

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 2827 / January 12, 2009

INVESTMENT COMPANY ACT OF 1940
Release No. 28580 / January 12, 2009

ADMINISTRATIVE PROCEEDING
File No. 3-13332

In the Matter of

GABELLI FUNDS, LLC,

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS
PURSUANT TO SECTION 203(e) OF THE
INVESTMENT ADVISERS ACT OF 1940
AND SECTIONS 9(b) AND 9(f) 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 203(e) of the Investment Advisers Act of 1940 (“Advisers Act”) and Sections 9(b) and 9(f) of the Investment Company Act of 1940 (“Investment Company Act”) against Gabelli Funds, LLC (“Respondent” or “Gabelli”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (“Offer”) 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, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 203(e) of the Investment Advisers Act of 1940 and Sections 9(b) and 9(f) 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 Respondent's Offer, the Commission finds¹ that:

Summary

This matter concerns violations of Section 19(a) of the Investment Company Act and Investment Company Act Rule 19a-1 by two closed-end funds, The Gabelli Convertible and Income Securities Fund Inc. and The Gabelli Utility Trust (collectively, the "Funds"). Section 19(a) of the Investment Company Act and Investment Company Act Rule 19a-1 require funds to provide shareholders with contemporaneous written statements identifying the source of distributions to shareholders if any portion of the distributions is from a source other than the fund's net income.² The purpose of Section 19(a) and Rule 19a-1 is to provide shareholders adequate disclosure of the sources from which distributions are made.

During the period from January 1, 2002 through December 31, 2003 (the "relevant period"), significant portions of all but one of the Funds' shareholder distributions were from shareholder capital and capital gains. None of the distributions was accompanied by a notice that contained the information required by Rule 19a-1. The Funds therefore violated Section 19(a) of the Investment Company Act and Investment Company Act Rule 19a-1. Pursuant to agreements with the Funds, Gabelli was responsible for the Funds' administrative operations, which included providing Section 19(a) notices to shareholders of the Funds. Gabelli also represented in a 2001 exemptive application to the Commission that notices that comply with Rule 19a-1 would be sent to the Funds' shareholders. Although Gabelli regularly tracked the Funds' performance and knew or was reckless in not knowing that the Funds regularly paid distributions from sources other than net income, it failed to provide contemporaneous notices containing the information required by Rule 19a-1 to the Funds' shareholders. Gabelli thus caused and willfully³ aided and abetted the Funds' violations of Section 19(a) of the Investment Company Act and Investment Company Act Rule 19a-1.

Respondent

1. **Gabelli**, an investment adviser registered with the Commission under Section 203(c) of the Advisers Act, provides investment management and administrative services to nine publicly-traded, closed-end investment companies registered under the Investment Company Act, including The Gabelli Convertible and Income Securities Fund Inc. and The Gabelli Utility Trust.

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

² According to Section 19(a)(1) of the Investment Company Act, a fund's "net income" is "accumulated undistributed net income . . . not including profits and losses realized upon the sale of securities or other properties."

³ A willful violation of the securities laws means merely "that the person charged with the duty knows what he is doing." Wonsover v. SEC, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting Hughes v. SEC, 174 F.2d 969, 977 (D.C. Cir. 1949)).

Gabelli's principal place of business is Rye, New York. Gabelli is a subsidiary of GAMCO Investors, Inc. (NYSE: GBL).

Other Relevant Entities

2. **The Gabelli Convertible and Income Securities Fund Inc.**, a closed-end diversified management investment company registered under the Investment Company Act, was incorporated under the laws of Maryland on December 19, 1988. Its shares trade on the New York Stock Exchange under the symbol GCV. The Gabelli Convertible and Income Securities Fund Inc., which seeks a high level of total return through a combination of current income and capital appreciation, pays distributions quarterly. Its fiscal year ends on December 31.

3. **The Gabelli Utility Trust**, a closed-end, non-diversified management investment company registered under the Investment Company Act, was incorporated under the laws of Delaware on February 25, 1999. Its shares trade on the New York Stock Exchange under the symbol GUT. The Gabelli Utility Trust, which seeks long-term capital appreciation, pays distributions monthly. Its fiscal year ends on December 31.

Section 19(a) Violations

4. Section 19(a) of the Investment Company Act prohibits investment companies such as closed-end funds from paying distributions from any source other than net income unless the payments are accompanied by contemporaneous written statements to shareholders disclosing the sources of the distributions. Rule 19a-1 specifies that the written statement must be on a separate paper and clearly indicate what portion of the payment is from: 1) net income (not including capital gains); 2) capital gains; and 3) paid-in surplus or other capital source. The purpose of Section 19(a) and Rule 19a-1 is to afford shareholders adequate disclosure of the sources from which the payments are made so shareholders will not believe that a fund portfolio is generating investment income when, in fact, distributions are paid from other sources, such as shareholder capital or capital gains.⁴

5. During the relevant period, The Gabelli Convertible and Income Securities Fund Inc. and The Gabelli Utility Trust had managed distribution policies (disclosed to shareholders in the Funds' respective prospectuses and annual reports) that require fixed payments to shareholders on a regular basis, regardless of investment performance. Pursuant to these policies, the Gabelli Convertible and Income Securities Fund Inc. paid an annual distribution of 8% of its average NAV to shareholders and The Gabelli Utility Trust paid \$.06 per share to shareholders each month. The distribution policies for the Funds provide that to the extent the target distribution payment for any period exceeds net investment income and short-term capital gains, the shortfall is funded with shareholder capital or long-term capital gains.

⁴ Rule 19a-1(g) states: "[t]he purpose of this section, in the light of which it shall be construed, is to afford security holders adequate disclosure of the sources from which dividend payments are made." See SEC Release No. 71, 1941 WL 37715 (Feb. 21, 1941) ("An important feature of the rule is the extent to which it requires explicit and affirmative disclosure whenever a dividend is being paid from a capital source.").

6. By contract, Gabelli was responsible for the Funds' administrative operations during the relevant time period. The contract between Gabelli and The Gabelli Convertible and Income Securities Fund Inc. appoints Gabelli as the fund's investment manager and directs Gabelli to "oversee the administration of all aspects of the Fund's business and affairs and provide such services required for effective administration of the Fund." That agreement requires Gabelli to "oversee the performance of administrative and professional services rendered to the Fund of the Corporation by others including the Administrator, Custodian, Transfer Agent and Dividend Disbursing Agent, as well as legal, accounting and auditing services." Likewise, the contract between Gabelli and The Gabelli Utility Trust directs Gabelli "to oversee the administration of all aspects of the Fund's business and affairs and provide, or arrange for others whom it believes to be competent to provide" specified administrative functions.

7. In July 2001, Gabelli and the Funds jointly applied to the Commission for, and received, an exemption from Section 19(b) of the Investment Company Act to permit the Funds to distribute long-term capital gains throughout the year, instead of annually. In the exemptive application, Gabelli and the Funds represented that "[i]n accordance with Rule 19a-1 under the [Investment Company Act], a statement showing the source or sources of the distribution, i.e., net income, net short-term capital gains, net long-term capital gains and/or returns of capital accompanies or would accompany each distribution." Gabelli and the Funds also stated in the application that the disclosures accompanying the Funds' distributions would enable shareholders to understand that the fund payouts were not tied to the Funds' investment income.

8. During the relevant time period, the Funds made distributions to shareholders from shareholder capital and capital gains, as shown below annually on a per share basis.

Convertible and Income Securities Fund Inc.	2002		2003	
	%	\$	%	\$
Net Investment Income	36%	\$.2717	24%	\$.1880
Capital Gains	--	--	6%	\$.0516
Shareholder Capital	64%	\$.4783	70%	\$.5604

Gabelli Utility Trust	2002		2003	
	%	\$	%	\$
Net Investment Income	15.5%	\$.11175	12%	\$.08544
Capital Gains	50%	\$.3611	31%	\$.22368
Shareholder Capital	34.5%	\$.2469	57%	\$.41088

9. During 2002, a portion of all of The Gabelli Convertible and Income Securities Fund Inc.'s quarterly distributions were paid from shareholder capital, while in 2003, portions of three of the four quarterly distributions of The Gabelli Convertible and Income Securities Fund

Inc.'s quarterly distributions were paid from shareholder capital and capital gains.⁵ During 2002 and 2003, portions of all twenty-four of The Gabelli Utility Trust's monthly distributions were paid from shareholder capital and capital gains.⁶ However, none of these distributions by the Funds was accompanied by notices informing shareholders that such payments were from shareholder capital and capital gains. Gabelli only issued quarterly press releases for the Funds in 2002 and 2003 that failed to provide any information regarding the source of the Funds' distributions for the relevant quarter.⁷

10. By paying distributions to shareholders from sources other than net income without disclosing the source of those distributions in a notice that accompanied the distributions, the Funds violated Section 19(a) of the Investment Company Act and Investment Company Act Rule 19a-1.

11. Gabelli knew or was reckless in not knowing that the Funds were paying distributions to shareholders from sources other than the Funds' net income. In advance of the Board of Director meetings for the Funds in 2002 and 2003, Gabelli received detailed information regarding the Funds' distributions, including materials showing that these distributions would exceed the Funds' projected net income for the relevant quarter and characterizing portions of these distributions as "return of capital." Moreover, Gabelli closely tracked the Funds' performance on a book and tax basis and knew that the Funds regularly paid distributions from sources other than net income. Nevertheless, Gabelli, which was responsible for the Funds' administrative functions and had explicitly represented to the Commission that the Funds' distributions would be accompanied by Rule 19a-1 notices, failed to provide such contemporaneous notices containing the information required by Section 19(a) and Rule 19a-1 during 2002 and 2003.

12. As a result of the conduct described above, Gabelli caused and willfully aided and abetted the Funds' violations of Section 19(a) of the Investment Company Act and Investment Company Act Rule 19a-1.

Respondent's Cooperation and Remedial Efforts

13. In determining to accept the Offer, the Commission considered the remedial acts undertaken by Respondent.

⁵ Out of total distributions paid of \$6,110,659 in 2002 for The Gabelli Convertible and Income Securities Fund Inc., \$3,885,345 was from shareholder capital; for 2003, out of total distributions paid of \$8,985,195, \$340,383 was from capital gains and \$6,705,640 was from shareholder capital.

⁶ Out of total distributions paid of \$9,496,830 in 2002 for the Gabelli Utility Trust, \$4,760,629 was from capital gains and \$3,261,058 was from shareholder capital; for 2003, out of total distributions paid of \$12,348,980, \$3,836,119 was from capital gains and \$7,047,175 was from shareholder capital.

⁷ During the relevant period, both funds provided shareholders with Internal Revenue Service Forms 1099-DIV that identified the source of the shareholders' distributions for the prior calendar year. In addition, both Funds' annual reports, posted on Gabelli's website, identified the source of distributions made by the Funds. Such notices did not comply with Section 19(a) and Rule 19a-1 because they were not made contemporaneously with each distribution.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Gabelli's Offer.

Accordingly, it is hereby ORDERED pursuant to Sections 9(b) and 9(f) of the Investment Company Act and Section 203(e) of the Advisers Act that:

A. Gabelli shall cease and desist from causing any violations and any future violations of Section 19(a) of the Investment Company Act and Investment Company Act Rule 19a-1; and

B. Gabelli shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of \$450,000 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies Gabelli Funds, LLC as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Christopher R. Conte, Esq., Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549-4628.

By the Commission.

Elizabeth M. Murphy
Secretary