

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4847 / January 22, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18348

In the Matter of

**GEMINI FUND SERVICES,
LLC,**

Respondent.

**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**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against Gemini Fund Services, LLC (“Gemini” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over Respondent and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 203(k) of the Advisers Act, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. Gemini Fund Services, LLC ("Gemini") was the 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.

Respondent

2. **Gemini Fund Services, LLC ("Gemini")** is a Nebraska limited liability company based in Omaha, Nebraska and Hauppauge, New York, and is a subsidiary of NorthStar Financial Services Group, LLC ("NorthStar"). Gemini describes itself as a full-service mutual fund administrator, providing comprehensive services to mutual funds for fund administration, fund accounting, transfer agent services, and custody administration. Gemini served as the fund administrator, fund accountant, and transfer agent for the GL Fund from January 2012 to December 2014.

Other Relevant Parties

3. **GL Beyond Income Fund ("GL Fund")** is a registered investment company created by Daniel Thibeault ("Thibeault") on or about March 23, 2012, and was managed by GL Capital Partners, LLC during the relevant time period.

4. **GL Capital Partners, LLC ("GL Capital")** was an investment adviser firm controlled by Thibeault that was registered with the Commission. It acted as the sole investment manager for the GL Fund during the relevant time period.

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

5. **Daniel Thibeault (“Thibeault”)** was the Managing Director of GL Capital and assisted in the execution of the GL Fund’s investment strategies and marketing between December 2011 and December 2014, when he was arrested and charged with securities fraud. During the same time period, he was also the GL Fund’s co-portfolio manager.

Background on Thibeault’s and GL Capital’s Fraud on the GL Fund

6. The GL Fund was managed by an investment adviser, Massachusetts-based GL Capital, and its principal, Thibeault. The GL Fund pooled investor money to purchase consumer loans. These loans were the assets of the GL Fund, and the interest payments on these loans were intended to provide the GL Fund’s investment returns. The GL Fund held mostly small unsecured consumer loans. By January 31, 2013, there were more than 500 individual loans in the GL Fund.

7. In February 2013, Thibeault began misappropriating GL Fund investors’ money by creating fictitious loans originated through Taft Financial Services, LLC (a special purpose entity controlled by Thibeault), which were designated with a program code “TA” in the books and records of the GL Fund (“Taft loans”). Each of the Taft loans was significantly larger in dollar value than the typical loans acquired by the GL Fund. Thibeault used the names and personal information of friends and associates without their knowledge or permission to serve as the purported borrowers for the Taft loans, and thus caused the GL Fund’s custodian bank to wire out investor funds for these purported loans. Thibeault then diverted those investor funds—the Taft loan proceeds—to his personal and business bank accounts.

8. By January 31, 2014, there were 22 Taft loans held by the GL Fund, with a combined face value of approximately \$8,000,000. In reality, Thibeault had fraudulently created all of these Taft loans, and they were worth nothing. By December 8, 2014, the GL Fund reported approximately \$46.9 million in net assets, including 40 Taft loans with an aggregate face value of over \$15 million (over 30% of the reported assets). All \$15 million had, in fact, been misappropriated by Thibeault and GL Capital.

9. On December 11, 2014, Thibeault was arrested and charged with criminal securities fraud by the United States Attorney’s Office for the District of Massachusetts. *See U.S. v. Thibeault*, Case No. 15-10031 (D. Mass). On March 3, 2016, Thibeault pled guilty to one count of securities fraud and one count of obstruction of justice. On June 16, 2016, he was sentenced to nine years in prison with three years of supervised release, and was ordered to pay \$15,300,403 in restitution.

10. On January 9, 2015, the Commission filed a civil securities fraud action against Thibeault, GL Capital, and others. *See SEC v. Thibeault, et al.*, Case No. 15-10050 (D. Mass). On September 23, 2016, a final judgment was entered against Thibeault in the Commission’s civil action against him. The final judgment permanently enjoined Thibeault from violating Section 10(b) of the Securities and Exchange Act of 1934 and Rule 10b-5 thereunder, Section 17(a) of the Securities Act of 1933, and Sections 206(1) and 206(2) of the Advisers Act, and ordered disgorgement of \$15,300,403 and prejudgment interest thereon.

Gemini's Agreement to Perform Essential Services for the GL Fund

11. Gemini was the fund administrator for the GL Fund. Fund administration includes the various activities that must be carried out in support of the process of managing and operating a collective investment vehicle like an investment fund. Rather than perform all of these activities themselves, fund managers sometimes outsource the performance of these activities to third-party fund administrators, like Gemini. Such activities can range from preparation and filing of shareholder reports, to daily portfolio valuation, to providing information to shareholders or clients. These are often activities that are required for an investment fund to be in compliance with the securities laws. Gemini is a self-described “expert in fund services including fund administration, accounting, and transfer agency.” Gemini, along with another NorthStar subsidiary, was a subject of a prior Commission enforcement proceeding against mutual fund gatekeepers for causing untrue or misleading disclosures. *See In the Matter of Northern Lights Compliance Svcs., LLC, et al.*, Investment Company Act Rel. No. 30502 (May 2, 2013) (finding that Gemini caused violations of Sections 30(e) and 31(a) of the Investment Company Act and Rules 30e-1 and 31a-2(a)(6) thereunder).

12. One activity a third-party fund administrator might perform is the calculation of a fund's daily net asset value (“NAV”) per share, which is essentially the fund's share price. However, unlike the stock of a publicly traded company—with a share price based on its trading performance in the market at any given moment—the per-share NAV of an investment fund is calculated based on the sum of the assets in a fund's portfolio, less any liabilities, divided by the number of outstanding shares. For example, if a fund had \$1,000,000 of net assets and 100,000 outstanding shares, the per-share NAV would be \$10. The process of calculating and publicly reporting a fund's NAV is referred to as “striking the NAV.”

13. A fund administrator might also perform a reconciliation of the fund's internal records against the records of a third-party custodian institution, typically a custodian bank. A custodian bank is a financial institution that holds customers' financial assets—either in electronic or physical form—for safekeeping. In the case of the GL Fund assets, which were primarily consumer loans, its custodian bank was responsible for holding copies of the promissory notes and other loan documents evidencing the existence and terms of the loans and information about the borrowers. Reconciliation between a fund's data and a fund custodian's records is an important administrative controls process that is intended, among other things, to reduce fraud and error in calculation of a fund's NAV.

14. Gemini contracted to perform the above-mentioned activities on behalf of the GL Fund. Specifically, on January 17, 2012, Gemini agreed to serve as the fund administrator, fund accountant, and transfer agent for the GL Fund, and Gemini and the GL Fund executed a Fund Services Agreement (the “Agreement”). The Agreement required Gemini to, among other things:

- a. “Timely calculate the net asset value per share with the frequency prescribed in [the] Fund's then-current Prospectus, transmit the Fund's net asset value to NASDAQ, and communicate such net asset value to the Trust and its transfer agent.”

- b. “Periodically reconcile all appropriate data with [the] Fund’s custodian.”²
- c. “Monitor the performance of administrative and professional services rendered to the Trust by others, including its custodian, transfer agent, fund accountant and dividend disbursing agent, as well as legal, auditing, shareholder servicing, and other services performed for the Trust.”

15. In accordance with the Agreement, Gemini struck a per-share NAV for the GL Fund on a daily basis and transmitted that NAV to the NASDAQ securities exchange. Also in accordance with the Agreement, Gemini received daily transaction data from the GL Fund’s adviser and ran a daily reconciliation report comparing its records of the GL Fund’s assets to daily account holdings reports from the GL Fund’s custodian bank.

Gemini Struck an Inflated NAV for the GL Fund

16. From February 2013 through December 2014, Gemini struck an inflated NAV for the GL Fund and transmitted that inflated NAV to the NASDAQ securities exchange. Based on the information it received from GL Capital, the GL Fund’s adviser, and/or from GL Capital’s affiliated loan servicer, Gemini included the fake Taft loans as assets of the GL Fund when striking the GL Fund’s NAV. In reality, GL Capital had caused the fake Taft loans to be generated and then misappropriated the proceeds of those loans when they were disbursed from the GL Fund’s custodian bank. Although Gemini did not know that the Taft loans were fake when it struck the NAV, Gemini personnel did know—through their performance of the contractually required reconciliation process with the GL Fund’s custodian bank—that for extended periods of time the GL Fund’s custodian bank did not have adequate proof of the existence of the Taft loans. Gemini knew that the custodian bank was therefore not counting the Taft loans as assets of the GL Fund during the same time that Gemini was striking a NAV that *did* include those same assets. In fact, throughout the relevant time period, Gemini continued to include those Taft loans in calculating the NAV for the GL Fund, even though Gemini personnel knew that the GL Fund’s claimed assets exceeded, by as much as \$6.8 million, the assets reflected in the custodian bank’s records of the GL Fund’s holdings.

17. For example, on February 27, 2013, Thibeault caused the first three fake Taft loans to be purchased by the GL Fund, in face amounts of \$382,847, \$426,039, and \$418,394, and caused these amounts to be disbursed from the GL Fund’s custodian bank to the purported loan originator (the Taft shell company that was actually controlled by Thibeault). While Thibeault sent the custodian bank the names of the purported borrowers and the terms of the purported loans to cause the bank to

² In the case of Gemini’s reconciliation with the GL Fund’s custodian, Gemini received daily transaction data from the GL Fund and daily account holdings reports from the GL Fund’s custodian bank. Gemini compiled a daily “NAV package” which contained the reconciliation reports comparing that data.

release those funds, neither Thibeault nor GL Capital provided the custodian bank with underlying loan documents (such as promissory notes) or other identifying information of the borrowers (such as addresses, birthdays, or social security numbers), which were required by the custodian bank, as proof of the existence of the loans. Therefore, in accordance with its practices, the custodian bank did not “book” those loans—did not count them as assets of the GL Fund—until January 31, 2014, almost one year later, when Thibeault fabricated loan documentation for the previous year’s fake Taft loans and sent that documentation to the custodian bank in advance of the GL Fund’s year-end audit. As a result, between February 27, 2013 and January 31, 2014, these three Taft loans were not included as assets in the records of the GL Fund’s holdings that the custodian bank sent to Gemini for the purpose of reconciliation.

18. When Gemini performed its daily reconciliations between the fund’s records and the records of the custodian bank (as required by its contract with the GL Fund), Gemini personnel became aware that the three aforementioned Taft loans issued on February 27, 2013, were not reflected as assets of the GL Fund in the records provided by the custodian bank. Gemini nevertheless continued to include the \$1,227,280 from those three Taft loans in striking the daily per-share NAV for the GL Fund. Gemini then transmitted this inflated NAV to the investing public without notifying anyone—including the GL Fund’s board of directors—of the discrepancies between the records of the adviser and the records of the custodian bank. For the eleven months that the custodian bank did not reflect these loans as assets of the GL Fund, Gemini inappropriately struck a much higher NAV for the GL Fund that *did* include these loans as assets of the GL Fund.

19. This pattern continued throughout 2013 with each subsequently issued Taft loan (Thibeault created 22 Taft loans in the fiscal year ending on January 31, 2014), and the discrepancy between the GL Fund adviser’s data and the custodian bank’s records grew larger. The custodian bank explicitly informed Gemini that the custodian bank could not book these loans as assets of the GL Fund because the adviser had not yet provided the custodian bank with the underlying loan documents. Nevertheless, Gemini continued to include these undocumented (and, as it turned out, fraudulent) loans in striking the GL Fund’s daily per-share NAV.

20. On January 31, 2014, immediately prior to the GL Fund’s year-end audit, Thibeault provided fake underlying loan documents to the custodian bank for the Taft loans issued in 2013. The custodian bank then booked those loans as assets of the GL Fund, eliminating the reconciliation discrepancy with Gemini for a short period of time.

21. However, throughout 2014, Gemini personnel came to be aware of new reconciliation discrepancies between the custodian bank’s records and the information received from the GL Fund adviser, and Gemini continued to strike daily NAVs for the GL Fund that ultimately proved to be inflated. Between February 2014 and December 2014, Thibeault generated 18 more fraudulent Taft loans. Only four of these loans were ever booked as assets of the GL Fund by the custodian bank. Gemini continued to include these Taft loans in striking the NAV until Thibeault was arrested in December 2014 – ultimately transmitting a daily NAV to NASDAQ that at its peak was inflated by at least \$15 million in fraudulent Taft loans, of which several million was not reflected as assets of the GL Fund by the custodian bank during that same time period. Again,

Gemini did not report the non-reconciling asset values to the GL Fund's board or to the investing public.

Violations

22. Section 206(1) of the Advisers Act prohibits any investment adviser from employing any device, scheme, or artifice to defraud any client or prospective client, and Section 206(2) of the Advisers Act prohibits any investment adviser from engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client.

23. Thibeault and GL Capital violated Sections 206(1) and 206(2) of the Advisers Act by making false and misleading statements to GL Fund investors and by engaging in a scheme to defraud those investors by misappropriating money from them.

24. As a result of the conduct described above, Gemini was a cause of Thibeault's and GL Capital's violations of Sections 206(1) and 206(2) of the Advisers Act.

Undertakings

25. **Independent Compliance Consultant.**

- a. Gemini has undertaken to retain, within 30 days of the date of the issuance of this Order, the services of an Independent Compliance Consultant ("Consultant") not unacceptable to the staff of the Commission. The Consultant's compensation and expenses shall be borne exclusively by Gemini. Gemini shall require the Consultant to conduct a comprehensive review of, and recommend corrective measures concerning, Gemini's compliance and other policies and procedures with respect to:
 - i. NAV calculation and publication;
 - ii. Reconciliation of data with fund custodians;
 - iii. Monitoring of the performance of administrative and professional services rendered to its mutual fund clients by other service providers;
 - iv. Coordination of fund audits;
 - v. Communications with clients, auditors, and others about possible failures to comport with fund governing documents or possible failures to comply with the law by clients or investment advisers; and
 - vi. Detecting and addressing fraud.

- b. Gemini shall provide to the Commission staff, within thirty (30) days of retaining the Consultant, a copy of an engagement letter detailing the Consultant's responsibilities, which shall include the review described in paragraph 25.a.
- c. At the end of the review, which in no event shall be more ninety (90) days after the date the Consultant is retained by Gemini, Gemini shall require the Consultant to submit an Initial Report to Gemini and to the Commission staff. The Initial Report shall address the items in paragraph 25.a, and shall describe the review performed, the conclusions reached, the Consultant's recommendations for changes in, or improvements to, Gemini's policies and procedures, and a procedure for implementing the recommended changes in, or improvements to, those policies and procedures.
- d. Gemini shall adopt all recommendations contained in the Initial Report within ninety (90) days of receipt; provided, however, that within thirty (30) days of Gemini's receipt of the Initial Report, Gemini may, in writing, advise the Consultant and the Commission staff of any recommendations that it considers unnecessary, unduly burdensome, impractical, or inappropriate. With respect to any such recommendation, Gemini need not adopt that recommendation at that time, but shall propose in writing an alternative policy, procedure, or system designed to achieve the same objective or purpose. The Consultant shall evaluate any alternative procedure proposed by Gemini. As to any recommendation on which Gemini and the Consultant do not agree, such parties shall attempt in good faith to reach an agreement within thirty (30) days after Gemini provides the alternative procedures described above. In the event that Gemini and the Consultant are unable to agree on an alternative proposal, Gemini and the Consultant shall jointly confer with the Commission staff to resolve the matter. In the event that, after conferring with the Commission staff, Gemini and the Consultant are unable to agree on an alternative proposal, Gemini will abide by the recommendations of the Consultant.
- e. Within two hundred seventy (270) days after the date of the issuance of this Order, Gemini shall require the Consultant to complete its review and submit a written final report to Commission staff. The Final Report shall describe the review made of Gemini's compliance policies and procedures; set forth the conclusions reached and recommendations made by the Consultant, as well as any proposals made by Gemini; and describe how Gemini is implementing the Consultant's final recommendations.
- f. Gemini shall take all necessary and appropriate steps to adopt and implement all recommendations contained in the Consultant's Final Report. The date of completion of the undertakings shall, in no event, be later than the one year anniversary from the date of issuance of this Order.
- g. For good cause shown and upon timely application by the Consultant or Gemini, the Commission's staff may extend any of the deadlines set forth in these undertakings.

- h. To ensure the independence of the Consultant, Gemini (i) shall not have the authority to terminate the Consultant or substitute another consultant for the initial Consultant, without the prior written approval of the Commission's staff; (ii) shall compensate the Consultant and persons engaged to assist the Consultant for services rendered pursuant to the Order at their reasonable and customary rates; and (iii) shall not invoke the attorney-client or any other doctrine or privilege to prevent the Consultant from communicating with or transmitting any information, reports, or documents to the Commission's staff.
- i. Gemini shall require the Consultant to enter into an agreement providing that for the period of the engagement and for a period of two years from completion of the engagement, the Consultant shall not enter into any employment, consultant, attorney-client, auditing, or other professional relationship with Gemini, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. The agreement will also provide that the Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Consultant in the performance of his or her duties under this Order shall not, without prior written consent of the Commission staff, enter into any employment, consultant, attorney-client, auditing, or other professional relationship with Gemini, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

26. Gemini shall certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission's staff may make reasonable requests for further evidence of compliance, and Gemini agrees to provide such evidence. The certification and supporting material shall be submitted to Paul Block, Assistant Director, Boston Regional Office, Securities and Exchange Commission, 33 Arch Street, 24th Floor, Boston, MA 02110, with a copy to the Office of the Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of completion of the undertakings.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent's Offer.

Accordingly, pursuant to Section 203(k) of the Advisers Act, it is hereby ORDERED that:

- A. Gemini cease and desist from committing or causing any violations and any future violations of Sections 206(1) and 206(2) of the Advisers Act.
- B. Gemini shall comply with the undertakings enumerated in paragraphs 25 and 26 above.

C. Gemini shall, within ten (10) days of the entry of this Order, pay a civil monetary penalty of \$400,000, disgorgement of \$147,334, and prejudgment interest of \$14,072, to the Securities and Exchange Commission. If timely payment of disgorgement and prejudgment interest is not made, additional interest shall accrue pursuant to Rule 600 of the Commission Rules of Practice [17 C.F.R. § 201.600], and if timely payment of a civil money penalty is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717.

Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Gemini as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Paul Block, Assistant Director, Boston Regional Office, Securities and Exchange Commission, 33 Arch Street, 24th Floor, Boston, MA 02110.

D. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the disgorgement, prejudgment interest, and penalties referenced in paragraph IV.C above. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty

imposed in this proceeding. For purposes of this paragraph, a “Related Investor Action” means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of disgorgement, prejudgment interest, and civil penalties, plus any additional interest accrued pursuant to SEC Rule of Practice 600 and pursuant to 31 U.S.C. 3717, shall be due and payable immediately, without further application.

By the Commission.

Brent J. Fields
Secretary