

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**

**Release No. 84815 / December 13, 2018**

**ADMINISTRATIVE PROCEEDING**

**File No. 3-12372**

**In the Matter of**

**WADDELL & REED, INC.,  
WADDELL & REED INVESTMENT  
MANAGEMENT COMPANY, AND  
WADDELL & REED SERVICES  
COMPANY,**

**Respondents.**

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

On July 24, 2006, the United States Securities and Exchange Commission (“Commission”) issued an Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 15(b) and 17A(c) of the Securities Exchange Act of 1934, Sections 203(e) 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”)<sup>1</sup> against Waddell & Reed, Inc. (“W&R”), Waddell & Reed Investment Management Company, and Waddell & Reed Services Company (collectively, the “Respondents”). The Commission concluded that the Respondents knowingly permitted three accountholders to engage in market timing activity from December 1998 through the fall of 2003 and were aware that such conduct would dilute the returns of other fund investors to whom they owed a fiduciary duty. The Order required, among other things, Respondents to pay on a joint and several basis \$40 million in disgorgement and a civil money penalty of \$10 million. Section IV.H.1 of the Order required the Respondents to transfer a total of \$50 million to the Commission, which was to comprise the Fair Fund established pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002 (the “Fair Fund”).

On April 23, 2013, the Secretary of the Commission, pursuant to delegated authority, issued a Notice of Proposed Plan of Distribution and Opportunity for Comment (“Notice”)<sup>2</sup> pursuant to Rule 1103 of the Commission’s Rules on Fair Fund and Disgorgement Plans (the “Rules”), 17 C.F.R. § 201.1103. The Notice provided a 30-day comment period. No comments were received by the Commission in response to the Notice. Accordingly, on August 9, 2013, the Secretary of the Commission, pursuant to delegated authority, issued an Order Approving Plan

<sup>1</sup> Exchange Act Rel. No. 54193 (July 24, 2006).

<sup>2</sup> Exchange Act Rel. No. 69437 (Apr. 23, 2013).

of Distribution, Appointing a Fund Administrator, and Waiving Bond Requirement<sup>3</sup> and posted the approved Plan of Distribution (the “Plan”).

Under the Plan, the Respondents, in consultation with the Independent Distribution Consultant (“IDC”), proposed to distribute a prorated share of the Fair Fund to accountholders of the affected W&R funds based on the individual account holders’ proportionate share of the total dilution as calculated by the IDC. The Plan also provided that monies not distributed to individual accountholders could be disbursed to impacted W&R funds based on each fund’s proportionate share of the total dilution attributable to the market timing activity.

On July 15, 2014,<sup>4</sup> January 16, 2015,<sup>5</sup> April 17, 2015,<sup>6</sup> and July 17, 2015<sup>7</sup> the Commission issued orders directing the disbursement of an aggregate of \$52,706,556.39 from the Fair Fund for distribution by the Fund Administrator to harmed investors. At the conclusion of distributions by checks to individual accountholders, a total of \$44,195,704.27 had been cashed by recipient investors, leaving a balance of \$9,153,949.10 in the Fair Fund. Section 6.5 of the Plan provides that all monies not distributed to individual W&R accountholders may be distributed to the W&R funds impacted by the market activity at issue in this case. Pursuant to this Section, the Commission issued an order on December 14, 2017 to disburse \$9,153,949.10 to six W&R funds for further distribution.<sup>8</sup>

The Fair Fund earned approximately \$6.35 million in investment and interest income, paid taxes of approximately \$1.8 million, and paid investment/bank fees and tax administration expenses of approximately \$1.3 million. The Fair Fund currently holds approximately \$1,283.00 in residual funds.

The Plan provides that the final accounting shall be submitted by the Fund Administrator for approval by the Commission prior to the Fair Fund’s termination and the discharge of the Fund Administrator. Furthermore, residual funds remaining after Fair Fund disbursements to individual accountholders and W&R funds, and the payment of all taxes and fees, are to be transferred to the U.S. Treasury by order of the Commission following the approval of the final accounting. The Consolidated Final Account Report, which was submitted to the Commission for approval as required by Rule 1105(f) of the Rules, 17 C.F.R. § 201.1105(f), and as set forth in the Plan, is now approved. The staff has verified that all taxes, fees, and expenses have been paid, and the Commission is in possession of the remaining funds.

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<sup>3</sup> Exchange Act Rel. No. 70151 (Aug. 9, 2013).

<sup>4</sup> Order Directing Disbursement of a Fair Fund, Exchange Act Rel. No. 72610 (July 15, 2014).

<sup>5</sup> Exchange Act Rel. No. 74079 (Jan. 16, 2015).

<sup>6</sup> Exchange Act Rel. No. 74756 (Apr. 17, 2015).

<sup>7</sup> Exchange Act Rel. No. 75485 (July 17, 2015).

<sup>8</sup> Exchange Act Rel. No. 82333 (Dec. 14, 2017).

Accordingly, it is ORDERED that:

- A. The remaining Fair Fund balance of \$1,283.00 and any funds returned to the Fair Fund in the future, shall be transferred to the U.S. Treasury, subject to Section 21F(g)(3) of the Securities Exchange Act of 1934 [15 U.S. Code § 78u-6(g)(3)];
- B. The Fair Fund is terminated; and
- C. The Fund Administrator, Rust Consulting, Inc., is discharged.

By the Commission.

Brent J. Fields  
Secretary