

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

**SECURITIES ACT OF 1933**  
**Release No. 10623 / March 28, 2019**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 85443 / March 28, 2019**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 5215 / March 28, 2019**

**INVESTMENT COMPANY ACT OF 1940**  
**Release No. 33432 / March 28, 2019**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-19123**

**In the Matter of**

**DENNIS GIBB and**  
**SWEETWATER**  
**INVESTMENTS, INC.**

**Respondents.**

**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO 8A OF THE SECURITIES ACT OF 1933, SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, SECTIONS 203(e), 203(f) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, AND SECTION 9(b) OF THE INVESTMENT COMPANY ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”), Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”), and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against Dennis Gibb and Sweetwater Investments, Inc. (“Respondents”).

## II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, Respondents admit the Commission’s jurisdiction over them and the subject matter of these proceedings, and consent to the entry of this Order Instituting Administrative and Cease and Desist Proceedings Pursuant to 8A of the Securities Act of 1933, Section 21C of the Securities Exchange Act of 1934, Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-And-Desist Order (“Order”), as set forth below.

## III.

On the basis of this Order and Respondents’ Offers, the Commission finds<sup>1</sup> that:

### Summary

From July 2007 to September 2018, Respondent Dennis Gibb, the founder and sole owner of registered investment adviser Respondent Sweetwater Investments, Inc. (“Sweetwater”), stole more than \$3 million from Sweetwater Income Flood LP (“Income Flood”), a private fund Sweetwater managed. To hide his theft and induce investors to put more money into the fund, Gibb created and sent to investors false account statements and tax documents. The false documents, which were inflated to include gains that might have been realized if Gibb had not been stealing the funds that were to be invested, showed that in the aggregate, Income Flood held \$7.8 million in assets, when in fact it only held \$1.8 million. Gibb also falsely reported fictitious amounts of assets under management in Forms ADV filed with the Commission, and falsely claimed Income Flood had been audited by an independent auditor. Gibb’s fraud was discovered by the SEC’s San Francisco Office of Compliance Inspections and Examinations staff when they conducted an exam of Sweetwater in the summer of 2018.

### Respondents

1. **Dennis Gibb** is the founder, sole owner, President, and Chief Compliance Officer of Respondent Sweetwater Investments, Inc., an investment adviser registered with the Commission. Gibb, who is 72 years old, is a resident of Redmond, Washington.

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<sup>1</sup> The findings herein are made pursuant to Respondents’ Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

2. **Sweetwater Investments, Inc.** is a Redmond, Washington investment adviser that has been registered with the Commission since 1989. Sweetwater advised separately managed accounts for retail clients and also advised Sweetwater Income Flood LP, a private fund. Sweetwater was entitled to management fees of 1% of assets under management annually, and a performance fee if the fund had met certain benchmarks.

### **Related Party**

3. **Sweetwater Income Flood LP** is a limited partnership formed in Washington in 2008. Income Flood has been operated as a private fund and, as of 2018, had about 18 investors. Some of the investors were relying on Income Flood to fund their retirements. Its limited partnership application shows that Dennis Gibb is the fund's general partner, and Sweetwater's filings with the Commission show that Sweetwater was the fund's adviser. Income Flood was administratively dissolved by the State of Washington in 2012 due to failure to file an annual statement, but continued doing business.

### **Gibb and Sweetwater Misappropriated \$3 Million From Investors**

4. In 2007, Gibb started soliciting investors for Income Flood, which he formed as an entity in 2008. He marketed the fund to investors by claiming that it would use an investment strategy of writing certain put and call option contracts on the same underlying security, as well as investing in government bonds, to produce stable, consistent returns. This was important to some of the Income Flood investors because they were relying on the fund for their retirements in the relatively near future.

5. From July 2007 until September 2018, approximately 20 investors invested a total of about \$7.3 million in Income Flood. Also during that time, Gibb secretly transferred \$3,137,153 from Income Flood's brokerage accounts to bank accounts belonging to Sweetwater. Gibb spent the money on personal expenses, such as his mortgage and car payments, and on Sweetwater's business expenses. The transfers were not authorized by Income Flood's private placement memorandum or other governing documents. Gibb knew when he made the transfers that he was stealing the money from Income Flood. Even though Sweetwater was entitled to a management fee, Gibb never actually caused any management fees to be accrued or charged to the fund because he knew that he already was taking more from Income Flood than Sweetwater was entitled to. Ultimately, the money that Gibb misappropriated far exceeded the amount of management fees that Sweetwater could have earned from the fund. From November 2013 on, Gibb's transfers totaled \$1,144,000.

### **Gibb and Sweetwater Made False and Misleading Statements to Investors**

6. Gibb induced investors to put their money into Income Flood by telling them in conversation that it was a stable investment. He told the investors that they could trust him because he had a fiduciary obligation to them. At the time that he made these statements to certain investors, he knew that he was stealing from Income Flood.

7. Gibb represented to investors, in email and through Sweetwater's Forms ADV filed with the Commission (that Gibb personally signed), that the Income Flood fund was audited. From 2012 to 2016, Sweetwater's Forms ADV stated that Income Flood was audited by an independent auditor registered with the PCAOB. In reality, as Gibb knew, the fund was never audited. Gibb admitted that he made this representation to make the fund appear legitimate, so as to encourage further investment. For example, when one investor wrote to Gibb that he was thinking of putting more money into Income Flood, but was troubled by the lack of accounting transparency and the fact that the fund was not audited, Gibb assured him that the fund was in the process of being audited and that the audit report would be made available to all investors when it was complete. The investor then transferred additional retirement funds to Income Flood.

8. Gibb represented to investors, in marketing materials, email and Sweetwater's Forms ADV, that Sweetwater had over a billion dollars in assets under management ("AUM"). For example, a PowerPoint presentation made by Gibb that he used to solicit Income Flood investors stated that Sweetwater had \$1.4 billion in AUM. In reality, in 2018, it had approximately \$73 million in AUM, including separately managed accounts and Income Flood. Gibb also variously represented to investors, through the Forms ADV and email, that Income Flood had a gross asset value of \$55 million to \$450 million, when it was actually \$1.8 million. Gibb admitted that he exaggerated the Income Flood's asset value in an attempt to solicit larger investments so that he could replenish the fund.

9. Gibb represented to potential investors, in a Sweetwater PowerPoint presentation promoting Income Flood drafted by Gibb, that Gibb was required to and did invest in Income Flood, and that he was charged the same fees as the other investors. In fact, Gibb never invested in Income Flood.

10. Gibb made misrepresentations about Sweetwater's employees to investors in order to make the company seem more impressive. For example, an Income Flood PowerPoint presentation shown to investors listed Gibb's administrative assistant as Sweetwater's Chief Operating Officer, and another individual who did not even work for Sweetwater as the company's Fixed Income Portfolio Manager.

11. Gibb created and sent false account statements from Sweetwater to the investors in Income Flood, showing that their investments in Income Flood were growing. In fact, because he had stolen money from the fund, the investors were losing money. Gibb also created and sent false tax forms to the investors, reporting their supposed investment gains. By 2018, Gibb's false records, upon which he based the false statements that he sent to the investors, claimed Income Flood was worth \$7.8 million. In reality, the fund was worth only \$1.8 million. For example, one investor's statement from Gibb showed that his investment of \$226,000 had grown to \$578,000. In fact, his pro rata share of the money left in Income Flood fund at that time was about \$90,000. These false documents were important to investors' decisions to invest more money into Income Flood.

### **Gibb and Sweetwater Made False Statements in Forms ADV**

12. In Forms ADV signed and filed by Gibb on behalf of Sweetwater with the Commission, Gibb falsely claimed: from 2009 to 2018, that Sweetwater had between \$1 billion and \$1.5 billion in AUM; from 2011 to 2016, that there were two separate Income Flood funds, with a total of from \$27 million to over \$120 million in gross assets; and from 2012 to 2016, that Income Flood was audited. In Sweetwater's March 2017 Form ADV, Gibb claimed Sweetwater had no private funds, even though Income Flood still existed. Gibb knew these statements were untrue. In Sweetwater's January 2018 Form ADV, Gibb claimed that Sweetwater was eligible for registration with the Commission because it had more than \$100 million in AUM. At the time, as Gibb knew, Sweetwater had only approximately \$73 million in AUM, and was not otherwise eligible for registration with the Commission.

### **Sweetwater Failed to Comply with the Custody Rule**

13. Gibb knew that under the custody rule, Rule 206(4)-2 of the Advisers Act, Sweetwater was required to either 1) have Income Flood audited, or 2) have an annual surprise independent verification of its assets. Sweetwater failed to meet either of these requirements at any time since the fund's inception. Gibb admitted that he purposefully did not make arrangements for Sweetwater to meet these requirements because he did not want his stealing discovered.

### **Violations**

14. As a result of the conduct described above, Gibb and Sweetwater willfully violated Section 17(a) of the Securities Act, and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in the offer or sale of securities and in connection with the purchase or sale of securities.

15. As a result of the conduct described above, Gibb and Sweetwater willfully violated Sections 206(1) of the Advisers Act, which prohibits an investment adviser from employing any device, scheme, or artifice to defraud, and Section 206(2) of the Advisers Act, which prohibits an investment adviser from engaging in any transaction, practice, or course of business which operates as a fraud or deceit on any client or prospective client.

16. As a result of the conduct described above, Sweetwater willfully violated, and Gibb aided and abetted and caused Sweetwater's violation of, Section 206(4) of the Advisers Act, which prohibits an investment adviser from engaging in any act, practice, or course of business which is fraudulent, deceptive, or manipulative, and Rule 206(4)-2 thereunder, which requires registered investment advisers to pooled investment vehicles to either distribute annual audited financial statements prepared in accordance with GAAP and audited by an independent public accountant registered with, and subject to regular inspection by, the PCAOB to all members or other beneficial owners of the pooled investment vehicle within 120 days of the end of its fiscal year, or to have client funds and securities verified by an independent public accountant at least once a year without prior notice to the investment adviser.

17. As a result of the conduct described above, Gibb and Sweetwater willfully violated Section 206(4) of the Advisers Act, which prohibits an investment adviser from engaging in any act, practice, or course of business which is fraudulent, deceptive, or manipulative, and Rule 206(4)-8 thereunder, which prohibits an investment adviser to a pooled investment vehicle from making material misrepresentations or omissions to or otherwise engaging in any act, practice or course of business that is fraudulent, deceptive or manipulative with respect to any investor or potential investor in the pooled investment vehicle.

18. As a result of the conduct described above, Gibb and Sweetwater willfully violated Section 207 of the Advisers Act, which makes it “unlawful for any person willfully to make any untrue statement of a material fact in any registration application or report filed with the Commission . . . or willfully to omit to state in any such application or report any material fact which is required to be stated therein.”

### **Respondents’ Remedial Efforts**

19. In determining to accept the Offers, the Commission considered remedial acts promptly undertaken by Respondents and cooperation afforded the Commission staff.

### **Undertakings**

20. Respondent Dennis Gibb has undertaken to:

(1) Within one week of the date of this order, Gibb shall liquidate all of the securities in Income Flood’s brokerage account, so that the account holds only cash, and shall cause Income Flood to gift all of the money in the account to the Disgorgement Fund referenced in Section IV(E) of this Order, pursuant to Section 308(b) of the Sarbanes-Oxley Act of 2002, for distribution to Income Flood’s investors. The gift must be made in one of the following ways:

- A) Income Flood may transmit the gift electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- B) Income Flood may make the gift directly from its brokerage account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- C) Income Flood may make the gift by certified check, bank cashier’s check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center

Accounts Receivable Branch  
HQ Bldg., Room 181, AMZ-341  
6500 South MacArthur Boulevard  
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Dennis Gibb as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Erin Schneider, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 44 Montgomery St, Ste 2800, San Francisco, CA 94104.

(2) Within one week of the date of this order, Gibb shall certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to Jeremy Pendrey, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 44 Montgomery St, Ste 2800, San Francisco, CA 94104, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

21. In determining whether to accept Gibb's Offer, the Commission has considered these undertakings.

#### IV.

In view of the foregoing, the Commission deems it appropriate, in the public interest, and for the protection of investors to impose the sanctions agreed to in Respondents' Offers.

Accordingly, pursuant to Section 8A of the Securities Act, Section 21C of the Exchange Act, Sections 203(e), 203(f) and 203(k) of the Advisers Act, and Section 9(b) of the Investment Company Act it is hereby ORDERED that:

A. Respondents Dennis Gibb and Sweetwater Investments, Inc. cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1), 206(2), 206(4) and 207 of the Advisers Act and Rules 206(4)-2 and 206(4)-8 promulgated thereunder.

B. The registration of Respondent Sweetwater Investments, Inc. be, and hereby is, revoked.

C. Respondent Dennis Gibb be, and hereby is:

barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; except that Gibb may, within one week of the date of this order, take actions that are necessary to perform the undertakings listed above; and

prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter.

D. Respondents shall pay, jointly and severally, disgorgement of \$1,144,000 and prejudgment interest of \$20,747.40 to the Securities and Exchange Commission. However, as to Gibb, this obligation shall be offset by the amount of any criminal order of restitution that is entered against him, based on or in connection with the facts above.

E. The disgorgement and prejudgment interest referenced in paragraph D above shall be distributed to harmed investors through a Disgorgement Fund in accordance with a distribution plan to be approved by the Commission.

V.

It is further Ordered that, for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Vanessa A. Countryman  
Acting Secretary