

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 90188 / October 15, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-16786

In the Matter of

BANKRATE, INC.,

Respondent.

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ORDER APPROVING
PLAN OF DISTRIBUTION

ADMINISTRATIVE PROCEEDING
File No. 3-16787

In the Matter of

HYUNJIN LERNER, CPA,

Respondent.

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On September 8, 2015, in two related settled administrative proceedings the Commission issued separate orders (collectively, the “Orders”), against Bankrate¹ and Lerner² (collectively, the “Respondents”) finding that they violated the federal securities laws. The Commission’s Orders arose out of substantially similar facts and occurred within a subset of the time period as the violations alleged in a related class action (the “Class Action”).³ In the Orders, the Commission found that, during the second quarter of 2012, Bankrate, through its chief financial officer, Edward DiMaria (“DiMaria”), vice president and director of accounting, Matthew Gamsey (“Gamsey”), and vice president of finance, Lerner, intentionally manipulated its

¹ See Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Cease-and-Desist Order and Civil Penalty, Securities Act Rel. No. 9901 (Sept. 8, 2015), (Admin. Proc. File No. 3-16786).

² See Order Instituting Public Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Sections 4C and 21C of the Securities Exchange Act of 1934, and Rule 102(e) of the Commission’s Rules of Practice, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order, Securities Act Rel. No. 9902 (Sept. 8, 2015), (Admin. Proc. File No. 3-16787).

³ *The City of Los Angeles, et al. v. Bankrate, Inc., et al.*, 9:14-cv-81323-DMM (S.D. Fla.).

financial results to meet and/or exceed analyst consensus estimates for key financial metrics. As a result of the manipulation, Bankrate materially overstated its financial results for the second quarter of 2012.

The Commission ordered Bankrate to pay a \$15,000,000 civil penalty and ordered Lerner to pay a \$150,000 civil penalty, \$30,045 in disgorgement, and \$2,571 in prejudgment interest. Bankrate and Lerner paid the funds in full to the Commission on September 10, 2015 and September 18, 2015, respectively. On May 8, 2017, a single fair fund (the “Fair Fund”) was established, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, which combined the \$15,182,616 in civil penalties, disgorgement, and prejudgment interest paid by Bankrate and Lerner for distribution to harmed investors.⁴

In a related district court action (the “District Court Action”),⁵ pursuant to their respective judgments, DiMaria paid \$231,158.56 in disgorgement, prejudgment interest, and civil penalties and Gamsey paid a \$60,000 civil penalty to the Commission, which was transferred into the Fair Fund for distribution with the funds therein.

In total, \$15,473,774.56 was paid into the Fair Fund. The Fair Fund is subject to the continuing jurisdiction and control of the Commission and the Fair Fund is currently on deposit in a Commission designated interest-bearing account at the United States Department of Treasury Bureau of Fiscal Service. The assets of the Fair Fund are subject to the continuing jurisdiction and control of the Commission.

On August 28, 2020, the Commission published a Notice of Proposed Plan of Distribution and Opportunity for Comment (the “Notice”)⁶ pursuant to Rule 1103 of the Commission’s Rules on Fair Fund and Disgorgement Plans (“Commission’s Rules”).⁷ The Notice advised interested persons that they could obtain a copy of the proposed Plan of Distribution (the “Plan”) from the Commission’s public website at <http://www.sec.gov/litigation/fairfundlist.htm> or by submitting a written request to Keshia W. Ellis, United States Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-5876.

The Notice also advised that all persons desiring to comment on the Plan could submit their comments, in writing, no later than thirty (30) days from the publication 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 e-mail to rule-comments@sec.gov. The Commission received no comments on the Plan during the comment period.

The Plan provides for the distribution of the Net Available Fair Fund, comprised of the \$15,473,774.56 in disgorgement, prejudgment interest, and civil money penalties paid into the

⁴ See Order Establishing a Fair Fund, Exchange Act Rel. No. 80626 (May 8, 2017).

⁵ *SEC v. DiMaria, et al.*, 15-cv-07035 (S.D.N.Y. Sept. 8, 2015).

⁶ Exchange Act Rel. No. 89711 (Aug.28, 2020).

⁷ 17 C.F.R. § 201.1103.

Fair Fund, plus interests and income earned thereon, minus all taxes, fees and other expenses of distributing the Net Available Fair Fund to investors who were harmed by the conduct described in the Orders in accordance with the methodology described in the Plan.

The Division of Enforcement now requests that the Commission approve the Plan.

Accordingly, it is hereby ORDERED, pursuant to Rule 1104 of the Commission's Rules,⁸ that the Plan is approved, and posted simultaneously with this order on the Commission's website at www.sec.gov.

For the Commission, by its Secretary, pursuant to delegated authority.

Vanessa A. Countryman
Secretary

⁸ 17 C.F.R. § 201.1104.