

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 94857 / May 5, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-17614

In the Matter of	:	
	:	
	:	
Laurence I. Balter d/b/a Oracle	:	ORDER APPROVING
Investment Research,	:	PLAN OF DISTRIBUTION
	:	
	:	
Respondent.	:	

I.

On May 26, 2017, the Commission issued an Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933, Section 21C of the Securities Exchange Act of 1934, Sections 203(f) and 203(k) of the Investment Advisers Act of 1940, and Sections 9(b) and 9(f) of the Investment Company Act of 1940 (the “Order”)¹ against Laurence I. Balter d/b/a Oracle Investment Research (the “Respondent”). In the Order, the Commission found that that the Respondent, a former registered investment adviser to the Oracle Mutual Fund (the “Oracle Fund”), committed multiple breaches of fiduciary duty and violations of the antifraud provisions of the federal securities laws from January 2011 to April 2014: (a) he fraudulently allocated profitable trades to his own accounts to the detriment of several client accounts; (b) he falsely told his clients who invested in the Oracle Fund that they would not pay both advisory fees and management fees for the portions of their accounts invested in the Oracle Fund; and (c) he made trades for the Oracle Fund that deviated from two of its fundamental investment limitations. The Commission ordered the Respondent to pay \$489,921 in disgorgement, \$10,079 in prejudgment interest, and a \$50,000 civil money penalty, for a total of \$550,000, to the Commission. The Commission also created a Fair Fund, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, so the penalty paid, along with the disgorgement and interest paid, can be distributed to harmed investors (the “Fair Fund”).

The Fair Fund includes the \$550,000.00 paid by the Respondent. The assets of the Fair Fund are subject to the continuing jurisdiction and control of the Commission. The Fair Fund and has been deposited in an interest-bearing account at the U.S. Department of the Treasury’s Bureau of the Fiscal Service, and any interest accrued will be added to the Fair Fund.

On December 29, 2021, the Division of Enforcement, pursuant to delegated authority, published a Notice of Proposed Plan of Distribution and Opportunity for Comment (“Notice”),¹ pursuant to Rule 1103 of the Commission’s Rules on Fair Fund and Disgorgement Plans (“Commission’s Rules”)²; and simultaneously posted the Proposed Plan of Distribution (the “Proposed Plan”). The Notice advised interested persons that they could obtain a copy of the Proposed Plan from the Commission’s public website or by submitting a written request to David H. London, United States Securities and Exchange Commission, 33 Arch Street, 24th Floor, Boston, MA 02110. The Notice also advised that all persons desiring to comment on the Proposed Plan could submit their comments, in writing, within 30 days of the Notice. The Commission received a comment on the Proposed Plan during the comment period.

The Proposed Plan provides for the distribution of the Net Available Fair Fund³ to investors based on their losses between January 2011 and April 2014 due to the Respondent (a) cherry-picking scheme; and/or (b) misrepresentations of management fees.

II. Public Comments on the Proposed Plan

On January 7, 2022, the Commission received a single comment letter with multiple comments. The comments can be grouped into three categories: (i) commentary on the Commission staff’s investigation that resulted in the Order; (ii) commentary on Commission’s timeline and process for distributing the funds collected in this matter; and (iii) objections to the structure of the Proposed Plan and the proposed distribution methodology in the Plan of Allocation.

The first and second categories of comments are unrelated to the substance of the Proposed Plan and thus do not require any modification of the Proposed Plan. The first category of comments relate to the Commission’s investigation and do not relate to the Proposed Plan. The second category of comments, while related to the Proposed Plan, focus on the timing and administration of the Proposed Plan rather than the distribution methodology. The deadlines established in the Proposed Plan are contemplated so that the numerous steps necessary to conduct a full, fair, and equitable distribution will proceed in a timely fashion. In addition, the Notice that accompanied the Proposed Plan is designed to provide investors with sufficient information to understand the distribution process and the obligations of those who receive distribution payments, including any potential tax liability. As the comments do not relate to the substance of the Proposed Plan or the distribution methodology, they do not warrant modification of the Proposed Plan.

Finally, although the third set of comments relate directly to the structure of the Proposed Plan and the proposed distribution methodology, these comments are already addressed by provisions of the Proposed Plan or are not sufficiently substantive to warrant modification of the Proposed Plan. Specifically, the commenter questioned the proposed allocation of funds and urged the Commission to provide more detail concerning the Reserve and to distribute any

¹ Exchange Act Rel. No. 93872 (Dec. 29, 2021).

² 17 C.F.R. § 201.1103.

³ All capitalized terms used herein but not defined shall have the same meanings ascribed to them in the Proposed Plan.

residual amounts remaining after the distribution to Payees rather than transferring it to the U.S. Treasury. In order to fairly distribute the Fair Fund among harmed investors, the Plan of Allocation contemplates an equitable *pro rata* distribution to all Eligible Claimants. Prioritizing the claims of some investors over others would undermine the purpose of the distribution and needlessly disadvantage investors who were harmed by the Respondent's violations. In addition, the Proposed Plan describes the nature and purpose of the Reserve and provides that leftover funds, including those constituting the Reserve, will be returned to investors, if feasible. The commenter also indicated that the definition of investor losses was insufficiently clear, challenged the Commission's basis for providing recovery for fees paid, and stated investor losses and fees should be disclosed in the Proposed Plan. Paragraph 21 of the Plan, defines "Recognized Loss" as the total amount of loss calculated for a Preliminary Claimant for both the Cherry-Picking and Misrepresentations, in accordance with the Plan of Allocation. The Plan of Allocation details how Recognized Loss is calculated and, consistent with the Commission's findings in the Order, includes recovery of management fees paid by investors. Further, in order to protect the private financial information of individual investors, such as their loss amounts and other relevant information, the Commission will provide this information through the Plan Notice rather than publicly disclosing such information in the Proposed Plan.

The Commission has considered the investor's comments and concludes that no modification to the Proposed Plan to accommodate the commenting party is necessary.

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

Accordingly, it is hereby ORDERED, pursuant to Rule 1104 of the Commission's Rules,⁴ that the Proposed Plan is approved without modification, and the approved Plan of Distribution shall be posted simultaneously with this order on the Commission's website at www.sec.gov.

By the Commission.

Vanessa A. Countryman
Secretary

⁴ 17 C.F.R. § 201.1104.