

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 86957 / September 12, 2019

ADMINISTRATIVE PROCEEDING
File No. 3-19123

<hr/>	:	
In the Matter of	:	
	:	
DENNIS GIBB and	:	ORDER APPROVING PLAN OF
SWEETWATER INVESTMENTS,	:	DISTRIBUTION AND AUTHORIZING
INC.	:	TRANSFER OF DISGORGEMENT
	:	FUND
	:	
Respondents.	:	
<hr/>	:	

On March 28, 2019, the Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to 8A of the Securities Act of 1933, Section 21C of the Securities Exchange Act of 1934, Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (the “Order”)¹ against Sweetwater Investments, Inc. (“Sweetwater”), a registered investment adviser, and Dennis Gibb (“Gibb”), Sweetwater’s founder and sole owner. In the Order, the Commission found that, from July 2007 to September 2018, Gibb stole more than \$3 million from Sweetwater Income Flood LP (“Income Flood”), a private fund managed by Sweetwater. The Commission found that, among other misrepresentations, Gibb inflated account values and Income Flood holdings in account statements and tax documents sent to investors, and in Forms ADV filed with the Commission. The Commission determined that, by this conduct, Gibb and Sweetwater (collectively, the “Respondents”) willfully violated, among other things, the antifraud provisions of the Securities Act of 1933, the Securities Exchange Act of 1934, and the Investment Advisers Act of 1940. The Commission ordered the Respondents to pay, jointly and severally, disgorgement of \$1,144,000 and prejudgment interest of \$20,747.40 to the Commission, but offset Gibb’s obligation by the amount of any criminal order of restitution entered against him. The Commission established a Disgorgement Fund so that collected disgorgement and prejudgment interest could be distributed to harmed investors in accordance with a distribution plan to be approved by the Commission (the “Disgorgement Fund”). The Respondents have not paid any of the ordered disgorgement or prejudgment interest.

In the Order, Gibb voluntarily undertook to liquidate the securities in Income Flood’s brokerage account and cause Income Flood to gift all assets in the liquidated account to the

¹ Securities Act Rel. No. 10623 (Mar. 28, 2019).

Disgorgement Fund pursuant to Section 308(b) of the Sarbanes-Oxley Act of 2002. Gibbs has completed this undertaking, sending approximately \$1.77 million to the Disgorgement Fund. Although the Commission does not expect the payment of additional funds, any additional funds paid pursuant to the Order will become part of the Disgorgement Fund. The Disgorgement Fund is currently on deposit with the United States Department of the Treasury (the “Treasury”).

On August 8, 2019, the Commission published a Notice of Proposed Plan of Distribution and Opportunity for Comment (“Notice”)² pursuant to Rule 1103 of the Commission’s Rules on Fair Fund and Disgorgement Plans (“Rules”).³ The Notice advised interested persons that they could obtain a copy of the proposed plan of distribution (“Distribution Plan”) from the Commission’s public website at <http://www.sec.gov/litigation/fairfundlist.htm> or by submitting a written request to Catherine E. Pappas, Esq., United States Securities and Exchange Commission, One Penn Center, 1617 JFK Blvd., Ste. 520, Philadelphia, PA 19103.

The Notice also advised that all persons desiring to comment on the Distribution Plan could submit their comments, in writing, no later than thirty (30) days from the date of the Notice (1) to the Office of the Secretary, United States Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090; (2) by using the Commission’s Internet comment form (<http://www.sec.gov/litigation/admin.shtml>); or (3) by sending an email to rule-comments@sec.gov. The Commission received no comments on the Distribution Plan during the comment period.

Pursuant to Rule 1102(a) of the Rules,⁴ the Distribution Plan proposes to transfer the Disgorgement Fund, less any administrative fees and expenses, to the Court Registry Investment System account established in the related criminal action, *US v. Gibb*, 19-cr-059 (RSM) (W.D. Wash.) (the “Criminal Action”), for distribution to harmed investors in accordance with the restitution process in the Criminal Action. The Commission finds that the allegations in the Criminal Action arise from the same conduct by Gibbs, through Sweetwater, as alleged in the Order, and involves the same victims and harm. Under these circumstances, the Division of Enforcement has concluded that transferring the funds to the Criminal Action for distribution through the criminal restitution process is fair and reasonable because it reduces administrative costs, employs a more efficient use of resources to benefit investors harmed as a result of the Respondents’ misconduct than would two separate distribution processes, and it should not materially increase the amount of time to return funds to harmed investors.

The Division of Enforcement therefore now requests that the Commission approve the Distribution Plan as published and authorize the transfer of funds to the Criminal Action.

² Exchange Act Rel. No. 86601 (Aug. 8, 2019).

³ 17 C.F.R. § 201.1103.

⁴ 17 C.F.R. § 201.1102(a).

Accordingly, it is hereby ORDERED that:

- A. Pursuant to Rule 1104 of the Rules, 17 C.F.R. § 201.1104, the Distribution Plan is approved; and
- B. Pursuant to Rule 1102(a) of the Rules, 17 C.F.R. § 201.1102(a), the Commission staff shall transfer the Disgorgement Fund in the amount of \$1,770,398.63, less any outstanding fees and expenses to the Court Registry Investment System account established in the Criminal Action for distribution to harmed investors.

By the Commission.

Vanessa A. Countryman
Secretary