

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 61255 / December 30, 2009**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-13019**

**In the Matter of**

**Gabelli Funds LLC,**

**Respondent.**

**ORDER APPOINTING A FUND**  
**ADMINISTRATOR AND WAIVING BOND**

On April 24, 2008, the Commission instituted settled administrative proceedings against Gabelli Funds LLC (“Gabelli Funds”) regarding an undisclosed market-timing agreement. *See Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order*, Admin. Proc. File No. 3-13019, Investment Advisers Act Rel. No. 2727 (April 24, 2008) (“Order”). Among other things, the Commission ordered Gabelli Funds to pay a total of \$16 million in disgorgement, prejudgment interest, and penalty. The Order further provided that a Fair Fund be established and that Gabelli Funds retain an independent distribution consultant (“IDC”), acceptable to the staff of the Commission, to develop a distribution plan for the Fair Fund. Gabelli Funds retained Kenneth Lehn, the Samuel A. McCullough Professor of Business Administration at the University of Pittsburgh, as the IDC, and submitted the Distribution Plan to the Division of Enforcement.

On September 11, 2009, the Commission published a “Notice of Proposed Plan of Distribution and Opportunity for Comment” in connection with this proceeding pursuant to Rule 1103 of the Commission’s Rules on Fair Fund and Disgorgement Plans, 17 C.F.R. § 201.1103.

The Fair Fund will be distributed by the methodology described in the Distribution Plan to compensate eligible investors for the impaired value of their investment as a result of market timing. The Distribution Plan describes the procedures that will be used to identify the investors who will receive distributions under the Plan. It further provides the procedures that will be used to calculate the total amounts to be paid to the eligible investors and the process for distribution of those amounts to them.

The Distribution Plan also proposes that Rust Consulting, Inc. (“Rust Consulting”) be appointed as the Fund Administrator and that Rust Consulting not be required to post a bond as generally required under Fair Fund Rule 1105(e). The Distribution Plan incorporates several levels of protection for the Fair Fund. Among other things, under the Distribution Plan: (1) Rust Consulting will not have custody, and only limited control, of the Fair Fund nor will it have discretion regarding disbursements from the Fair Fund; (2) the Fair Fund will be held by the U.S. Treasury Bureau of Public Debt on behalf of the

Commission until the funds are transferred to US Bank, N.A. (the “Bank”) as referred to in Paragraph 8.3.2.1 of the Distribution Plan, immediately before transmittal of checks or electronic transfers to eligible investors; (3) upon transfer from the U.S. Treasury, funds will be held in an escrow account at the Bank, separate from the assets of the Bank, until presentation of a check or electronic transfer, at which time funds will be transferred to a controlled distribution account; (4) presented checks or electronic transfers will be subject to “positive pay” controls before being honored by the Bank, and (5) both the Bank and Rust Consulting will maintain, throughout this process, insurance and/or a financial institution bond that covers errors and omissions, misfeasance, and fraud.

The Division of Enforcement proposes that the Commission appoint Rust Consulting as the Fund Administrator of the Gabelli Funds Distribution Plan and waive the bond requirement for the Fund Administrator for the good cause shown in the Distribution Plan.

Accordingly, pursuant to Rules 1105(a) and (c) of the Commission’s Rules on Fair Fund and Disgorgement Plans, 17 C.F.R. § 201.1105, IT IS HEREBY ORDERED that Rust Consulting is appointed as the Fund Administrator in accordance with the terms of the Distribution Plan and that the bond requirement is waived for good cause shown.

By the Commission.

Elizabeth M. Murphy  
Secretary