

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 81086 / July 6, 2017

ADMINISTRATIVE PROCEEDING
FILE No. 3-12737

In the Matter of	:	
	:	ORDER AUTHORIZING THE
	:	TRANSFER TO THE U.S.
FOLGER NOLAN FLEMING	:	TREASURY OF THE REMAINING
DOUGLAS CAPITAL	:	FUNDS AND ANY FUNDS
MANAGEMENT, INC., NEIL C.	:	RETURNED TO THE FAIR FUND
FOLGER and DAVID M. BROWN,	:	IN THE FUTURE, DISCHARGING
	:	THE FUND ADMINISTRATOR,
Respondents.	:	AND TERMINATING THE
	:	DISTRIBUTION FUND

On August 23, 2007, 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 Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940 (the “Order”)¹ against Folger Nolan Fleming Douglas Capital Management, Inc. (“Folger Nolan”), Neil C. Folger (“Folger”), and David M. Brown (“Brown”) (collectively, the “Respondents”). The Order required Folger Nolan to pay \$244,921 in disgorgement and prejudgment interest, which, with accrued interest, was to comprise a fund for distribution (the “Distribution Fund”). The Respondents undertook to develop, in consultation with Commission staff, a plan to distribute the Distribution Fund to defrauded advisory clients. The Order also required Folger Nolan to pay a \$100,000 civil money penalty to the Treasury.

On March 1, 2011, the Secretary, pursuant to delegated authority, published a Notice of Proposed Plan of Distribution 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 April 13, 2011, the Secretary, pursuant to delegated authority, issued an order that approved the Final Distribution Plan (“Plan”) and appointed Brendan P. McGlynn, a Commission employee, as the Fund Administrator.³

¹ Advisers Act Rel. No. 2639 (Aug. 23, 2007).

² Exchange Act Rel. No. 63994 (Mar. 1, 2011).

³ Exchange Act Rel. No. 64295 (Apr. 13, 2011).

The Plan provided for the distribution of the Distribution Fund to Folger Nolan advisory clients who paid inflated commissions for trade execution. Pursuant to the Plan, the Fund Administrator identified eligible client accounts from existing records and not through a claims process. The Plan provided that each eligible account would receive the excess commissions paid plus a proportionate share of interest, the latter representing the time value of the excess commissions paid.

On August 17, 2011, the Commission authorized the disbursement of \$246,472.45 in accordance with the Plan⁴, of which \$246,116.75 was ultimately distributed directly to approximately 100 injured clients. The Distribution Fund earned interest of approximately \$3,600 and paid taxes, fees and expenses of approximately \$2,200. The Distribution Fund currently holds \$211.76.

The Plan provides that the Distribution 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 or any residual amounts have 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 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.

Accordingly, it is ORDERED that:

- A. The remaining Distribution Fund balance of \$211.76, and any funds returned to the Distribution Fund in the future, shall be transferred to the U.S. Treasury;
- B. The Fund Administrator, Brendan P. McGlynn, is discharged; and
- C. The Distribution Fund is terminated.

By the Commission.

Brent J. Fields
Secretary

⁴ Exchange Act Rel. No. 65152 (Aug. 17, 2011).