

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 89711 / August 28, 2020**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-16786**

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**In the Matter of**

**BANKRATE, INC.**

**Respondent.**

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**NOTICE OF PROPOSED PLAN OF  
DISTRIBUTION AND OPPORTUNITY  
FOR COMMENT**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-16787**

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**In the Matter of**

**HYUNJIN LERNER, CPA**

**Respondent.**

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Notice is hereby given, pursuant to Rule 1103 of the United State Securities and Exchange Commission’s (“Commission”) Rules on Fair Fund and Disgorgement Plans (“Commission’s Rules”), 17 C.F.R. § 201.1103, that the Division of Enforcement has submitted to the Commission a proposed plan of distribution (the “Plan”) for the distribution of monies paid in the above-captioned matter.

On September 8, 2015, in two related settled administrative proceedings the Commission issued separate orders (collectively, the “Orders”), against Bankrate<sup>1</sup> and Lerner<sup>2</sup> (collectively, the “Respondents”) finding that they violated the federal securities laws. The Commission’s

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<sup>1</sup> 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).

<sup>2</sup> 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).

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”).<sup>3</sup> 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 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.<sup>4</sup>

In a related district court action (the “District Court Action”),<sup>5</sup> 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.

## **OPPORTUNITY FOR COMMENT**

Pursuant to this Notice, all interested persons are advised that they may obtain a copy of the Plan from the Commission’s public website at <http://www.sec.gov/litigation/fairfundlist.htm>. Interested persons may also obtain a written copy of the Plan by submitting a written request to Keshia W. Ellis, United States Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-5876. All persons who desire to comment on the Plan may submit their comments, in writing, no later than thirty (30) days from the date of this 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](mailto:rule-comments@sec.gov).

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

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

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

Comments submitted by email or via the Commission’s website should include “Administrative Proceeding File Nos. 3-16786 and 3-16787” in the subject line. Comments received will be publicly available. Persons should submit only information they wish to make publicly available.

## **THE PLAN**

The Net Available Fair Fund<sup>6</sup> is comprised of the \$15,473,774.56 in disgorgement, prejudgment interest, and civil money penalties paid into the Fair Fund, plus interest 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. The Plan proposes to distribute the Net Available Fair Fund to investors injured as a result of the Respondents’ conduct as calculated by the methodology described in the Plan of Allocation (Exhibit B) of the Plan.

By the Commission.

Vanessa A. Countryman  
Secretary

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<sup>6</sup> All capitalized terms used herein but not defined shall have the same meanings ascribed to them in the Plan.