

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Release No. 51829 / June 13, 2005

Administrative Proceeding  
File Nos. 3-11393

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In the Matter of	:	Order Directing Appointment
	:	of Tax Administrator and
Massachusetts Financial Services Co.,	:	Establishing a Fair Fund
John W. Ballen and Kevin R. Parke	:	
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**I.**

**FACTS**

1. On February 5, 2004, the Commission issued an Order instituting administrative and cease-and-desist proceedings (“February Order”) against Massachusetts Financial Services Co. (“MFS”), John W. Ballen (“Ballen”), and Kevin R. Parke (“Parke”) (collectively, “Respondents”). The February Order found that Respondents violated Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 and Section 34(b) of the Investment Company Act of 1940 by allowing widespread market timing trading in certain MFS mutual funds in contravention of those funds’ public disclosures. As to monetary relief, the February Order required MFS to pay \$225 million in disgorgement and penalties, required Ballen and Parke to pay \$314,058.88 and \$315,083.99, respectively, in disgorgement and penalties, and authorized the creation of a Fair Fund to compensate injured investors.

2. The February Order further states that the civil penalties may be added to a Fair Fund to be distributed pursuant to a distribution plan drawn up by an Independent Distribution Consultant.

3. In accordance with the provisions of the February Order, Ballen made payments to the Commission totaling \$314,058.88 on February 20, 2004, Parke made payments to the Commission totaling \$315,083.99 on February 23, 2004, and MFS made payments to the Commission totaling \$225 million on March 5, 2004. These funds are held at the Department of the Treasury pending a distribution.

4. The Commission recently has solicited proposals from several tax firms in similar administrative proceedings and has determined that Damasco and Associates, located in San Francisco, California, is best suited to act as tax administrator in these proceedings.

## II.

In view of the foregoing, it is ORDERED that:

A. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, a Fair Fund is hereby established for the disgorgement and penalty funds described in the February Order (“the Fund”).

B. Pursuant to Rule 1105(a) of the Commission’s Rules on Fair Fund and Disgorgement Plans, Damasco and Associates be appointed as tax administrator (the “Tax Administrator”) for the Fund with limited authority and power to: (1) act as the administrator for tax purposes for the Fund as a qualified settlement fund (“QSF”); (2) prepare, sign, and file the necessary tax returns and tax-related documents for the Fund; (3) obtain the necessary tax-related documents and identifiers, such as an employee identification number, on behalf of the Fund; (4) perform other tax-related and reporting duties on behalf of the Fund as required by Department of the Treasury regulations relating to QSF administrators; and (5) communicate on behalf of the Fund on matters set forth in this paragraph.

C. The bond requirement of Rule 1105(c) of the Commission’s Rules on Fair Fund and Disgorgement Plans is waived for good cause shown, specifically, as further described below, because the Tax Administrator shall never have custody or control of the Fund;

D. The Tax Administrator shall submit, at least 30 days prior to any date on which a tax payment is required on behalf of the Fund, or as soon as is practicable, documents showing the amount necessary to satisfy the tax liability of the Fund as well as all other documents supporting such amount. The Tax Administrator shall submit the documents to the Office of Financial Management (“OFM”), Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312, with a copy to the Commission attorney assigned to this matter. OFM shall pay the amount of the documented taxes to the Tax Administrator by check or wire transfer from the Fund. Such tax payments will come first from any earnings or interest in the Fund, and second, if necessary, from the principal of the Fund. The Tax Administrator, in turn, shall be responsible for paying the taxes to the IRS and the relevant state taxing authority, if any, on behalf of the Fund.

E. The Tax Administrator shall comply with all reporting requirements applicable to a QSF as defined in Treasury Regulations Section 1.468B-1(a), as amended, shall file on a timely basis all required federal, state, and local tax returns, and shall contemporaneously provide copies of such filings to the Commission attorney assigned to this matter.

F. Respondent MFS shall be responsible for the payment of the fees and other expenses of Damasco & Associates in carrying out the Tax Administrator duties described herein.

G. The Tax Administrator shall keep records and bill the Fund for the services provided to it. The Tax Administrator shall submit the bill to MFS for payment by check or wire

transfer. Each bill shall be reviewed by the Commission attorney assigned to this matter. The fees billed shall be as agreed upon in the Tax Administrator's engagement letter with the Commission executed on March 8, 2005.

By the Commission.

Jonathan G. Katz  
Secretary