

ADMINISTRATIVE PROCEEDING
File No. 3-13019

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of

Gabelli Funds, LLC,

Respondent.

PROPOSED PLAN OF DISTRIBUTION

1 Introduction

1.1 This Distribution Plan sets forth the procedures by which to distribute to investors who held shares in GAMCO Global Growth Fund¹ (“GGGF” or “The Fund”) during the period spanning September 1999 through August 2002, their proportionate share of the fair fund established to compensate such investors as a result of market timing in GGGF.

2 The Engagement

2.1 Kenneth Lehn, Ph.D., has been engaged by Gabelli Funds, LLC (“Gabelli” or “Respondent”) as the Independent Distribution Consultant (“IDC”) in the captioned matter.² In that capacity, Dr. Lehn is to develop a plan to distribute money paid to the Securities and Exchange Commission (“Commission”) pursuant to a Commission order (the “Order”) related to the Commission’s findings that Gabelli permitted a hedge fund investment manager based in the United Kingdom (the “U.K. hedge fund manager”) to market time GGGF during the period of September

¹ GGGF was called the Gabelli Global Interactive Couch Potato Fund until January 13, 2000 when its name was changed to Gabelli Global Growth Fund. The Fund’s name was changed again on November 16, 2005 to GAMCO Global Growth Fund.

² Dr. Lehn is the Samuel A. McCullough Professor of Business Administration at the University of Pittsburgh and former Chief Economist at the Commission.

1999 through August 2002 (the “relevant period”).³ Respondent has agreed to pay all costs associated with the engagement of the IDC.

- 2.2 The Order required Gabelli to pay \$16 million to the Commission. The Order created a fair fund⁴ to be distributed to GGGF investors who incurred losses due to the market timing in GGGF (“the Fair Fund”). The \$16 million payment includes \$9.7 million in disgorgement, \$1.3 million in prejudgment interest and \$5 million in a civil monetary penalty. Gabelli made the \$16 million payment on May 20, 2008. This money currently is being held by the Bureau of Public Debt, United States Department of the Treasury (“Treasury”). All interest earned will inure to the benefit of investors who incurred losses due to market timing in GGGF. Other than interest, it is not anticipated that the Fair Fund will receive additional funds.
- 2.3 As the IDC, Dr. Lehn has been asked to develop a Distribution Plan for the distribution of the Fair Fund according to a methodology developed in consultation with Gabelli and acceptable to the staff of the Commission and the independent Trustees of GGGF (the “Distribution Plan”).⁵
- 2.4 The Distribution Plan relies on the findings in the Order. The estimated dilution losses associated with market timing in GGGF, as calculated by the IDC, are not intended to be, nor should they be interpreted to be, an estimate of any actual or other damages associated with alleged market timing in the Fund. The estimated dilution losses were calculated as a means to allocate to investors, as compensation for losses suffered by GGGF, a share of the Fair Fund.
- 2.5 It is the IDC’s view that the methodology described herein constitutes a fair and reasonable allocation of the Fair Fund in the context of the captioned matter.

3 Representations of the IDC

- 3.1 To the best of his knowledge, the IDC has received full cooperation from the Respondent, including access to data and individuals as requested.
- 3.2 Several people at Compass Lexecon, an economics consulting firm, have assisted the IDC in developing this Distribution Plan, including Neal Lenhoff, Vincent Warther and Deborah Dobrusin. All work in this matter has been done under the IDC’s direction.

³ *In the Matter of Gabelli Funds LLC*, Admin. Proc. File No. 3-13019, Investment Advisers Act Release No. 2727 (Apr. 24, 2008).

⁴ “Fair Fund” as defined in Section 308(a) of the Sarbanes-Oxley Act of 2002.

⁵ The Distribution Plan is to “compensate those shareholders fairly and proportionately for the harm caused to them by the market-timing trading activity during the relevant period . . .” Order at ¶ 20.b.

- 3.3 Dr. Lehn has never been employed by the Respondent. Under the terms of the Order, Dr. Lehn agrees that, for the period of this engagement and for a period of two years from completion of this engagement, he will not “enter into any employment, consultant, attorney-client, auditing or other professional relationship with the Respondent or any of their present or former subsidiaries, affiliates, trustees, directors, officers, employees, or agents acting in their capacity[.]”⁶
- 3.4 Pursuant to the terms of the Order, Compass Lexecon and/or its representatives set forth above will not, without prior written consent of the independent directors of the Respondent and the Commission’s staff, “enter into any employment, consultant, attorney-client, auditing or other professional relationship with the Respondent, or any of their present or former subsidiaries, affiliates, trustees, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.”⁷
- 3.5 The conclusions the IDC has reached in this matter should be viewed as specific to this engagement and to the facts of this case.

4 Background

- 4.1 In the Order, the Commission found that the Respondent violated Section 17(d) of the Investment Company Act of 1940 (“Investment Company Act”) and Rule 17d-1 thereunder; Section 206(2) of the Investment Advisers Act of 1940; and aided and abetted and caused violations of Section 12(d)(1)(B)(i) of the Investment Company Act. The Respondent neither admitted nor denied any of the Commission’s findings in the Order.
- 4.2 The methods of calculation of each eligible investor’s share of the Fair Fund are intended to result in a payment to each eligible investor that restores the impaired value of the investor’s investment in GGGF. Some of this impaired value is susceptible to calculation, while some of this impaired value is not. The methods of calculation are intended by the Commission to fairly estimate the impaired value that each investor has suffered and make a payment in that amount.
- 4.3 GGGF investors purchased shares in the Fund through one of four distribution channels.⁸ Each distribution channel presents unique challenges to the Distribution Plan, and the manner of distribution to each channel is described herein.
- 4.3.1 Financial Intermediary Disclosed Accounts – Certain GGGF investors bought shares in the Fund through financial intermediaries (including registered broker-

⁶ Order at ¶ 20.g.

⁷ Order at ¶ 20.g.

⁸ A single investor may have purchased shares in multiple accounts. Hereafter, the term “acountholder” refers to the name in which an individual account is held.

dealers, banks, trust companies and investment advisers) who established accounts with the Fund's transfer agent, *Boston Data Financial Services*, which disclosed the investor's identity, contact information, purchases and redemptions.

- 4.3.2 Financial Intermediary Non-Disclosed Accounts – Other GGGF investors bought their shares through financial intermediaries who provided a unique identifier for each account to the Fund's transfer agent. The financial intermediary did not provide the investor's identity or contact information to the transfer agent.
- 4.3.3 Financial Intermediary Omnibus Accounts – Other GGGF investors bought their shares through financial intermediaries that functioned as the accountholder of record. Under this structure, the financial intermediary provided to the Fund's transfer agent, on a daily basis, customer transaction data concerning the number of shares purchased and sold by all customers on an aggregate basis. Specific information, such as a tax identification number for each customer or account, was not provided to the transfer agent.
- 4.3.4 Direct Purchase Holders – Certain GGGF investors bought their shares directly through the distributor for the Fund, Gabelli & Company, Inc., by submitting an application with payment to the transfer agent.
- 4.4 The IDC sets forth below the methodology used to develop the plan for calculating and distributing the Fair Fund to investors in GGGF during the relevant period.

5 Methodology Used to Develop Distribution Plan

5.1 Data

- 5.1.1 To estimate the effect of the relevant market timing transactions on GGGF investors, the IDC requested the following data from Gabelli: (a) account information for the U.K. hedge fund manager identified in the Order; (b) trading records for the GGGF accounts of the U.K. hedge fund manager during the relevant period; (c) trading records for all other investors in GGGF during the relevant period; (d) investments in securities made by GGGF during the relevant period and for one month thereafter; (e) GGGF's daily net asset value ("NAV") over the relevant period; and (f) dividends paid by GGGF over the relevant period.
- 5.1.2 Gabelli provided all of the requested data.
- 5.1.3 The IDC and Compass Lexecon used the data to identify market timing transactions involving the U.K. hedge fund manager. Compass Lexecon created a dataset consisting of "roundtrip" transactions made by the U.K. hedge fund manager in GGGF using a "last in, first out ("LIFO") methodology."

- 5.1.4 For example, assume the U.K. hedge fund manager purchased 100 shares of GGGF on January 15, bought an additional 50 shares on January 20, sold 100 shares on January 22, and sold the remaining 50 shares on January 25. The LIFO methodology results in a 50 share trade pair with a buy date of January 20 and a sell date of January 22, a second trade pair of 50 shares with a buy date of January 15 and sell date of January 22, and a third trade pair of 50 shares with a buy date of January 15 and a sell date of January 25.
- 5.1.5 Table 1 shows the number of trades in GGGF made by the U.K. hedge fund manager, and the dollar value of the market timing transactions identified in the Order.
- 5.1.6 The Order notes that “the U.K. hedge fund manager executed approximately 399 round-trip market-timing trades in GGGF with an aggregate volume of approximately \$4.2 billion...”⁹ These figures approximate those shown in Table 1, which shows total transactions of almost \$4.2 billion involving 800 trades.¹⁰

5.2 Estimation of Dilution Losses

- 5.2.1 Transactions by market timers impose losses on other shareholders in a mutual fund if the returns earned by the market timers exceed the returns that the fund generates on the cash flows invested in the fund by the market timers. These losses are referred to as “dilution losses.” The amount of dilution losses associated with market timing is related to how the fund invests the cash flows invested by market timers in the fund. The IDC considered three approaches to estimating dilution losses in this matter – (i) the next day NAV approach, (ii) the realized profits approach, and (iii) the hybrid approach.
- 5.2.2 *Next Day NAV Approach.* If a fund fully invests the net cash flows in securities (or derivatives related to the securities) the day after a market timer invests in the fund, and liquidates the securities investment the day after the market timer exits the fund, then the “next day NAV” approach is an appropriate way to estimate dilution losses associated with market timing. Under this approach, dilution losses are equal to the sum of the market timer’s first day profits plus avoided loss on the day the market timer exits the fund.
- 5.2.3 *Realized Profits Approach.* Alternatively, if a fund holds all of the market timer’s net cash flows as cash (i.e., if a fund does not invest any of the market timer’s cash flows in securities or derivatives), then the “realized profits” approach is an appropriate way to estimate dilution losses associated with market

⁹ Order at Overview.

¹⁰ The discrepancies between the figures in the Order and those in the table are due to differences in the way roundtrip transactions are identified.

timing. Under the realized profits approach, dilution losses are equal to the market timer's holding period profits (i.e., the difference between the proceeds the market timer realizes upon redemption and the amount of the initial investment).

5.2.4 *Hybrid Approach.* A third possibility is that a fund gradually invests the market timer's cash flows in securities or derivatives over a period of time greater than one day and holds a portion of the cash flows in cash until it is fully invested. In this case, dilution losses will tend to lie between the dilution losses estimated under the next day NAV approach and the realized profits approach.

5.3 Empirical Analysis of How GGGF Invested Flows from the U.K. Hedge Fund Manager

5.3.1 The IDC conducted statistical analysis to determine whether Respondent invested the net cash flows invested in GGGF by the U.K. hedge fund manager in securities. The IDC used regression analysis to determine whether there was a statistically significant relation between GGGF's daily net purchases of securities and lagged values of net cash flows invested in the fund by the U.K. hedge fund manager. The regression was estimated over a period corresponding to the period during which GGGF was allegedly timed.

5.3.2 The statistical analysis revealed no statistically significant relation between the net cash flows invested in GGGF by the U.K. hedge fund manager and securities purchases by GGGF. Based on this analysis, the IDC believes it is reasonable to assume that the flows invested by the U.K. hedge fund manager were held as cash, not invested in securities.¹¹ As a result, the IDC used the realized profits approach to estimate dilution losses in this matter.

5.3.3 Table 2 shows the results of the IDC's estimation of losses due to market timing in GGGF. Total dilution losses are estimated to be approximately \$9.7 million.

6 Interest

6.1 Because of the time value of money, investors who incurred a given dilution loss earlier in the relevant period suffered a larger loss than those who incurred the same dilution loss later in the relevant period. For this reason, the dilution losses

¹¹ "Regression analysis is a statistical tool for the investigation of relationships between variables. Usually, the investigator seeks to ascertain the causal effect of one variable upon another—the effect of a price increase upon demand, for example, or the effect of changes in the money supply upon the inflation rate. To explore such issues, the investigator assembles data on the underlying variables of interest and employs regression to estimate the quantitative effect of the causal variables upon the variable that they influence. The investigator also typically assesses the "statistical significance" of the estimated relationships, that is, the degree of confidence that the true relationship is close to the estimated relationship." Alan O. Sykes, *An Introduction to Regression Analysis*, in Chicago Lectures in Law & Economics 1 (E. Posner ed.) (Foundation Press: 2000).

incurred by investors will be adjusted for the accumulation of interest from the time the losses were incurred through a date shortly before the distributions are made. The interest rate used for this calculation is the federal short-term rate, which is determined from a one-month average of market yields from marketable obligations of the U.S. federal government with maturities of three years or less.

- 6.2 Table 2 shows the estimated dilution losses and interest adjustment for each month during the period of September 1999 through August 2002. The total estimated dilution loss over the period is \$9,730,174 and the total interest adjustment is \$3,102,892. The sum of the total dilution loss and interest adjustment is \$12,833,066.

7 Calculation of Distribution Amounts for Individual Investors in GGGF

- 7.1 For each investor in GGGF, including Financial Intermediary Disclosed, Non-Disclosed and Omnibus Accountholders, and Direct Purchase Holders, the IDC calculated a prorated share of the estimated dilution losses incurred by the Fund because of the market timing on each day (the "Distribution Amount"). The prorated share was calculated as the percentage of the value of the Fund held by an investor on a given day times the estimated dilution losses incurred by the Fund on that day.
- 7.2 For example, suppose an investor owned 0.1% of the Fund on a day when the Fund incurred estimated dilution losses of \$1 million. Under the Distribution Plan, the prorated share of the dilution loss incurred by the investor is \$1,000 (i.e., 0.001 times \$1 million). Hence, the investor would receive \$1,000 (before interest) from the Fair Fund to compensate him for the dilution loss he incurred.
- 7.3 The U.K. hedge fund manager who engaged in market timing, as identified in the Order, will not be eligible for a distribution. In addition, investors who, prior to distribution under the Distribution Plan, are subject to order(s) of the Commission, a court, or other authority, by settlement or otherwise, of which the IDC has notice, finding them responsible for losses suffered by the Fund in connection with market timing of the Fund during the relevant periods, will not be eligible for a distribution under the Distribution Plan.
- 7.4 Only investors with an aggregate prorated share of at least \$10 (including accounts that have negative aggregate losses) across all days are eligible to receive a distribution from the Fair Fund. The decision to adopt a \$10 de minimis requirement is based on the conclusion that it is not cost effective to attempt to distribute amounts of less than \$10 to individual investors.
- 7.5 Any monies not distributed to investors or paid in connection with tax obligations shall be remitted to the SEC for disbursement to the United States Treasury.

8 Distribution of Funds

- 8.1 Fund Administrator. Rust Consulting, Inc. (“Rust”) is proposed to serve as the Fund Administrator pursuant to Rule 1105 of the Commission’s Rules of Practice, 17 C.F.R. § 201.1105 (the “Fund Administrator”). Rust, founded in 1976, is a service provider of technology for the legal industry and offers claims administration services. Rust has extensive experience in both the settlement administration industry (over 20 years) and has been the settlement administrator for other SEC settlements in mutual fund market-timing matters. Rust will be compensated for its time and expenses by the Respondent in accordance with the Order.¹² In cooperation with the IDC, Rust will perform the duties and obligations set forth herein, including overseeing the administration of the Fair Fund; distributing funds from the Fair Fund to investors in accordance with the Distribution Plan; preparing and submitting to the staff in accordance with Rule 1105(f) periodic accountings of all monies earned or received and all monies spent in connection with the administration of the Distribution Plan; and, with the IDC, submitting a final accounting for approval by the Commission and/or its delegate.
- 8.2 Limitation on Liability. The IDC and the Fund Administrator, and/or each of their designees, agents and assigns, shall be entitled to rely on any Order issued in this proceeding by the Commission, its Secretary by delegated authority, or an Administrative Law Judge, and may not be held liable to any person other than the Commission or the Fair Fund for any act or omission in the course of administering the Fair Fund, except upon a finding that such act or omission is caused by such party's gross negligence, bad faith or willful misconduct, reckless disregard of duty, or reckless failure to comply with the terms of the Distribution Plan. This paragraph is an expression of the current state of the law and is not intended, nor should it be deemed to be, a representation to or an indemnification of the IDC or the Fund Administrator or their designees, agents and assigns, nor should this paragraph preclude the Commission or the Qualified Settlement Fund (as defined in 8.3.1) from seeking redress from the IDC or the Fund Administrator for any act or omission in the course of administering the Fair Fund or from seeking redress from any insurance or bond provided as set forth in this Plan.
- 8.3 Custody of the Fair Fund and Other Security Issues.
- 8.3.1 The Fair Fund constitutes a Qualified Settlement Fund under Section 468B(g) of the Internal Revenue Code, 26 U.S.C. §468B(g), and related regulations, 26 C.F.R. §§ 1.468B-1 through 1.468B-5.
- 8.3.2 The assets of the Fair Fund are subject to the continuing jurisdiction and control of the Commission. The Fair Fund is currently deposited at the U.S. Treasury, Bureau of Public Debt.

¹² Order at ¶ 20.a.

- 8.3.2.1 Upon approval of the Distribution Plan by the Commission, the Fund Administrator shall establish an escrow account at U.S. Bank (“the Bank”) in the name of and bearing the Employer Identification Number (“EIN”) of the QSF as custodian for the distributees of the Distribution Plan. The name of the account shall be in the following form: Qualified Settlement Fund, [EIN No.], as custodian for the benefit of investors allocated a distribution from the Gabelli Funds Plan of Distribution (“Escrow Account”). The escrow agreement (“Escrow Agreement”) must be not unacceptable to the Commission staff.
- 8.3.2.2 Upon approval of the Distribution Plan by the Commission, the IDC, the Fund Administrator, and the Bank shall further establish a controlled disbursement account in the name of and bearing the taxpayer identification number of the Fair Fund (the “Distribution Account”).
- 8.3.2.3 Following approval of the Distribution Plan, submission by the IDC of the Issue List (defined in ¶ 8.4.1, below) to the Commission staff and all information necessary to make disbursement to each distributee, and issuance of a disbursement order, the Commission staff shall cause the balance in the Fair Fund to be deposited in the Escrow Account.
- 8.3.2.4 All funds will remain in the Escrow Account pursuant to the Escrow Agreement until needed to satisfy a presented check or wire instruction. At that time, and subject to the controls set forth in the Escrow Agreement, the amount needed to satisfy any presented check will be transferred to the Distribution Account and immediately paid out, subject to any adjustments resulting from stop payments or the Positive Pay System and other controls in the Escrow Agreement. For any payment to be made by wire instruction, and subject to the controls set forth in the Escrow Agreement, funds will be paid by the Bank from the Escrow Account in accordance with written instructions provided to the Bank by parties authorized by the Escrow Agreement.
- 8.3.2.5 The Fund Administrator shall be the signer on the Distribution Account, subject to coordination with the IDC and the continuing jurisdiction and control of the Commission. The Fund Administrator shall authorize the Bank to provide information on the Escrow Account and the Distribution Account to the Tax Administrator (defined in ¶8.12.1, below), including providing duplicate statements for the accounts.

8.3.2.6 The Fund Administrator shall use the assets and earnings of the Fair Fund to provide payments to eligible investors and to provide the Tax Administrator with assets to pay tax liabilities. The Escrow account shall be invested in short-term U.S. Treasury securities all backed by the full faith and credit of the U.S. Government of a type and term necessary to meet the cash requirements of the payments to eligible investors, tax obligations and fees; provided however, that investments in U.S. Treasury securities will not be made through repurchase agreements or other derivative products.

8.3.3 Because (1) the Fund Administrator will have no custody, and only limited control, of the Fund; (2) the Fund will be held by Treasury until immediately before transmittal of checks or electronic transfers to eligible investors; (3) upon transfer from Treasury, funds will be held in an escrow account, separate from Bank assets, until presentation of a check or electronic transfer, at which time funds will be transferred to a controlled distribution account; (4) presented checks or electronic transfers will be subject to “positive pay” controls before honored by the Bank; and (5) both the Bank and the Fund Administrator will maintain, throughout this process, insurance and/or a financial institution bond that covers errors and omissions, misfeasance, and fraud, the Fund Administrator proposes that the requirement that a bond be posted pursuant to Rule 1105(c) be waived by the Commission for good cause shown. The Fund Administrator maintains and will continue to maintain until termination of the Fair Fund errors and omissions insurance coverage (“E&O insurance”). The primary insurer is a company which, as of its most recent renewal, was rated (“A+ XV”) by A.M. Best. The Fund Administrator maintains, and will continue to maintain until termination of the Fair Fund, E&O insurance in the amount of \$10,000,000. It has a policy limit of \$10,000,000 per occurrence and an overall limit of \$10,000,000 during the life of the policy. The Fund Administrator also maintains an additional \$10,000,000 in excess E&O insurance. In addition, the Fund Administrator maintains a crime policy in the amount of \$5,000,000 per occurrence, which provides protection against employee dishonesty, forgery or fraudulent alteration of securities, and electronic and computer crime exposures, which include losses due to transfer, payment or delivery of funds as a result of fraudulent input, preparation or modification of computer instructions, data or fraudulent electronic transmissions or communications. Under the Plan of Distribution, at no time will there be funds under the custody and control of the Fund Administrator. Documentation of coverage has been, and annually will be, provided to the assigned Commission staff to support the foregoing representations.

8.3.4 The Bank maintains and will continue to maintain, among other insurance, a Financial Institution Blanket Bond, and errors and omissions insurance coverage. The financial strength of the primary insurers, as of the most recent renewal of the coverage, was rated “A” by A.M. Best. The Bank annually assesses the adequacy of its policy limits through extensive analysis of historical loss data, exposure to

loss and internal company controls. The Bank's limits are reviewed annually by its Board of Directors. Documentation of coverage has been provided, and annually will be provided, to the assigned Commission staff to support the foregoing representations.

- 8.4 Additional Distribution Controls. Following approval of the Distribution Plan, and in order to maximize the security of the Fair Fund, the following procedures will be followed in connection with the Fair Fund:
- 8.4.1 The Fund Administrator will provide to the IDC a list identifying eligible investors through multiple identifiers; including name, address, and the payment amounts (the "Issue List"). The Issue List will be validated by the Fund Administrator at the direction of the IDC through the performance of procedures and methodologies chosen by the IDC. The validation will state that the Issue List was compiled in accordance with the Distribution Plan and provides all currently known information necessary to make a disbursement to each eligible investor. At the IDC's direction, the Fund Administrator will provide the validated Issue List to the Bank. The validated Issue List will be used in connection with the Positive Pay System and other controls described below.
- 8.4.2 In order to distribute funds, the IDC will submit a validated Issue List and the payment amounts to the assigned Commission staff, who will obtain authorization from the Commission to disburse pursuant to SEC Rule 1101(b)(6). The payees and amounts will be validated at the IDC's direction by the Fund Administrator. The validation will state that the Issue List was compiled in accordance with the Plan and provides all information necessary to make a disbursement to each distributee. Unless otherwise directed by the Commission, the Commission staff will obtain an Order Directing Disbursement that releases funds to the bank account established by the Fund Administrator based upon the validated Issue List and representation by the Fund Administrator that the checks or electronic transfers will be issued within the next 5 business days.
- 8.4.3 Upon authorization by the Commission, the Commission staff will direct the release of the Fair Fund from Treasury to the Escrow Account for distribution as provided herein.
- 8.4.4 The IDC, Commission staff, and the Fund Administrator will establish a set "Mailing" date, or date on which the Fund Administrator will transmit all checks or wires to eligible investors intended to be funded with the released funds.
- 8.4.5 The Commission staff will direct that the funds be released to the Escrow Account up to five (5) days before the agreed-upon mailing date. The Commission staff's direction will be based upon the validated Issue List and the representation by the Fund Administrator that all amounts intended to be funded with the released funds will be transmitted to eligible investors by check or wire

on the mailing date. The Fund Administrator will use its best efforts to mail and/or transmit distribution checks or wire transfers within five (5) business days of the Escrow Account's receipt of the funds. All efforts will be coordinated to keep the time between the receipt of the funds and the transmittal process at a minimum.

- 8.4.6 Upon presentation of an outstanding check, and subject to the controls set forth below, the exact amount needed to satisfy the presented obligation will be transferred from the Escrow Account to the Distribution Account and immediately paid out, subject to any adjustments resulting from stop payments or the Positive Pay System and other controls described below. All checks shall bear a stale date of 90 days. Checks that are not negotiated within the stale date shall be voided, and the Fund Administrator shall instruct the Bank to stop payment on those checks.
- 8.4.7 As stated in ¶ 8.3.2.3, above, for any payment to be made by wire instruction, funds will be distributed by the Bank from the Escrow Account in accordance with written instructions provided to the Bank by parties authorized by the Escrow Agreement.
- 8.4.8 A Positive Pay System will be used to control distributions from the Distribution Account, requiring, among other things, confirmation by the Bank that all checks presented for payment match the identifiers and amounts on the validated Issue List prior to payment of the presented obligation.
- 8.4.9 The Bank will report the aggregate amounts of transfers in and out of the Escrow Account and the Distribution Account on a daily basis to the Fund Administrator. The Fund Administrator, on a daily basis and using electronic "view functions" provided by the Bank, will confirm that: the Escrow Account and the Distribution Account reconcile; and, with respect to each instrument presented, that the proper amounts were released from the appropriate account. The Fund Administrator will regularly update the IDC as to the reconciliation of the Escrow Account and Distribution Account and will alert the IDC and the staff of the Commission as soon as possible under the circumstances upon the detection of any irregularity that is not resolved in the ordinary course of business. As appropriate, the Fund Administrator will monitor outstanding large dollar checks and contact the eligible investor to determine if assistance can be offered to speed the presentment for payment of the outstanding check(s).
- 8.5 Oversight and Costs. The IDC will work with the Fund Administrator in the conduct of its duties with respect to this engagement and the Fund Administrator will keep the IDC informed as to work on this engagement. The Respondent is responsible for all costs associated with the administration of the Distribution Plan, except tax liabilities. Tax liabilities will be paid from the interest earned on the

Fair Fund. If the interest is not sufficient, then the tax liabilities will be paid from the corpus of the Fair Fund.

- 8.6 Procedures for Identifying and Distributing to Eligible Investors. The Fund Administrator will identify and make distributions to eligible investors in several ways, depending on the distribution channel through which the investor purchased the shares. The manner in which the investors will be identified and paid is as follows:
- 8.6.1 Financial Intermediary Disclosed Accounts and Direct Purchase Holders: The Fund Administrator will use records provided by Gabelli and its transfer agent to identify each investor in a Financial Intermediary Disclosed Account and each Direct Purchase Holder and determine the shares held by each investor on a daily basis. The Fund Administrator will then, in accordance with the Distribution Plan and, working with the IDC, determine the Distribution Amount payable to each eligible investor.
- 8.6.2 Financial Intermediary Omnibus Accounts: Working with the IDC, the Fund Administrator will identify and determine the Distribution Amount for these investors as follows:
- 8.6.2.1 The Fund Administrator will use transfer agent records and other Gabelli resources to identify Omnibus Accounts.
 - 8.6.2.2 The Fund Administrator will, in accordance with the Distribution Plan, determine net shares held in each Omnibus Account on a daily basis.
 - 8.6.2.3 Working with the IDC, the Fund Administrator will calculate the total amount due to each Omnibus Account using the methodology set forth in the Distribution Plan.
 - 8.6.2.4 The Fund Administrator will engage in an “Outreach Process” by which the Fund Administrator will send written notification to each “Omnibus Account Intermediary” with provisional distributions of \$1,000 or more. With respect to any single Omnibus Account with provisional distributions between \$1,000 and less than \$100,000, the Omnibus Account Intermediary will be required to distribute the Omnibus Account’s distributions to its beneficial owners (or otherwise apply the distributions the Omnibus Account Intermediary receives for the benefit of its beneficial owners) in a manner that is consistent with its legal obligations to the beneficial owners. With respect to any single Omnibus Account with provisional distributions of \$100,000 or greater, the fund administrator will request investor records (i.e.,

shares held by each investor on each day). The individual accountholder's name and address, as well as the tax identification number, for each account within the Omnibus Account, will be requested from the Omnibus Account Intermediary that sold the Fund in this manner. The accounts that are directly underlying the Omnibus Account will be referred to as "Tier 1".

- 8.6.2.5 The Fund Administrator shall maintain in confidence investor identifying information and any other information relating to sub-account holders obtained from any Omnibus Accountholder pursuant to this Distribution Plan, and shall not share such information with Respondent. The Fund Administrator, however, may share such information with its service providers or other persons, including the Commission staff, to the extent necessary to perform its duties under this Distribution Plan, and the Fund Administrator shall require that such service providers and other persons maintain such information in confidence.
- 8.6.2.6 Upon receipt of the individual accountholder records from each Omnibus Account Intermediary, the Fund Administrator will, in accordance with the methodology set forth in the Distribution Plan, calculate the amount due each Tier 1 account as provided in Section 7, above.
- 8.6.2.7 After 60 days from the approval of this Distribution Plan, the Outreach Process will cease, unless otherwise directed by the Commission staff in consultation with the IDC. If an Omnibus Account Intermediary (1) does not respond to the Fund Administrator's Outreach Process or (2) does not provide to the Fund Administrator the requested individual accountholder records within 60 days, the Fund Administrator will offer to that Omnibus Account Intermediary information to enable the Omnibus Account Intermediary to make the distribution at its own cost and in accordance with this Distribution Plan and will ask the Omnibus Account Intermediary to certify that it will make commercially reasonable efforts consistent with its legal, fiduciary, and contractual duties to make the distribution to its Tier 1 accounts in accordance with the methodology provided by the IDC and the deadlines set forth in the Distribution Plan, and that the Omnibus Account Intermediary will return any undistributed money to an account that has been established to hold otherwise undistributed funds for ultimate disposition in accordance with the Distribution Plan.

8.6.2.7.1. The Fund Administrator, working with the IDC, will make commercially reasonable efforts to obtain a certification for each such Omnibus Account Intermediary. At the time the distribution is made, each Omnibus Account Intermediary that provides the certification will receive its portion of the Fair Fund so that it can make the distribution to its Tier 1 accounts. After the Omnibus Account Intermediary has distributed funds in this fashion, the Omnibus Account Intermediary will be required to provide the Fund Administrator and IDC with a certification that it has complied with these terms and conditions.

8.6.2.7.2. The Fund Administrator will maintain records of each attempt to contact an Omnibus Account Intermediary, each response received, if any, and the reason for not providing the requested information. The Fund Administrator will also maintain records of each offer to an Omnibus Account Intermediary to make the distribution at its own cost and in accordance with this Distribution Plan, each response received, if any, and the reason for not accepting such offer or for not providing the required certification. These records will be provided to the Commission staff at least 45 days before the scheduled distribution is made. In such cases, the amount of the Fair Fund allocated to such Omnibus Account Intermediary shall be treated as undistributed for purposes of this Distribution Plan.

8.6.3 Financial Intermediary Non-Disclosed Accounts: Working with the IDC, the Fund Administrator will determine the Distribution Amount for these investors as follows:

8.6.3.1 The Fund Administrator will use transfer agent records and other Gabelli resources to identify Financial Intermediary Non-Disclosed Accounts.

8.6.3.2 Working with the IDC, the Fund Administrator will calculate the total amount due to the Financial Intermediary Non-Disclosed Accounts using the methodology set forth in this Distribution Plan.

8.6.3.3 The Fund Administrator will contact each Financial Intermediary that maintains Financial Intermediary Non-Disclosed Accounts and request individual accountholder identification information. The investor name and address, as well as the tax identification number, typically the individual's social security number, will be requested for each of these accounts. This information will be requested from the Financial Intermediaries identified in the records of the Fund as having sold the Fund in this manner.

- 8.6.3.4 The Fund Administrator shall maintain in confidence investor identifying information and any other information relating to any individual accountholder obtained from Financial Intermediaries pursuant to this Distribution Plan, and shall not share such information with Respondent. The Fund Administrator, however, may share such information with its service providers or other persons, including the Commission staff, to the extent necessary to perform its duties under this Distribution Plan, and the Fund Administrator shall require that such service providers and other persons maintain such information in confidence.
- 8.6.3.5 Upon receipt of the individual accountholder records from each Financial Intermediary, the Fund Administrator will, in accordance with the methodology set forth in the Distribution Plan, calculate the amount due each Tier 1 account as provided in Section 7, above.
- 8.6.3.6 The Fund Administrator will maintain records of efforts made to obtain the cooperation of the Financial Intermediary and of the responses to these efforts. In the event that a Financial Intermediary elects not to provide to the Fund Administrator the requested individual accountholder records, or fails to provide to the Fund Administrator the requested records within 60 days from the approval of this Distribution Plan, the Fund Administrator will deliver to such Financial Intermediary one check or wire transfer representing the aggregate of all Distribution Amounts to which the Financial Intermediary's Non-Disclosed Accounts are entitled under the Distribution Plan. If the Financial Intermediary maintaining such Non-Disclosed Accounts wishes to receive payment via wire transfer, such Financial Intermediary must deliver wiring instructions to the Fund Administrator within forty-five (45) days from the approval of the Distribution Plan.
- 8.6.3.7 Upon receipt of funds representing a Financial Intermediary Non-Disclosed Account's Distribution Amount, the Financial Intermediary shall promptly distribute the funds to investors in accordance with a payment schedule prepared by the Fund Administrator identifying each accountholder by broker identification number. The payment schedule prepared by the Fund Administrator shall not provide for distributions to investors if each such distribution is less than the *de minimis* amount of \$10. All distributions shall be completed within one hundred and eighty (180) days of the receipt of the funds.

8.6.4 Embedded Omnibus and Non-Disclosed Accounts

8.6.4.1 To the extent that the accountholder identification information provided to the Fund Administrator in turn identifies Financial Intermediary Omnibus Accounts or Financial Intermediary Non-Disclosed Accounts, the Fund Administrator will treat the accountholder as a Tier 1 investor.

8.6.5 Retirement Plans¹³

8.6.5.1 Upon completing its final calculation of the amount to be distributed to each eligible investor and associated validations, the Fund Administrator will use its best efforts to identify eligible Retirement Plans whether service providers or otherwise, from the accountholder identification information provided to the Fund Administrator by Gabelli and transfer agency records. The Fund Administrator will then use its best efforts to mail and/or transmit distribution checks or wire transfers to eligible Retirement Plans.

8.6.5.2 With respect to eligible Retirement Plans that are entitled to provisional distributions of \$1,000 or more (“Eligible (1000) Retirement Plans”):

8.6.5.2.1 The Fund Administrator, upon completing its final calculation of the amount to be distributed to each eligible investor and associated validations, will mail notice to each Eligible (1000) Retirement Plan of its respective Distribution Amount. Such notice will be sent via the United States Postal Service to the Eligible (1000) Retirement Plan’s last known address of record.

8.6.5.2.2 Payments to Eligible (1000) Retirement Plans shall be made in the second tranche or any tranche subsequent to the second tranche in order to allow as much time as practicable under the Distribution Plan for such Eligible (1000) Retirement Plans to determine a distribution methodology and, as appropriate, notify the plan-level fiduciary of the same. In addition, the Fund Administrator

¹³ “Retirement Plan” as used in this Distribution Plan means an employee benefit plan, as such plans are defined in Section 3(3) of ERISA, 29 U.S.C. § 1002(3), which is not an Individual Retirement Account (“IRA”), whether or not the plan is subject to Title I of ERISA. Under this Distribution Plan, IRA retirement plans are treated as Omnibus Accounts, and distributions to IRA retirement plans will be made in accordance with Section 8.6.2 of this Distribution Plan.

shall use best efforts to accomplish distributions to all other eligible investors prior to distributing to Eligible (1000) Retirement Plans.

8.6.5.3 Assets of Retirement Plans are held in trust by a trustee, and the trust is the legal owner of the assets. This Distribution Plan requires the plan fiduciaries and intermediaries, as defined in Department of Labor Field Assistance Bulletin No. 2006-01, April 19, 2006 (the "Field Assistance Bulletin"), of Retirement Plans to distribute the monies received in accordance with their legal, fiduciary, and contractual obligations and consistent with guidance issued by the Department of Labor, including but not limited to, the Field Assistance Bulletin.

8.6.5.4 An intermediary to one or more Retirement Plans may allocate the distribution it receives pursuant to this Distribution Plan among eligible Retirement Plans participating in an omnibus account administered by such intermediary according to the procedures set forth in Section 8.6.2 above or according to the average share or dollar balances of the Retirement Plans' investment in GGGF from September 1999 to August 2002, provided, however, that for the purposes of such allocation each Retirement Plan itself (and not the individual plan participants) shall be treated as the beneficial owner.

8.6.5.5 The fiduciary of a Retirement Plan receiving a distribution may distribute it pursuant to one of the following four alternatives:

8.6.5.5.1 Retirement Plan fiduciaries may allocate the distribution to current and former participants in the Retirement Plan using the methodology referenced in Section 7. The IDC will make this methodology available to Retirement Plan fiduciaries.

8.6.5.5.2 Retirement Plan fiduciaries may allocate the distribution *pro rata* (based on the total account balance) among the accounts of all persons who are currently participants in the Retirement Plan (whether or not they are currently employees).

8.6.5.5.3 Retirement Plan fiduciaries may allocate the distribution *per capita* among the accounts of all persons who are currently participants in the Retirement Plan (whether or not they are currently employees).

8.6.5.5.4 To the extent that none of the three preceding alternatives is administratively feasible because the costs of effecting the allocation exceed the amount of the distribution, Retirement Plan fiduciaries may, to the extent permitted by the Retirement Plan, use the distribution amount to pay the reasonable expenses of administering the plan.

8.6.5.6 In view of, among other things, alternative distribution methodologies available to Retirement Plans, plan fiduciaries and/or intermediaries will not be reimbursed the costs and expenses associated with administering the distribution received pursuant to this Distribution Plan.

- 8.7 In accordance with the Order, the Respondent will bear the costs and expenses associated with the administration of the Distribution Plan, including the reasonable administrative costs incurred by Omnibus Account Intermediaries and Financial Intermediaries for identifying individual accountholder records in connection with the Distribution Plan. Requests for reimbursement from Omnibus Account Intermediaries or Financial Intermediaries will be made within a reasonable time and will be paid to the extent that such costs are commercially reasonable in light of the amount to be distributed to such firms. All reimbursement requests are subject to final review and a final decision by the IDC. The decision by the IDC shall be made within 30 days of receipt of the request for reimbursement.
- 8.8 Data Accuracy. All intermediaries providing information to the Fund Administrator will be required to attest to the IDC that to the best of their knowledge, the information they provide is true and accurate.
- 8.9 Affected Investors. Even though the Distribution Plan does not anticipate soliciting accountholder information directly from affected investors, it can be expected that a limited number of investors will contact the IDC, or others, to request a distribution. If this occurs, the information received will be compared to the data obtained by the IDC during the course of the engagement to (1) ensure accurate account information and (2) avoid any duplication of payment. This information will be forwarded to the Fund Administrator for an appropriate response.
- 8.10 Notice and Investor Communications. The Distribution Plan will utilize the following methods to provide notification and information to affected investors. The Fund Administrator will provide customer support and communications programs that will become active at least by the time the first distribution occurs. These services will include a toll free number and a website to the public. The Commission staff retains the right to review and approve any material posted on the website.
- 8.10.1 Gabelli Website. Gabelli will maintain a Gabelli website that will provide all affected GGGF investors with regular and ongoing updates about the Distribution Plan, including notice of the proposed plan, instructions on how to obtain copies

of the proposed plan, and how to submit comments on the proposed plan to the Commission. The website will provide a link to the Commission's website, [<http://www.sec.gov>].

8.10.2 Notice of a Proposed Plan and Opportunity for Comment. Notice of this Plan shall be published in the SEC Docket, on the Commission website [<http://www.sec.gov>], and on the Respondent's website <http://www.gabelli.com>. Any person or entity wishing to comment on the Plan must do so in writing by submitting their comments within thirty days of the date of the notice (i) by sending a letter to the Office of the Secretary, United States Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549-1090; (ii) by using the Commission's Internet comment form (www.sec.gov/litigation/admin.shtml); or (iii) by sending an e-mail to rule-comments@sec.gov. Comments submitted by e-mail or via the Commission's website should include the Administrative Proceeding File Number (Admin Proc. File No. 3-13019) in the subject line. Comments received will be available to the public. Commenters should only submit information that they wish to make publicly available.

8.10.3 Final Approved Plan. The final approved plan will be posted on the following websites:

TBA

8.10.4 Frequently Asked Questions. In addition to the final approved plan, a list of "Frequently Asked Questions" ("FAQs") will be posted on the following websites:

TBA

8.10.5 Investor Call Center. Gabelli has contracted with the Fund Administrator to operate a toll-free investor call center. Investors will have the option of speaking to an individual, who will be trained by the Fund Administrator. This number will be published in the Letter that accompanies the distribution checks, described in 8.11.1, below.

8.11 Distribution. Upon the Commission's approval, and in accordance with the Plan, the IDC will direct the Fund Administrator to implement the Distribution Plan. The Commission retains jurisdiction and control over the implementation of the Distribution Plan.

8.11.1 All payments shall be preceded or accompanied by a communication that includes, as appropriate: (a) a statement characterizing the distribution; (b) a description of the tax information reporting required of the Fair Fund and related

tax consequences; (c) a statement that checks will be void after 90 days; and (d) the name of a person to contact, to be used in the event of any questions regarding the distribution. Any such communication about this Distribution Plan shall be submitted to the assigned Commission staff for review and approval. Distribution checks, on their face or in the accompanying mailing, will clearly indicate that the money is being distributed from a fair fund established by the SEC.

- 8.11.2 It is expected that all distribution checks will be mailed, via the United States Postal Service (“USPS”), to the eligible investors’ last known address of record. All checks drawn on the Distribution Account will bear the legend “Void after 90 days.” A wire transfer may be made in lieu of a check payment where efficiencies dictate. Unless specific direction is provided by the IDC or the Commission staff, checks that are not negotiated within the 90-day period will not be honored and the Fund Administrator will instruct the Bank to refuse payment on those checks.
- 8.11.3 The Fund Administrator has agreed to provide regular updates and reconciliations to the IDC, and will provide a final reconciliation of all undistributed funds to the IDC.
- 8.12 Tax Issues. The methods for calculating each investor’s share of the Fair Fund are intended to result in a payment to each eligible investor that restores the impaired value of the investor’s investment in GGGF.
- 8.12.1 Tax Administrator. The Commission has appointed Damasco & Associates (“Damasco”) as the Tax Administrator of the Fair Fund (“Tax Administrator”).¹⁴ The IDC, the Fund Administrator, and the Respondent will cooperate with the Tax Administrator in providing information necessary to accomplish the income tax compliance, ruling and advice work assigned to the Tax Administrator by the Commission. The Tax Administrator shall be compensated by the Respondent in accordance with the Order.
- 8.12.2 Other Tax Obligations. The IDC will consult with the Tax Administrator regarding the Fair Fund’s income tax compliance, reporting and withholding obligations, if any. The IDC shall work with the Tax Administrator to make adequate reserves for tax liability and any costs of tax compliance not required to be paid by the Respondent.
- 8.13 Claims Process. The Fair Fund is not being distributed according to a claims-made process, so the procedures for providing notice and for making and approving claims are not applicable.

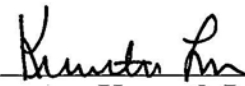
¹⁴ *In the Matter of Gabelli Fund, LLC*, Admin. Proc. File No. 3-13019, Securities Exchange Act Release No. 57796 (May 7, 2008).

- 8.14 Locating Investors. Returned and/or undelivered mail and checks will be handled by the Fund Administrator as follows:
- 8.14.1 All mail returned by the USPS for which a new forwarding address has been provided by the USPS will be immediately repackaged by the Fund Administrator and sent to the new address. The Fund Administrator will update the master database with the new address.
- 8.14.2 All mail returned by the USPS for the first time, without a new forwarding address, will be coded by the Fund Administrator as returned mail. The check will be void, and information forwarded to a company that has access to address information. That company will then search for the most current address available through its proprietary databases, and return each record back to the Fund Administrator. If a new address is found, the Fund Administrator will update that address in the master database and will issue a new check. If no new address is found, the original check will remain voided. Additional efforts to identify the addresses of eligible investors will be conducted by the Fund Administrator as is commercially reasonable in the view of the IDC, where the costs of further research and the amount to be distributed will be considered.
- 8.14.3 All mail returned by the USPS from a second attempted mailing, for which a new forwarding address has been provided by the USPS, will be immediately by the Fund Administrator repackaged and sent to the new address. The Fund Administrator will update the master database with the new address.
- 8.14.4 All mail returned by the USPS from a second attempted mailing, without a new forwarding address, will be coded by the Fund Administrator as returned mail and the check will be voided. Additional efforts to identify the addresses of eligible investors will be conducted by the Fund Administrator as is commercially reasonable in the view of the IDC, where the costs of further research and the amount to be distributed will be considered.
- 8.14.5 All uncashed checks returned as undeliverable will be coded by the Fund Administrator appropriately as returned. The Fund Administrator will mark these checks "VOID", code them into the settlement database, and store them in a secure facility.
- 8.15 Special Circumstances. It is anticipated that distribution checks will be returned to the Fund Administrator for various reasons, including the death, divorce, incapacitation, bankruptcy, or dissolution of the affected eligible investor. The Fund Administrator and/or the IDC will resolve and process these distributions on a case-by-case basis.
- 8.16 Accountings. Once the Fair Fund has been transferred from the Bureau of Public Debt to the Bank, the Fund Administrator will file an accounting during the first ten

days of each calendar quarter, and will submit a final accounting for approval of the Commission prior to termination of the Fair Fund and discharge of the IDC and Fund Administrator.

- 8.17 Distribution Timing. The Fund Administrator will use its best efforts to start the distribution no later than 180 days of plan approval and to complete the distribution within six months of the distribution start date.
- 8.18 Undistributed Funds. A residual account within the Fair Fund is established for any amounts remaining after all funds have been distributed. The residual account may include funds reserved for future taxes and related expenses, distributions from checks that have not been cashed, from checks that were not delivered, or from funds returned to the Fund Administrator. The residual account will be transferred to the Commission for disbursement to the Treasury.
- 8.19 Termination of the Fair Fund. After the distribution to investors has been completed, the Fund Administrator will make arrangements for the final payment of taxes and the Tax Administrator fees and will submit to the Commission staff a final accounting in an SEC standard accounting format provided by the Commission staff (the "Final Accounting"). The Fair Fund shall be eligible for termination after all of the following have occurred: (1) the Final Accounting by the Administrator has been submitted and approved by the Commission, (2) all taxes, fees and expenses have been paid, and (3) any amount remaining in the Fair Fund has been received by the Commission. When the Commission has approved the final accounting, the staff shall seek an order from the Commission to approve the transfer of any amount remaining in the Fair Fund to the U.S. Treasury and shall arrange for the termination of the Fair Fund and discharge of the Fund Administrator.
- 8.20 Extensions of Deadlines. For good cause shown, the Commission staff may extend any of the procedural dates and/or time limits set forth in the Distribution Plan.
- 8.21 Material Changes in Plan. The IDC will inform the Commission staff of any changes in the Distribution Plan. If the staff determines the change to be material, Commission approval is required prior to implementation by amending the Plan, which may be done upon the motion of the Respondent or the Fund Administrator, or upon the Commission's own motion.

Submitted on: 8/26, 2009

By: 

Kenneth Lehn, Ph.D.

Independent Distribution Consultant
retained in connection with *Gabelli
Funds LLC*, Admin. Proc. No. 3-
13019 (Apr. 24, 2008)