying a prior disbursement. Exchange Act Rel. No. 59741 (Apr. 9, 2009).

⁷ *See* Order Modifying Distribution Plan and Directing Disbursement, Exchange Act Rel. No. 63240 (Nov. 3, 2010).

⁸ *See* Order Directing Disbursement of Distribution Fund, Exchange Act Rel. No. 65245 (Sept. 1, 2011).

\$36.3 million in interest, and paid taxes of approximately \$11.8 million and administration fees of approximately \$3.6 million. The Fair Fund currently holds \$1,286.11, comprised of returned funds and accrued interest.

The Plan provides that the Fair Fund will terminate upon the later of the final distribution of all Residual Distributions as provided in paragraph 20 of the Plan and the final accounting submitted by the Fund Administrator has been approved by the Commission. A final accounting, which was submitted to the Commission for approval as required by Rule 1105(f) of the Commission's Rules on Fair Funds and Disgorgement Plan, 17 C.F.R. § 201.1105(f), and as set forth in the Plan, is now approved. The Commission staff has verified that all taxes, fees, and expenses have been paid, all Residual Distributions have been completed, and the Commission is in possession of the remaining funds.

Accordingly, it is ORDERED that:

- A. The remaining Fair Fund balance of \$1,286.11, and any funds returned to the Fair Fund in the future, shall be transferred to the U.S. Treasury;
- B. The Fund Administrator, Rust Consulting, Inc., is discharged;
- C. The Fair Fund is terminated.

By the Commission.

Brent J. Fields
Secretary