

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 101030 / September 16, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-16786

In the Matter of	:	
	:	
BANKRATE, INC,	:	ORDER APPROVING APPLICATION OF
	:	FUND ADMINISTRATOR FOR
Respondent.	:	PAYMENT OF FEES AND EXPENSES
	:	AND AUTHORIZING THE APPROVAL
	:	AND PAYMENT OF FEES AND
	:	EXPENSES OF ADMINISTRATION

ADMINISTRATIVE PROCEEDING
File No. 3-16787

In the Matter of	:	
	:	
HYUNJIN LERNER, CPA.,	:	
	:	
Respondent.	:	
	:	

On September 8, 2015, in two related settled administrative proceedings the Commission issued separate orders (collectively, the “Orders”), against Bankrate, Inc. (“Bankrate”)¹ and Hyunjin Lerner (“Lerner”)² (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

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.).

(“Lerner”), intentionally manipulated its financial results to meet and/or exceed analyst consensus estimates for key financial metrics. According to the Orders, 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. The Respondents have paid in full.

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 for distribution to harmed investors.⁴

In a related district court action, *SEC v DiMaria, et al.*⁵, the Court issued final judgments ordering DiMaria to pay \$231,158.56 in disgorgement, prejudgment interest, and civil penalties and Gamsey to pay a \$60,000 civil penalty to the Commission. The Commission added these paid amounts to the Fair Fund for distribution to harmed investors.

The Fair Fund consists of \$15,573,774.56 which has been deposited in an interest-bearing account at the U.S. Department of the Treasury. Any accrued interest will be added to the Fair Fund.

On January 18, 2018, the Division of Enforcement, pursuant to delegated authority, issued an order appointing JND Legal Administration as the fund administrator of the Fair Fund and set the administrator’s bond amount.⁶

On May 5, 2022, the Commission entered an order approving the disbursement of \$15,418,912.17 from the Fair Fund for distribution to investors.

In accordance with Rule 1105(d) of the Commission’s Rules,⁷ the Fund Administrator has submitted to the Commission staff 7 invoices for services rendered from January 18, 2018, through April 30, 2022, totaling \$127,822.16. The Commission staff has reviewed the Fund Administrator’s invoices, confirmed that the services have been provided, and finds the fees and expenses of \$127,822.16 to be reasonable. The Commission staff has requested that the Commission authorize the Office of Financial Management (“OFM”) to pay the Fund Administrator’s fees and expenses of \$127,822.16 from the Fair Fund in accordance with Rule 1105(e) of the Commission’s Rules.⁸

Additionally, to expedite and streamline the process for future payments, the Commission staff has requested that the Commission authorize OFM, at the direction of an Assistant Director

⁴ See Order Establishing a Fair Fund, Exchange Act Rel. No. 80626 (May 8, 2017). An additional \$291,158.56 from a related district court action, *SEC v. DiMaria, et al.*, 15-cv-07035 (S.D.N.Y. Sept. 8, 2015), was also added to the Fair Fund for a total of \$15,473,774.56 paid into the Fair Fund.

⁵ Case No. 15-cv-0735 (S.D.N.Y., Sept. 8, 2015)

⁶ Order Appointing Fund Administrator and Setting Administrator Bond Amount, Exchange Act Rel. No. 82535 (Jan. 18, 2018).

⁷ 17 C.F.R. § 201.1105(d).

⁸ 17 C.F.R. § 201.1105(e).

of the Office of Distributions, to pay the Fund Administrator's fees and expenses from the Fair Fund so long as the total amount paid to the Fund Administrator, including the invoice to be paid, does not exceed the total amount of the approved cost proposal submitted by the Fund Administrator.

Accordingly, it is hereby ORDERED, pursuant to Rule 1105(d) of the Commission's Rules,⁹ that OFM pay the Fund Administrator's fees and expenses of \$127,822.16 from the Fair Fund in accordance with Rule 1105(e) of the Commission's Rules.¹⁰ Further, OFM is authorized to pay, at the direction of an Assistant Director of the Office of Distributions, any fees and expenses of the Fund Administrator from the Fair Fund in accordance with Rule 1105(e) of the Commission's Rules,¹¹ so long as the total amount paid to the Fund Administrator, including the invoice to be paid, does not exceed the total amount of the approved cost proposal submitted by the Fund Administrator.

For the Commission, by the Division of Enforcement, pursuant to delegated authority.¹²

Vanessa A. Countryman
Secretary

⁹ 17 C.F.R. § 201.1105(d).

¹⁰ 17 C.F.R. § 201.1105(e).

¹¹ 17 C.F.R. § 201.1105(e).

¹² 17 C.F.R. § 200.30-4(a)(21)(vi).