

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 97172 / March 20, 2023**

**ADMINISTRATIVE PROCEEDING**  
**File Nos. 3-14191; 3-14192**

<b>In the Matter of</b>	:	<b>ORDER AUTHORIZING THE TRANSFER</b>
<b>BNY Mellon Securities LLC</b>	:	<b>TO THE U.S. TREASURY OF THE</b>
<b>and</b>	:	<b>REMAINING FUNDS AND ANY FUNDS</b>
<b>Mark Shaw,</b>	:	<b>RETURNED TO THE FAIR FUND IN THE</b>
<b>Respondents.</b>	:	<b>FUTURE, DISCHARGING THE IDC AND</b>
	:	<b>FUND ADMINISTRATOR, CANCELING</b>
	:	<b>THE ADMINISTRATOR’S BOND, AND</b>
	:	<b>TERMINATING THE FAIR FUND</b>

On January 14, 2011, the Commission instituted and simultaneously settled administrative proceedings against BNY Mellon Securities LLC (“BNY Mellon”),<sup>1</sup> as well as a related administrative and cease-and-desist proceeding against Mark Shaw (“Shaw”).<sup>2</sup> In the Orders, the Commission found that, from November 1999 through March 2008, BNY Mellon failed to reasonably supervise Shaw, the order desk manager on its institutional order desk, and traders under his supervision. The Commission also found that, from November 1999 through March 31, 2008, Shaw manipulated time delays in systems for executing and reporting agency cross-trades on a regional exchange to the advantage of a handful of accounts held by individuals or hedge funds, at the expense of accounts belonging to various employee plans, therefore depriving customers of best execution of their orders. Shaw directed traders under his supervision to do the same. In their respective Orders, the Commission ordered the BNY Mellon to pay \$19,297,016 in disgorgement, \$3,748,431 in prejudgment interest, and a \$1,000,000 civil money penalty and Shaw to pay \$195,300 in disgorgement, \$23,291 in prejudgment interest, and a \$150,000 in civil money penalty to the Commission. In the Orders, the Commission also created a Fair Fund, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, so the penalties paid, along with the disgorgement and interest paid, could be distributed to harmed investors, and further ordered in the Shaw Order that it could be distributed by the Fair Fund created in the BNY Order.

<sup>1</sup> See Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions., Exchange Act Rel. No. 63724 (Jan. 14, 2011).

<sup>2</sup> See Corrected Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Section 8A of Securities Act of 1933 and Sections 15(b) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order, Securities Act Rel. No. 9174 (Jan. 14, 2011).

The Respondents paid a total of \$24,414,038.00 pursuant to the Orders, comprising the Fair Fund. The Fair Fund was deposited in a Commission-designated account at the U.S. Department of Treasury, and all interest accrued was added to the Fair Fund.

On January 31, 2013, the Secretary, pursuant to delegated authority, published a Notice of Proposed Plan of Distribution and Opportunity for Comment (the “Notice”),<sup>3</sup> pursuant to Rule 1103 of the Commission’s Rules on Fair Fund and Disgorgement Plans (the “Commission’s Rules”);<sup>4</sup> and simultaneously posted the Proposed Plan of Distribution (the “Proposed Plan”). The Notice advised interested persons that they could obtain a copy of the Proposed Plan from the Commission’s public website or by submitting a written request to Philip Moustakis, United States Securities and Exchange Commission, 3 World Financial Center, Suite 400, New York, NY 10281. The Notice also advised that all persons desiring to comment on the Proposed Plan could submit their comments, in writing, within 30 days of the Notice. The Commission received no comments on the Proposed Plan during the comment period. On February 28, 2014, the Commission issued an order approving the Modified Plan of Distribution,<sup>5</sup> appointing Boston Financial Data Services<sup>6</sup> as the fund administrator of the Fair Fund and setting the administrator’s bond amount, and posted the approved Plan.<sup>7</sup>

The Plan set forth a methodology for allocating the Net Distribution Amount comprised of the \$24,414,038, plus accrued interest, less any amount needed for tax and related expenses of the Tax Administrator and the Escrow Bank, and the cost of the bond. The Plan sought to allocate the Fair Fund among Eligible Investors affected by cross-trades conducted on their behalf by BNY Mellon during the Relevant Time Period. Pursuant to the Plan, BNY Mellon retained IDC, Alan Friedman, and is responsible for all the IDC’s and Fund Administrator’s fees and expenses, except for the cost of the bond premium.

As ordered by the Commission, the Fund Administrator distributed the Fair Fund pursuant to the Plan in two tranches for a total of \$24,663,656.14.<sup>8</sup> Of this amount \$18,952,978.92 was successfully disbursed and cashed by recipient investors (76.8%), resulting in the 524,946 recipient investors being fully compensated.

The Fair Fund earned \$462,005.76 in interest, and paid state and federal taxes of \$14,204.00, investment/bank fees of \$20,983.32, \$84,518.19 for tax related expenses and \$583,481.42 for bank and bond fees and costs. The Fair Fund currently holds \$5,826,312.37, which is comprised of undeliverable and uncashed checks and accumulated interest and excess funds not needed to fully compensate investors.

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<sup>3</sup> Exchange Act Rel. No. 68796 (Jan. 31, 2013).

<sup>4</sup> 17 C.F.R. § 201.1103.

<sup>5</sup> The Proposed Plan was modified to require the Fund Administrator to obtain a bond and to set the administrator’s bond amount.

<sup>6</sup> Boston Financial Data Services has since undergone a few name changes and is now known as DST Asset Manager Solutions, Inc.

<sup>7</sup> Order Approving Modified Plan of Distribution, Appointing Fund Administrator, and Setting Fund Administrator Bond Amount, Exchange Act Rel. No. 71638 (Feb. 28, 2014).

<sup>8</sup> See Order Directing Disbursement of Fair Fund, Exchange Act Rel. No. 72962 (Sept. 3, 2014) and Order Directing Second Disbursement of Fair Fund, Exchange Act Rel. No. 84058 (Sept. 7, 2018).

The Plan provides that the Fair Fund is eligible for termination and the Fund Administrator discharged after all of the following have occurred: (a) the final accounting has been submitted by the Fund Administrator for approval, and has been approved by the Commission; (b) all taxes, fees, and expenses have been paid; and (c) any funds remaining in the Fair Fund has been received by the Commission.

The Commission staff has confirmed that the Fund Administrator has completed the distribution process in accordance with the Commission's orders, that all taxes, fees and expenses owed by the Fair Fund have been paid, and that all monies remaining in the Fair Fund have been received by the Commission. The final accounting, which was submitted to the Commission for approval, as required by Rule 1105(f) of the Commission's Rules, 17 C.F.R. § 201.1105(f), and as set forth in the Plan, has been approved.

Accordingly, it is ORDERED that:

- A. the Fair Fund's remaining funds, 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 IDC, Alan Friendman, and the Fund Administrator, DST Asset Manager Solutions, Inc. formerly Boston Financial Data Services, are discharged;
- C. the Fund Administrator's bond is cancelled; and
- D. the Fair Fund is terminated.

By the Commission.

Vanessa A. Countryman  
Secretary