

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 80543 / April 27, 2017

ADMINISTRATIVE PROCEEDING
FILE No. 3-12238

In the Matter of

**BEAR, STEARNS & CO. and BEAR,
STEARNS SECURITIES CORP.,**

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 March 16, 2006, the United States Securities and Exchange Commission (“Commission”) issued an Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-And-Desist Order Pursuant to Section 8A of the Securities Act of 1933, Sections 15(b) and 21C of the Securities Exchange Act of 1934, and Sections 9(b) and 9(f) of the Investment Company Act of 1940 (the “Order”)¹ against Bear, Stearns & Co., Inc. and Bear, Stearns Securities Corp. (collectively, the “Respondents”) for alleged violations of federal securities laws in connection with the facilitation of late trading and deceptive market timing in several mutual funds. The Commission ordered the Respondents to, jointly and severally, disgorge \$160,000,000.00 and to pay civil money penalties in the amount of \$90,000,000.00, for a total of \$250,000,000.00. The Order further established a Fair Fund pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, for the total amount ordered (the “Fair Fund”) and required the Respondents to retain an Independent Distribution Consultant to develop a distribution plan for the distribution of the Fair Fund (the “Distribution Plan”).

On December 8, 2008, the Secretary, pursuant to delegated authority, published a Notice of Proposed Distribution Plan and Opportunity for Comment² pursuant to Rule 1103 of the Commission’s Rules on Fair Fund and Disgorgement Plans (the “Rules”), 17 C.F.R. § 201.1103. The Commission received no comments and on February 4, 2009, the Secretary, pursuant to

¹ Securities Act Rel. No. 8668 (Mar. 16, 2006).

² Exchange Act Rel. No. 59065 (Dec. 8, 2008).

delegated authority, issued an order that approved the Distribution Plan, appointed Rust Consulting, Inc. as the Fund Administrator, and waived the bond requirement.³

Under the Distribution Plan, the approximately \$267.1 million then comprising the Fair Fund (the “Distributable Amount”) was to be distributed to eligible mutual funds according to a formula designed to capture each fund’s proportional dilution relative to the dilution of all eligible mutual funds. Fair Fund monies were directed to the asset bases of mutual funds affected by the Respondents’ conduct (“Affected Funds”) as well as directly to contemporaneous shareholders in those funds (“Contemporaneous Accountholders”), including through ongoing distributions in other enforcement or regulatory market timing proceedings.

On April 28, 2009 and July 15, 2009, the Commission issued orders directing the disbursement of an aggregate of (approximately) \$231.5 million to distribute to the asset bases of the Affected Funds and Contemporaneous Accountholders.⁴ In addition, by orders issued on May 14, 2009, June 5, 2009, and November 20, 2009, approximately \$34.4 million was disbursed to Contemporaneous Accountholders through other enforcement or regulatory market timing proceedings. Upon determining that approximately \$16.7 million of the disbursed funds had not reached investors, the Fund Administrator undertook supplemental outreach efforts with respect to uncashed checks over \$100. At a cost of \$109,000, the efforts included sending letters, making telephone calls, and assisting with omnibus account distributions, and resulted in \$5.9 million, or 35% of the \$16.7 million, distributed to approximately 14,000 investors.⁵

Ultimately, approximately \$254.5 million, or just over 95% of the Distributable Amount was distributed, directly or indirectly, to Contemporaneous Accountholders; the remaining \$12.6 million was undistributed residual, comprised of uncashed and undeliverable checks, calculation variances, and returned funds. The Fair Fund earned approximately \$26.7 million and paid taxes of approximately \$9.3 million and administrative fees of approximately \$30,500. The Fair Fund currently holds \$13,173,574.58, comprised of undistributed residual and accrued interest.

The Distribution Plan provides that the Fair Fund shall be eligible for termination after all of the following have occurred: (1) the final accounting by the Fund Administrator has been submitted and approved by the Commission; (2) all taxes and fees have been paid; and (3) all remaining funds, including interest earned after the Distributable Amount has been calculated, or any residual, has been transferred to the U.S. Treasury. A final accounting, 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 Distribution Plan, is now approved. The Commission staff has verified that all taxes, fees, and expenses have been paid, and the Commission is in possession of the remaining funds.

³ See Order Approving Distribution Plan, Appointing a Fund Administrator, and Waiving Bond, Exchange Act Rel. No. 59356 (Feb. 4, 2009).

⁴ See Order Directing Disbursement of Fair Fund, Exchange Act Rel. Nos. 59828 (Apr. 28, 2009) and 60310 (July 15, 2009).

⁵ See Order Directing Disbursement of Fair Fund, Exchange Act Rel. Nos. 59929 (May 14, 2009) and 60049 (June 5, 2009). See also Amended Order Directing Disbursement of Fair Fund, Exchange Act Rel. No. 60292A (Nov. 20, 2009).

Accordingly, it is ORDERED that:

- A. The remaining Fair Fund balance of \$13,173,574.58, 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; and
- C. The Fair Fund is terminated.

By the Commission.

Brent J. Fields
Secretary