

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 95643 / August 31, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-12540

In the Matter of	:	ORDER AUTHORIZING DISPOSITION OF
	:	REMAINING FUNDS AND ANY FUNDS
	:	RETURNED TO THE FAIR FUND IN THE
Fred Alger Management Inc. and	:	FUTURE, DISCHARGING THE FUND
Fred Alger & Company, Inc.,	:	ADMINISTRATOR, CANCELING THE
	:	ADMINISTRATOR'S BOND, AND
Respondents.	:	TERMINATING THE FAIR FUND

On January 18, 2007, the Commission issued an Order (the “Order”)¹ against Fred Alger Management Inc. and Fred Alger & Company, Inc. (collectively, the “Respondents”). In the Order, the Commission found that Alger Management, the investment adviser to mutual funds in the Alger Fund Group, and Alger Inc., a broker-dealer that serves as the principal underwriter and distributor of Alger Fund Group mutual funds, permitted numerous select investors to market time the Alger Fund. This timing activity contradicted representations in the Alger Fund’s prospectus that limited shareholders to six exchanges a year. Additionally, Alger Management failed to disclose that Alger Inc. had entered into numerous arrangements with select investors to permit them to time the Alger Fund.

More specifically, from at least 2000 through late 2002, Alger Inc. permitted select investors to time the Alger Fund. Over time, Alger Inc. also began to demand that market timers place “static” or “buy and hold” investments in certain portfolios within the Alger Fund in exchange for timing capacity (these arrangements are sometimes referred to as “sticky asset” arrangements). In early 2003, Alger Inc. formalized this practice by requiring sales employees to negotiate a buy and hold investment equal to twenty percent of an investor’s funds within the Alger Fund Group mutual fund complex in return for new timing capacity. Alger Inc.’s sales force then negotiated a number of these arrangements with market timers. Alger Inc. also permitted one hedge fund customer, Veras Investment Partners (“Veras”), to engage in late trading of Alger Fund portfolios.

¹ See Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934, Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, and Sections 9(b) and 9(f) of the Investment Company Act of 1940, Exchange Act Rel. No. 55118 (Jan. 18, 2007).

The market timing in the Alger Fund diluted the value of long-term shareholders' investments. At the same time, Alger Inc. and Alger Management benefited through advisory fees paid to Alger Management and distribution and servicing fees paid to Alger Inc. The Commission ordered the Respondents to pay \$30,000,000 in disgorgement plus a \$10,000,000 civil money penalty 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, along with the disgorgement paid, could be distributed to harmed investors (the "Fair Fund"). The Respondents paid a total of \$40,000,000 pursuant to the Order, comprising the Fair Fund.

On July 23, 2015, the Division of Enforcement, pursuant to delegated authority, issued an order appointing Rust Consulting, Inc. as the fund administrator of the Fair Fund and set the administrator's bond amount.²

On May 5, 2015, the Commission published a Notice of Proposed Plan of Distribution and Opportunity for Comment ("Notice"),³ pursuant to Rule 1103 of the Commission's Rules on Fair Fund and Disgorgement Plans ("Commission's Rules");⁴ 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 Nancy Burton, United States Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-5631. 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 no comments on the Proposed Plan during the comment period. On July 24, 2015, the Secretary, pursuant to delegated authority, issued an order approving the Proposed Plan,⁵ and posted the approved Plan of Distribution (the "Plan").

The Plan set forth a methodology for allocating the net available Fair Fund comprised of the \$40,000,000, plus accrued interest, less certain costs, including bond premiums and taxes, to investors accountholders, in order of priority: (1) a proportionate share of the Fair Fund as compensation for dilution losses they may have suffered as a result of market timing and late trading during the period spanning September 12, 2001 through October 15, 2003, in the Alger Fund portfolios, and (2) a proportionate share of advisory fees paid by Alger Fund portfolios that suffered such losses during the period of such market timing and late trading. To the extent that any remaining funds were in excess of \$10 million, such funds were to be distributed to the Alger Fund portfolios based on the proportion of aggregate excess profits by market timers accounted for by each Alger Fund portfolio that experienced dilution. Any monies remaining in the Fair Fund after completing the distribution to individual accountholders and omnibus accounts not to exceed \$10 million are part of the Residual Fund and are to be transmitted to the U.S. Treasury and the Fair Fund terminated, subject to the Commission's approval of the Fund Administrator's final accounting.

² Order Appointing Fund Administrator and Setting Administrator's Bond Amount, Exchange Act Rel. No. 75515 (July 23, 2015).

³ Exchange Act Rel. No. 74871 (May 5, 2015).

⁴ 17 C.F.R. § 201.1103.

⁵ See Order Approving Plan of Distribution, Exchange Act Rel. No. 75520 (July 24, 2015).

As ordered by the Commission, the Fund Administrator distributed the Fair Fund to individual harmed accountholders pursuant to the Plan in three tranches for a total of \$31,598,783.19. Of this amount \$19,017,209.89 was cashed by the recipient investors (60.18% of the disbursed funds), and recipient investors were fully compensated for their losses. Since there were still residual funds in excess of \$10 million, the Commission ordered the distribution of an additional \$329,919.89 from the Fair Fund to be added to the residual funds for the Fund Administrator to make a fourth disbursement in the amount of \$13,423,323.52 to the harmed mutual funds as provided in the Plan.⁶

The Fair Fund earned \$4,075,411.69 in interest, and paid \$190,000 for bond premium costs, \$1,769.49 for tax administrator bonds, \$53,198.68 for investment banking fees, and \$1,399,863 for state and federal taxes. The Fair Fund currently holds \$9,990,047.11; however, there is an outstanding invoice from the Fund Administrator for reimbursement of the bond premium in the amount of \$10,000 for the period covering June 1, 2022 through August 31, 2022, leaving \$9,980,047.11 in the Fair Fund once all obligations of the Fair Fund have been paid.

The Plan provides that the Fair Fund is eligible for termination and the Fund Administrator discharged after all of the following have occurred: (a) the final accounting has been submitted by the Fund Administrator for approval, and has been approved by the Commission; (b) all taxes, fees, and expenses, have been paid; and (c) any amount remaining in the Fair Fund has been received by the Commission.

The Commission staff has requested that the Commission authorize the Office of Financial Management to pay the Fund Administrator \$10,000 for reimbursement of bond premium costs.

The Commission staff has confirmed that the Fund Administrator has completed the distribution process in accordance with the Commission's orders, that all taxes, fees, and expenses,⁷ except the outstanding \$10,000 bond premium, have been paid, that all monies remaining in the Fair Fund have been received by the Commission; and that the remaining funds, less \$10,000, should be transferred to the U.S. Treasury.

The final accounting, which was submitted to the 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, has been approved.

⁶ Exchange Act Rel. Nos. 81698 (Sept. 25, 2017); 83915 (Aug. 23, 2018); 85791 (May 6, 2019); 93109 (Sept. 23, 2021).

⁷ Pursuant to the Plan, the Respondents are responsible for all fees and costs of administering the Plan, except for bond premiums, tax liabilities, and tax compliance fees and costs.

Accordingly, it is ORDERED that:

- A. The Office of Financial Management direct the payment of \$10,000 to the Fund Administrator for reimbursement of bond premium costs covering the period of June 1, 2022 to August 31, 2022;
- B. After such payment, the Fair Fund's remaining funds that are infeasible to return to investors, and any funds returned to the Fair Fund in the future that are infeasible to return to investors, shall be transferred to the U.S. Treasury, subject to Section 21F(g)(3) of the Securities Exchange Act of 1934, 15 U.S. Code § 78u-6(g)(3);
- C. The Fund Administrator, Rust Consulting, Inc., is discharged;
- D. The Fund Administrator's bond is canceled; and
- E. The Fair Fund is terminated.

By the Commission.

Vanessa A. Countryman
Secretary