

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 83069 / April 19, 2018**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-18348**

**In the Matter of**

**GEMINI FUND SERVICES,  
LLC,**

**Respondent.**

**ORDER DIRECTING PAYMENT OF  
CERTAIN FUNDS RECEIVED BY THE  
COMMISSION AND DIRECTING  
TRANSFER OF REMAINING FUNDS TO  
THE U.S. TREASURY**

On January 22, 2018, the Commission simultaneously instituted and settled a cease and desist proceeding against Gemini Fund Services, LLC (“Gemini” or the “Respondent”).<sup>1</sup> The proceeding arose out of Gemini’s role as fund administrator for a Massachusetts-based investment company called the GL Beyond Income Fund (the “GL Fund”). Gemini was responsible for calculating the GL Fund’s daily share price (also called a “net asset value” or “NAV”) and transmitting it to the investing public, via the NASDAQ securities exchange. From February 2013 to December 2014, the NAV that Gemini gave to NASDAQ was inflated because Gemini included in the NAV fake assets that were purportedly worth over \$15 million but were actually worth nothing. Although Gemini did not know that these assets were fake at the time it was calculating the NAV, Gemini did know that, for months at a time, the GL Fund’s custodian bank (a financial institution that holds customers’ securities for safekeeping) did not have adequate proof of the existence of many of these fake assets, and that there were therefore significant discrepancies between Gemini’s own records and those of the custodian bank. When confronted with this fact, Gemini failed to take any further steps, such as further investigating the problem with the assets, notifying the investing public or the board of directors of the GL Fund that the custodian bank did not have proof of the validity of the assets, or reducing the share price to reflect this problem.

In the OIP, the Commission found that Gemini was a cause of Thibeault and GL Capital’s violations of Sections 206(1) and 206(2) of the Investment Advisers Act of 1940. The Commission ordered the Respondent to pay disgorgement of \$147,334, prejudgment interest of

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<sup>1</sup> Order Instituting Cease-and-Desist Proceedings, Pursuant to Section 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing a Cease-and-Desist Order, Adviser Act Rel. No. 4847 (Jan 22, 2018) (“OIP”).

\$14,072, and a civil penalty of \$400,000 to the Commission within 10 days of the entry of the OIP and created a Fair Fund pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended. The Commission also ordered Gemini to engage an independent compliance consultant.

After receipt of the disgorgement, interest, and penalty amounts referenced above, the Commission staff will distribute a payment to GL Fund of the amount in the Fair Fund minus a reserve for taxes and related administrative expenses. The Commission staff will issue payment to the GL Fund upon receipt of a certification: (i) that the distribution payment is designated solely for affected investors and will not be used for administrative or management fees; and (ii) that the GL Fund will make commercially reasonable efforts consistent with its legal, fiduciary, and contractual duties, as applicable, to disburse the Fair Fund payment to its victim investors in accordance with this Order. The Trustees of the GL Fund have agreed to make payments to those victim investors, provide a written report and evidence of such payments to Commission staff, and return any undistributed funds to the Commission.

The payment of disgorgement, prejudgment interest, and civil penalty constitutes a qualified settlement fund (“QSF”) under section of 468B(g) of the Internal Revenue Code (IRC), 26 U.S.C. Section 468B(g), and related regulations, 26 C.F.R Sections 1.468B-1 through 1.468B-5. The Commission staff will seek the appointment of a tax administrator to establish a reserve for taxes and related administrative expenses. After establishing and withholding the reserve, the remaining amount in the Fair Fund will be transferred to the GL Fund for distribution to affected investors.

Accordingly, it is ORDERED that:

A. After the receipt of the funds simultaneously ordered in this proceeding, a tax administrator will be appointed to establish a reserve for taxes and administrative expenses.

B. After withholding the reserve amount, the remaining Fair Fund shall be disbursed to the GL Fund for distribution to affected investors upon receipt of a certification from the GL Fund (i) that the distribution payment is designated solely for affected investors and will not be used for administrative or management fees; and (ii) that the GL Fund will make commercially reasonable efforts consistent with its legal, fiduciary, and contractual duties, as applicable, to disburse the Fair Fund payment to its affected investors. The GL Fund also will provide a written report and evidence of such payments to the Commission staff within 180 days after the receipt of the Fair Fund payment.

C. Any undistributed funds be returned to the Commission for remittance to the general fund of the United States Treasury subject to Exchange Act Section 21F(g)(3).

By the Commission.

Brent J. Fields  
Secretary