

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 87893 / January 6, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-19123

In the Matter of	:	
	:	ORDER AUTHORIZING THE
	:	TRANSFER TO THE U.S. TREASURY
	:	OF ANY FUNDS RETURNED TO THE
DENNIS GIBB and	:	DISGORGEMENT FUND IN THE
SWEETWATER INVESTMENTS,	:	FUTURE, DISCHARGING FUND
INC.	:	ADMINISTRATOR, AND
	:	TERMINATING THE
	:	DISGORGEMENT FUND
Respondents.	:	

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. On June 28, 2019, the United States District Court for the Western District of Washington entered judgment against Gibb in the related criminal action described below, ordering him to pay over \$4.2 million in restitution, thus resulting in a total offset of Gibb’s disgorgement and prejudgment interest liability.

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

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 Disgorgement Fund pursuant to Section 308(b) of the Sarbanes-Oxley Act of 2002. Gibb completed this undertaking, sending approximately \$1.77 million to the Disgorgement Fund, which was held in an account at the U.S. Treasury's Bureau of the Fiscal Service pending distribution.

On August 8, 2019, the Commission published a Notice of Proposed Plan of Distribution and Opportunity to Comment ("Notice")² pursuant to Rule 1103 of the Commission's Rules on Fair Fund and Disgorgement Plans ("Commission's Rules").³ The Commission received no comments on the Plan of Distribution (the "Plan") during the comment period. On September 12, 2019, the Commission issued an Order Approving Plan of Distribution and Authorizing Transfer of Disgorgement Fund (the "Approval Order") and simultaneously posted the approved Plan.⁴

Pursuant to Rule 1102(a) of the Commission's Rules,⁵ the Plan provided for the Disgorgement Fund, less any administrative fees and expenses, to be sent to the Court Registry Investment System account ("CRIS account") established in the related criminal action, *United States 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 Plan appointed Catherine E. Pappas, a Commission employee, as the Fund Administrator to oversee the administration and distribution of the Disgorgement Fund. Any residual funds following execution of the Plan are to be transferred to the U.S. Treasury and the Disgorgement Fund terminated, subject to the Commission's approval of the Fund Administrator's final accounting.

Pursuant to the Approval Order, the Disgorgement Fund, less any outstanding fees and expenses, has been sent to the CRIS account in the Criminal Action for distribution to harmed investors. Because there were no outstanding fees and expenses, the Fund Administrator directed the transfer of the entire Disgorgement Fund, in the amount of \$1,770,398.63, to the CRIS account in the Criminal Action. The Disgorgement Fund currently has a balance of \$0.

The Plan provides that the Disgorgement Fund is eligible for termination and the Fund Administrator discharged after all of the following have occurred: (a) a final accounting, in the Commission's standard accounting format, has been submitted by the Fund Administrator for approval, and has been approved, by the Commission; (b) all Administrative Costs⁶ have been paid; and (c) any amount remaining in the Disgorgement Fund has been received by the Commission.

The Commission staff has verified that there were no Administrative Costs and that there is no balance in the Disgorgement Fund. A final accounting, which was submitted to the

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

³ 17 C.F.R. § 201.1103.

⁴ Exchange Act Rel. No. 86957 (Sept. 12, 2019).

⁵ 17 C.F.R. § 201.1102(a).

⁶ Capitalized terms used herein but not defined shall have the same meanings ascribed to them in the Plan.

Commission for approval as required by Rule 1105(f) of the Commission's Rules, 17 C.F.R. § 201.1105(f), and as set forth in the Plan, is now approved.

Accordingly, it is ORDERED that:

- A. Any funds returned to the Disgorgement Fund in the future, shall be transferred to the U.S. Treasury, subject to Section 21F(g)(3) of the Securities Exchange Act of 1934, 15 U.S.C. § 78u-6(g)(3);
- B. The Fund Administrator, Catherine E. Pappas, is discharged; and
- C. The Disgorgement Fund is terminated.

By the Commission.

Vanessa A. Countryman
Secretary