

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

HOWARD BRETT BERGER,

Defendant,

MICHELLE BERGER,

Relief Defendant.

12-CV-4728  
(LDW-ARL)

ECF CASE

**PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S THIRD NOTICE OF  
MOTION, MOTION AND MEMORANDUM IN SUPPORT OF ORDER FOR  
DISTRIBUTION OF FAIR FUND**

**NOTICE**

**PLEASE TAKE NOTICE**, that based upon the accompanying Affidavit of Peter S. Davis ("Affidavit") in Support of the Securities and Exchange Commission's ("Commission") Third Motion for Distribution of Fair Fund executed on November 30, 2017, the Proposed Order submitted herewith, and all prior proceedings had herein, and pursuant to the Plan of Distribution approved by this Court on August 27, 2015 ("Distribution Plan"), Plaintiff Securities and Exchange Commission will move this Court, at a date and time to be determined by the Court, before the Honorable Judge Leonard D. Wexler, at the United States Courthouse for the Eastern District of New York, 100 Federal Plaza, Central Islip, New York 11722, for an order:

1. Directing the Commission to issue a check payable to the QSF for Berger Distribution Fund, in care of the Distribution Agent, Simon Consulting, LLC, from the Commission's account under the case name designation "*SEC v. Howard Brett Berger, et al.*" for all of the funds in the Commission's accounts representing the SEC v Berger Distribution Fund ("Fair Fund" or "Fund"), totaling approximately \$795,743.93; and
2. Directing the Distribution Agent to:
  - a. Deposit these funds pursuant to Paragraph 32 of the Distribution Plan; and
  - b. Distribute these funds to Eligible Recipients in accordance with the terms of the Distribution Plan.

**MOTION**

In accordance with the Distribution Plan approved by this Court on August 27, 2015, the Commission respectfully requests that the Court enter an Order:

1. Directing the Commission to issue a check payable to the QSF for Berger Distribution Fund, in care of the Distribution Agent, Simon Consulting, LLC, from the Commission's account under the case name designation "*SEC v. Howard Brett Berger, et al.*" for all of the funds in the Commission's accounts representing the SEC v Berger Distribution Fund ("Fair Fund" or "Fund"), totaling approximately \$795,743.93; and
2. Directing the Distribution Agent to:
  - a. Deposit these funds pursuant to Paragraph 32 of the Distribution Plan; and
  - b. Distribute these funds to Eligible Investors pursuant to the final payee list in accordance with the terms of the Distribution Plan.

## **MEMORANDUM**

### **Procedural Background**

On September 21, 2012, the Commission filed a complaint against Defendant Howard Brett Berger (“Berger”) and Relief Defendant Michelle Berger (collectively, the “Bergers” or “Defendants”). The Complaint alleged that no later than July 2008 and continuing through approximately early March 2010, Berger engaged in a fraudulent trade allocation scheme commonly referred to as “cherry picking.” Berger utilized a direct-access trading platform to delay final allocation of the trades until the end of the trading day, frequently after the market closed, so he could determine whether the trades were profitable. Oftentimes, he would cherry pick profitable trades by allocating those trades to his wife’s brokerage account while allocating unprofitable trades to other accounts, including Professional Offshore Opportunity Fund Ltd. (“POOF”) and/or Professional Traders Fund, LLC (“PTF”), two hedge funds Berger managed.

On January 22, 2013, the Court entered a Final Judgment of Permanent Injunction and Other Relief against Berger and Final Judgment against Relief Defendant Michelle Berger (“Final Judgment”) pursuant to Rule 54(b) of the Federal Rules of Civil Procedure. The Final Judgment held the Bergers jointly and severally liable for a total of \$5,399,456.16 in disgorgement. Berger was also held liable for an additional \$1,433,521.84 in disgorgement, \$22,776.00 in prejudgment interest, and a \$50,000.00 civil penalty. The Final Judgment found that the Commission may by motion propose a plan to distribute the money received from Defendants subject to the Court’s approval. Pursuant to the Final Judgment, on or about February 26, 2013, \$5,399,456.16 in disgorgement was paid to the Clerk of the Court and deposited in the CRIS account.

On April 9, 2014, the Court appointed Simon Consulting, LLC as Distribution Agent (“Distribution Agent”) to assist in overseeing the administration and distribution of the Distribution Fund in coordination with Commission staff, pursuant to the terms of the Distribution Plan.

To identify potential injured investors, the Distribution Agent obtained and analyzed records provided by various parties, including (a) the Commission; (b) Folio Administrators Ltd. (“Folio”), the fund administrator for POOF; (c) Greg Goldberg (“Goldberg”) via Andrew Solomon, counsel for Professional Trades Management, LLC and Professional Offshore Traders Management LLC, both of which are managed by Greg Goldberg; and (d) Ken Marshall (“Marshall”) of Development Group, LLC who represents various POOF investor interests. The Distribution Agent identified thirty-six (36) injured POOF investors from an investor holdings report provided by Folio that are eligible to receive a distribution. *See* Exhibit B. The Distribution Agent reconciled Folio’s investor holdings report to the detailed investor records provided by Goldberg and Marshall and verified that the number of injured POOF investors, the names of the investors, and the number of shares held by each investor are correct. The Distribution Agent identified twenty (20) PTF investors that could potentially qualify for a distribution. The Distribution Agent has determined that out of the 20 PTF investors that could potentially qualify for a distribution, nine (9) PTF investors have received Excess Distributions and are therefore ineligible for distributions from the Distribution Fund. *See* Exhibit C. PTF investors who are not considered injured and are therefore ineligible to participate in a distribution either: (a) withdrew their funds prior to June 30, 2008; (b) received a liquidating distribution on June 2, 2008; or (c) received a liquidating distribution later in 2008.

The Distribution Agent and Commission staff believes that all injured investors in POOF and PTF have been identified and the amount each will receive will be accurately calculated without additional information from investors.

On August 19, 2015, the SEC filed a motion to approve a proposed distribution plan, together with a proposed plan of distribution (“Distribution Plan”). On August 27, 2015, the Court approved the Distribution Plan. A total of \$5,362,661.59 was successfully distributed to injured investors.

On September 19, 2016, the SEC filed a motion to disburse funds to pay the remaining fees and expenses of the Distribution Agent and Tax Administrator, and approve the final accounting, discharge the Distribution Agent, and terminate the Distribution Fund. On November 8, 2016, the court granted the motion in its entirety.

On November 4, 2016, the SEC filed a second motion to distribute approximately \$687,357.86 to eligible investors. On November 8, 2016, the Court granted the SEC’s motion and entered an order to disburse approximately \$687,357.86 from the Fair Fund for distribution to eligible investors.

Pursuant to the judgment entered on January 15, 2013, Berger was held liable to pay an additional \$1,433,521.84 in disgorgement, \$22,776 in prejudgment interest, and a \$50,000 civil money penalty. According to terms proposed in a settlement letter dated September 27, 2016, which the SEC accepted, the Bergers entered into a settlement with the SEC wherein the balance of the judgment was to be satisfied. The SEC recently received \$788,760.84 under the stipulation agreement and wants to distribute that money. After deducting the estimated Distribution Agent and Tax Administrator fees and expenses, the estimated funds available for distribution is \$771,897.99. *See* Exhibit A. The SEC is currently holding the \$788,760.84

recently recovered from the Defendants, as well as \$6,983.09 withheld from prior recoveries, for a total of \$795,743.93.

**Disbursement of Fair Fund**

Pursuant to the Distribution Plan, the Distribution Agent has prepared and submitted to the Commission staff a list of Eligible Recipients, the amount of the asserted claim of each Eligible Recipients, and the Approved Claim for each Eligible Recipients (the “Final Payee List”).<sup>1</sup> Each Eligible Recipient will receive a *pro rata* share of the SEC v Berger Distribution Fund available for distribution. The Final Payee List and the Affidavit has been reviewed by the undersigned Commission Counsel who has no objections.

**WHEREFORE**, for all the foregoing reasons, the Commission respectfully requests that this Court enter the proposed Order and grant such other relief as it deems just and proper.

Dated: January 3, 2018

Respectfully Submitted,

/s/ Michael S. Lim  
Michael S. Lim  
Attorney for Plaintiff  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-5876  
Tel: (202) 551-4659  
Fax: (202) 572-1372  
Email: limm@sec.gov

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<sup>1</sup> The Final Payee List shall, upon request, be made available to the Court under seal.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

HOWARD BRETT BERGER,

Defendant,

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Relief Defendant.

12-CV-4728  
(LDW-ARL)

ECF CASE

**AFFIDAVIT OF PETER S. DAVIS  
IN SUPPORT OF MOTION AND MEMORANDUM IN SUPPORT OF AN ORDER TO  
TRANSFER FUNDS TO DISTRIBUTION AGENT FOR DISBURSEMENT**

I, Peter S. Davis, hereby declare as follows:

1. I am over twenty-one years of age and am not a party to this action. I have personal knowledge of the matters set forth herein and, if called as a witness, I could and would testify competently to the facts forth in this Affidavit.

2. I am the managing director of Simon Consulting, LLC (“Simon”), located at 3200 North Central Avenue, Suite 2460, Phoenix, Arizona 85012. I am a Certified Public Accountant, Accredited in Business Valuation, Certified in Financial Forensics, and a Certified Insolvency and Restructuring Advisor, a Certified Turnaround Professional, and a Certified Fraud Examiner.

3. On April 9, 2014, the Court entered an Order (“Appointment Order”) appointing Simon as Distribution Agent for the SEC v. Berger Distribution Fund (“Distribution Fund”) in the Order to Appoint Distribution Agent (Dkt. 11), Case No. 2:12-cv-4728 (LDW-ARL).

4. Pursuant to the Appointment Order, the Distribution Agent was directed to assist in overseeing the administration of the Distribution Fund including the distribution to injured investors in coordination with Commission staff, pursuant to the terms of the plan of distribution (“Distribution Plan”) (Dkt. 11).

5. Injured investors were determined to be those who had funds invested in Professional Offshore Opportunity Fund Ltd. (“POOF”) and/or Professional Traders Fund, LLC (“PTF”) between July 2008 and March 2010.

6. On August 19, 2015, the Commission filed the Motion for Order Approving Proposed Distribution Plan and the corresponding Proposed Distribution Plan (Dkt. 16). The Court entered the Order Approving Proposed Distribution Plan on August 27, 2015 (Dkt. 17).

#### **INVESTOR NOTICE PROCEDURES**

7. On approximately August 25, 2015, pursuant to the Distribution Plan, the Distribution Agent provided notice and a copy of the proposed Distribution Plan to all thirty-six (36) POOF investors and twenty (20) PTF investors. The notice included (a) instructions for serving on the Distribution Agent any objections to the Distribution Plan; (b) notice of the time period allotted for the opportunity to object to the Distribution Plan; and (c) a request for the preferred method of payment including wire instructions and/or mailing address. Investors were directed to submit any objections to the Distribution Agent within sixty (60) days after the date of the notice, or by October 25, 2015.



8. On November 6, 2015, the SEC notified the Court that no objections were received regarding the court-approved Distribution Plan (Dkt. 20).

9. As discussed in the Distribution Plan, the Distribution Agent has identified thirty-six (36) injured POOF investors and twenty (20) injured PTF investors who are potentially eligible for distributions from the Distribution Fund. Previously, the Distribution Agent determined that out of the twenty (20) PTF investors that could potentially qualify for a distribution, ten (10) PTF investors had received Excess Distributions and were therefore ineligible for distributions from the Distribution Fund.

10. Because the SEC has now recovered sufficient funds to repay PTF investors approximately 40.67% of their net asset value as of June 30, 2008, one (1) additional PTF investor is now eligible for a distribution, increasing the number of injured PTF investors entitled to a distribution to eleven (11). Thus, a total of thirty-six (36) injured POOF investors and eleven (11) injured PTF investors are entitled to a distribution.

11. In response to communications sent to eligible investors regarding the first distribution the Distribution Agent initially received completed preferred method of payment forms from ten (10) PTF investors and all thirty-six (36) POOF investors.

12. On October 13, 2016, the Distribution Agent provided notice of the second distribution via email to all thirty-six (36) POOF investors and ten (10) eligible PTF investors. The notice included (a) a copy of the Stipulation of Settlement; and (b) a request for an updated preferred method of payment form. Investors were advised that payment would be issued pursuant to the payment instructions previously provided if updated forms were not submitted.

13. On October 27, 2017, the Distribution Agent provided notice of the third and final distribution via email to all thirty-six (36) POOF investors and eleven (11) eligible PTF

investors. The notice included a request for an updated preferred method of payment form. Investors were again advised that payment would be issued pursuant to the payment instructions previously provided if updated forms were not submitted. The Distribution Agent received the completed preferred method of payment form from the one (1) PTF investor who was not eligible for prior distributions, as well as updated forms from several other investors.

#### **NO CLAIMS PROCESS**

14. As stated in the Distribution Plan, the Distribution Agent and Commission staff believe that all injured investors in POOF and PTF have been identified and the amount each will receive will be accurately calculated without additional information from investors. As a result, the Distribution Fund will not be distributed according to a claims-made process.

#### **ALLOCATION OF THE DISTRIBUTION FUND**

15. Because investors' losses exceed the amount available in the Distribution Fund, distributions will be made on a pro rata basis, pursuant to the terms of this Distribution Plan.

14. Thomas Dunn of the Commission's Division of Economic and Risk Analysis ("DERA") provided the Distribution Agent with the disgorgement analysis used in the Commission's Complaint against the Bergers. DERA relied on the amounts of account trading activity in the Bergers' accounts and hedge funds to calculate losses in POOF and PTF. According to DERA's analysis, POOF suffered the most losses, totaling \$10,059,406 (or 85.4017% of total POOF and PTF losses) and PTF suffered lesser losses, totaling \$1,719,526 (or 14.5983% of total POOF and PTF losses).

15. The funds available for distribution will be allocated 85.4017% to POOF investors and 14.5983% to PTF investors pursuant to the allocation of losses as calculated by DERA.

16. The methodologies for allocating the Distribution Fund to individual investors are discussed in detail in the Distribution Plan. Defendants and related entities will not be eligible for a distribution from the Distribution Fund.

17. After withholding a reserve for the estimated fees and expenses of the Distribution Agent and Tax Administrator to complete the distribution and fulfill tax reporting requirements, projected tax liabilities, and other anticipated costs, the Distribution Agent estimates the total funds available for distribution to eligible POOF and PTF investors to be approximately \$772,167.99. Therefore, it is estimated that \$659,213.86 (85.4017%) will be allocated to eligible POOF investors and \$112,684.13 (14.5983%) will be allocated to eligible PTF investors. Any portion of the Distribution Fund that remains at the conclusion of the distribution will be paid to the Commission for transfer to the United States Department of Treasury.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on November 30, 2017 in Phoenix, Arizona.

Further affiant sayeth not.

  
\_\_\_\_\_  
Peter S. Davis, Simon Consulting  
Distribution Agent

Simon Consulting, LLC

Distribution Agent

SEC v. Berger

Professional Offshore Opportunity Fund Ltd.

Professional Traders Fund, LLC

FINAL Allocation of 3rd Distribution

**Exhibit "A"**

<b>Calculation of Funds Available for Distribution</b>	
	<b>Total</b>
Funds Held by the Distribution Agent as of 11/28/17	756.56
Funds Withheld by the SEC from the 2nd Distribution	6,983.09
Additional Funds Recovered by the SEC	788,760.84
<b>Balance as of 11/28/17</b>	<b>796,500.49</b>
Less: Distribution Agent Fees through 11/28/17	(3,502.50)
Less: Estimated Distribution Agent Fees after 11/28/17	(5,000.00)
Less: Estimated Tax Administrator Fees	(14,100.00)
Less: Estimated Wire/Bank Fees	(2,000.00)
Total Reserve	<b>(24,602.50)</b>
<b>Estimated Funds Available for Distribution</b>	<b>771,897.99</b>

<b>Allocation of Losses by Fund</b>					
<b>Per SEC's Division of Economic and Risk Analysis</b>					
<b>Fund</b>	<b>No. of Trades</b>	<b>Amount Traded (\$)</b>	<b>Profit/(Loss)</b>	<b>% of Total Profit/(Loss)</b>	<b>Net Distribution by Fund</b>
<b>POOF</b>	2,768	1,449,534,308	(10,059,406.00)	85.4017%	<b>659,213.86</b>
<b>PTF</b>	424	172,664,648	(1,719,526.00)	14.5983%	<b>112,684.13</b>
<b>Total</b>	<b>3,192</b>	<b>1,622,198,956</b>	<b>(11,778,932.00)</b>	<b>100.0000%</b>	<b>771,897.99</b>

Simon Consulting, LLC

**Distribution Agent  
SEC v. Berger**

**Professional Offshore Opportunity Fund Ltd.  
Allocation of Funds Available for Distribution**

**Exhibit "B"**

<b>Investor [Names Redacted]</b>	<b>No. of Shares</b>	<b>% of Total</b>	<b>Proposed Distribution</b>
Investor No. 1	1,049.7784	1.5739%	10,375.08
Investor No. 2	4,011.5450	6.0142%	39,646.54
Investor No. 3	2,391.3432	3.5852%	23,633.91
Investor No. 4	587.9851	0.8815%	5,811.12
Investor No. 5	3,587.8687	5.3790%	35,459.30
Investor No. 6	1,856.6913	2.7836%	18,349.88
Investor No. 7	115.7567	0.1735%	1,144.04
Investor No. 8	714.1120	1.0706%	7,057.65
Investor No. 9	629.8670	0.9443%	6,225.05
Investor No. 10	101.0505	0.1515%	998.69
Investor No. 11	9,321.6374	13.9752%	92,126.77
Investor No. 12	870.7161	1.3054%	8,605.38
Investor No. 13	3,210.3970	4.8131%	31,728.71
Investor No. 14	182.9800	0.2743%	1,808.41
Investor No. 15	3,603.3948	5.4023%	35,612.75
Investor No. 16	489.2938	0.7336%	4,835.74
Investor No. 17	773.5671	1.1598%	7,645.25
Investor No. 18	1,481.9021	2.2217%	14,645.80
Investor No. 19	485.0044	0.7271%	4,793.35
Investor No. 20	254.9005	0.3822%	2,519.21
Investor No. 21	2,937.2273	4.4036%	29,028.94
Investor No. 22	2,937.2274	4.4036%	29,028.94
Investor No. 23	159.3795	0.2389%	1,575.17
Investor No. 24	415.6866	0.6232%	4,108.28
Investor No. 25	487.5951	0.7310%	4,818.96
Investor No. 26 [1]	-	0.0000%	-
Investor No. 27	477.4369	0.7158%	4,718.56
Investor No. 28	77.0495	0.1155%	761.49
Investor No. 29	642.0794	0.9626%	6,345.74
Investor No. 30	152.5300	0.2287%	1,507.47
Investor No. 31	323.3363	0.4848%	3,195.57
Investor No. 32	100.5506	0.1507%	993.75
Investor No. 33	9,920.8081	14.8735%	98,048.44
Investor No. 34	8,274.2205	12.4049%	81,775.03
Investor No. 35	3,200.0000	4.7975%	31,625.95
Investor No. 36	79.5709	0.1193%	786.41
Investor No. 37	796.5637	1.1942%	7,872.53
<b>Total</b>	<b>66,701.0529</b>	<b>100.0000%</b>	<b>659,213.86</b>

**Notes:**

[1] Professional Traders Management, LLC ("PTM") holds 107.7872 shares of Professional Offshore Opportunity Fund. However, pursuant to discussions with the SEC, PTM is a related party of the Defendant and therefore should be excluded from the Distribution Plan.

SEC v. Berger  
Distribution Agent

Professional Traders Fund, LLC  
Allocation of Funds Available for Distribution

Exhibit "C"

Investor Name	NET ASSET VALUE CALCULATION					1st & 2nd Payments from Distribution Fund	Total Recovery	Actual Recovery (% of NAV) to Date	ITERATION NO. 1		ITERATION NO. 2		ITERATION NO. 3	
	06/30/08 NAV	Plus Post-06/30/08 Investment Transactions	Adjusted NAV	Liquidating Distributions	Actual Recovery (% of NAV) to Date				Actual % Exceeds Allowable %?	Excess Distributions	Actual % Exceeds Allowable %?	Excess Distributions	Actual % Exceeds Allowable %?	Excess Distributions
Investor No. 38	353,367	(50,000)	303,367	41,420	78,551	119,971	39.5466%	NO	-	NO	-	NO	-	
Investor No. 39	3,856,312	-	3,856,312	1,271,209	253,831	1,525,040	39.5466%	NO	-	NO	-	NO	-	
Investor No. 40	475,870	-	475,870	179,160	9,030	188,190	39.5466%	NO	-	NO	-	NO	-	
Investor No. 41	618,182	-	618,182	132,651	111,819	244,470	39.5466%	NO	-	NO	-	NO	-	
Investor No. 42	836,320	-	836,320	129,869	200,867	330,736	39.5466%	NO	-	NO	-	NO	-	
Investor No. 43	194,954	-	194,954	45,131	31,967	77,098	39.5466%	NO	-	NO	-	NO	-	
Investor No. 44	-	250,000	250,000	99,045	-	99,045	39.6180%	NO	-	NO	-	NO	-	
Investor No. 45	175,237	-	175,237	73,740	-	73,740	42.0802%	YES	(1,416.13)	YES	(2,268.93)	YES	(2,426.30)	
Investor No. 46	309,522	-	309,522	138,600	-	138,600	44.7787%	YES	(10,853.98)	YES	(12,360.28)	YES	(12,638.26)	
Investor No. 47	980,750	-	980,750	359,320	28,533	387,853	39.5466%	NO	-	NO	-	NO	-	
Investor No. 48	1,207,064	-	1,207,064	359,320	118,033	477,353	39.5466%	NO	-	NO	-	NO	-	
Investor No. 49	224,678	-	224,678	100,685	-	100,685	44.8130%	YES	(7,955.82)	YES	(9,049.23)	YES	(9,251.01)	
Investor No. 50	224,678	200,000	424,678	189,569	-	189,569	44.6383%	YES	(14,295.76)	YES	(16,362.47)	YES	(16,743.86)	
Investor No. 51	101,733	-	101,733	45,894	-	45,894	45.1122%	YES	(3,906.72)	YES	(4,401.81)	YES	(4,493.18)	
Investor No. 52	78,252	-	78,252	33,748	-	33,748	43.1273%	YES	(1,451.81)	YES	(1,832.63)	YES	(1,902.90)	
Investor No. 53	464,712	-	464,712	166,509	17,269	183,778	39.5466%	NO	-	NO	-	NO	-	
Investor No. 54	-	598,800	598,800	263,980	-	263,980	44.0848%	YES	(16,843.07)	YES	(19,757.16)	YES	(20,294.92)	
Investor No. 55	93,518	-	93,518	40,635	-	40,635	43.4515%	YES	(2,038.22)	YES	(2,493.33)	YES	(2,577.32)	
Investor No. 56	256,539	-	256,539	106,794	-	106,794	41.6288%	YES	(915.14)	YES	(2,163.60)	YES	(2,393.99)	
Investor No. 57	412,169	400,000	812,169	288,391	32,794	321,185	39.5466%	NO	-	NO	-	NO	-	
<b>Totals</b>	<b>10,863,857</b>	<b>1,398,800</b>	<b>12,262,657</b>	<b>4,065,670</b>	<b>882,694</b>	<b>4,948,364</b>			<b>(59,676.67)</b>		<b>(70,689.44)</b>		<b>(72,721.74)</b>	

No. of Eligible Investors:	20	11	11
Plus: Funds Available for Distribution:	112,684	5,061,047.68	5,061,047.68
Adjusted Total Funds Available for Distribution:	5,061,048	5,061,047.68	5,061,047.68
Adjusted Total Excluding Excess Distributions:		5,001,371.01	4,990,358.24
Maximum Allowable Recovery (% of Total NAV):	41.2720%	40.785378%	40.695571%
Exact Match to Allowable Recovery Per Prior Iteration?:		NO	NO

SEC v. Berger  
Distribution Agent

Professional Traders Fund, LLC  
Allocation of Funds Available for Distribution

Exhibit "C"

Investor Name	NET ASSET VALUE CALCULATION					ITERATION NO. 4		ITERATION NO. 5		ITERATION NO. 6	
	06/30/08 NAV	Plus Post-06/30/08 Investment Transactions	Adjusted NAV	Liquidating Distributions	1st & 2nd Payments from Distribution Fund	Total Recovery	Actual Recovery (% of NAV) to Date	Actual % Exceeds Allowable %?	Excess Distributions	Actual % Exceeds Allowable %?	Excess Distributions
Investor No. 38	353,367	(50,000)	303,367	41,420	78,551	119,971	39.5466%	NO	-	NO	-
Investor No. 39	3,856,312	-	3,856,312	1,271,209	253,831	1,525,040	39.5466%	NO	-	NO	-
Investor No. 40	475,870	-	475,870	179,160	9,030	188,190	39.5466%	NO	-	NO	-
Investor No. 41	618,182	-	618,182	132,651	111,819	244,470	39.5466%	NO	-	NO	-
Investor No. 42	836,320	-	836,320	129,869	200,867	330,736	39.5466%	NO	-	NO	-
Investor No. 43	194,954	-	194,954	45,131	31,967	77,098	39.5466%	NO	-	NO	-
Investor No. 44	-	250,000	250,000	99,045	-	99,045	39.6180%	NO	-	NO	-
Investor No. 45	175,237	-	175,237	73,740	-	73,740	42.0802%	YES	(2,455.35)	YES	(2,460.70)
Investor No. 46	309,522	-	309,522	138,600	-	138,600	44.7787%	YES	(12,689.55)	YES	(12,699.02)
Investor No. 47	980,750	-	980,750	359,320	28,533	387,853	39.5466%	NO	-	NO	-
Investor No. 48	1,207,064	-	1,207,064	359,320	118,033	477,353	39.5466%	NO	-	NO	-
Investor No. 49	224,678	-	224,678	100,685	-	100,685	44.8130%	YES	(9,288.24)	YES	(9,295.11)
Investor No. 50	224,678	200,000	424,678	189,569	-	189,569	44.6383%	YES	(16,814.25)	YES	(16,827.24)
Investor No. 51	101,733	-	101,733	45,894	-	45,894	45.1122%	YES	(4,510.04)	YES	(4,513.15)
Investor No. 52	78,252	-	78,252	33,748	-	33,748	43.1273%	YES	(1,915.87)	YES	(1,918.26)
Investor No. 53	464,712	-	464,712	166,509	17,269	183,778	39.5466%	NO	-	NO	-
Investor No. 54	-	598,800	598,800	263,980	-	263,980	44.0848%	YES	(20,394.16)	YES	(20,412.48)
Investor No. 55	93,518	-	93,518	40,635	-	40,635	43.4515%	YES	(2,592.82)	YES	(2,595.68)
Investor No. 56	256,539	-	256,539	106,794	-	106,794	41.6288%	YES	(2,436.51)	YES	(2,444.35)
Investor No. 57	412,169	400,000	812,169	288,391	32,794	321,185	39.5466%	NO	-	NO	-
<b>Totals</b>	<b>10,863,857</b>	<b>1,398,800</b>	<b>12,262,657</b>	<b>4,065,670</b>	<b>882,694</b>	<b>4,948,364</b>			<b>(73,096.79)</b>		<b>(73,178.76)</b>

No. of Eligible Investors:	20	11	11
Plus: Funds Available for Distribution:	112,684	5,061,047.68	5,061,047.68
Adjusted Total Funds Available for Distribution:	5,061,048	4,987,881.69	4,987,868.92
Adjusted Total Excluding Excess Distributions:		40.675939%	40.675271%
Maximum Allowable Recovery (% of Total NAV):	41.2720%	NO	NO
Exact Match to Allowable Recovery Per Prior Iteration?:		NO	NO

SEC v. Berger  
Distribution Agent

Professional Traders Fund, LLC  
Allocation of Funds Available for Distribution

Exhibit "C"

Investor Name	NET ASSET VALUE CALCULATION						ITERATION NO. 7		ITERATION NO. 8		ITERATION NO. 9		
	06/30/08 NAV	Plus Post-06/30/08 Investment Transactions	Adjusted NAV	Liquidating Distributions	1st & 2nd Payments from Distribution Fund	Total Recovery	Actual Recovery (% of NAV) to Date	Actual % Exceeds Allowable %?	Excess Distributions	Actual % Exceeds Allowable %?	Excess Distributions	Actual % Exceeds Allowable %?	Excess Distributions
Investor No. 38	353,367	(50,000)	303,367	41,420	78,551	119,971	39.5466%	NO	-	NO	-	NO	-
Investor No. 39	3,856,312	-	3,856,312	1,271,209	253,831	1,525,040	39.5466%	NO	-	NO	-	NO	-
Investor No. 40	475,870	-	475,870	179,160	9,030	188,190	39.5466%	NO	-	NO	-	NO	-
Investor No. 41	618,182	-	618,182	132,651	111,819	244,470	39.5466%	NO	-	NO	-	NO	-
Investor No. 42	836,320	-	836,320	129,869	200,867	330,736	39.5466%	NO	-	NO	-	NO	-
Investor No. 43	194,954	-	194,954	45,131	31,967	77,098	39.5466%	NO	-	NO	-	NO	-
Investor No. 44	-	250,000	250,000	99,045	-	99,045	39.6180%	NO	-	NO	-	NO	-
Investor No. 45	175,237	-	175,237	73,740	-	73,740	42.0802%	YES	(2,461.88)	YES	(2,461.91)	YES	(2,461.92)
Investor No. 46	309,522	-	309,522	138,600	-	138,600	44.7787%	YES	(12,701.09)	YES	(12,701.15)	YES	(12,701.16)
Investor No. 47	980,750	-	980,750	359,320	28,533	387,853	39.5466%	NO	-	NO	-	NO	-
Investor No. 48	1,207,064	-	1,207,064	359,320	118,033	477,353	39.5466%	NO	-	NO	-	NO	-
Investor No. 49	224,678	-	224,678	100,685	-	100,685	44.8130%	YES	(9,296.62)	YES	(9,296.66)	YES	(9,296.67)
Investor No. 50	224,678	200,000	424,678	189,569	-	189,569	44.6383%	YES	(16,830.07)	YES	(16,830.16)	YES	(16,830.17)
Investor No. 51	101,733	-	101,733	45,894	-	45,894	45.1122%	YES	(4,513.83)	YES	(4,513.85)	YES	(4,513.85)
Investor No. 52	78,252	-	78,252	33,748	-	33,748	43.11273%	YES	(1,918.79)	YES	(1,918.80)	YES	(1,918.81)
Investor No. 53	464,712	-	464,712	166,509	17,269	183,778	39.5466%	NO	-	NO	-	NO	-
Investor No. 54	-	598,800	598,800	263,980	-	263,980	44.0848%	YES	(20,416.48)	YES	(20,416.60)	YES	(20,416.62)
Investor No. 55	93,518	-	93,518	40,635	-	40,635	43.4515%	YES	(2,596.30)	YES	(2,596.32)	YES	(2,596.32)
Investor No. 56	256,539	-	256,539	106,794	-	106,794	41.6288%	YES	(2,446.07)	YES	(2,446.12)	YES	(2,446.13)
Investor No. 57	412,169	400,000	812,169	288,391	32,794	321,185	39.5466%	NO	-	NO	-	NO	-
<b>Totals</b>	<b>10,863,857</b>	<b>1,398,800</b>	<b>12,262,657</b>	<b>4,065,670</b>	<b>882,694</b>	<b>4,948,364</b>			<b>(73,181.13)</b>		<b>(73,181.57)</b>		<b>(73,181.65)</b>

No. of Eligible Investors: 20  
 Plus: Funds Available for Distribution: 112,684  
 Adjusted Total Funds Available for Distribution: 5,061,048  
 Adjusted Total Excluding Excess Distributions: 4,987,866.55  
 Maximum Allowable Recovery (% of Total NAV): 41.2720%  
 Exact Match to Allowable Recovery Per Prior Iteration?: NO



Professional Traders Fund, LLC  
 Allocation of Funds Available for Distribution  
 Distribution Agent  
 SEC v. Berger

**Professional Traders Fund, LLC**  
**Allocation of Funds Available for Distribution**

**Exhibit "C"**

Investor Name	NET ASSET VALUE CALCULATION					ITERATION NO. 10			SUMMARY OF TOTAL DISTRIBUTIONS			
	06/30/08 NAV	Plus Post-06/30/08 Investment Transactions	Adjusted NAV	Liquidating Distributions	1st & 2nd Payments from Distribution Fund	Total Recovery	Actual Recovery (% of NAV) to Date	Actual % Exceeds Allowable %?	Excess Distributions	Proposed Payments from Distribution Fund	Total Recovery (\$)	Total Recovery (% of NAV)
Investor No. 38	353,367	(50,000)	303,367	41,420	78,551	119,971	39.5466%	NO	-	3,423.99	123,395.28	40.6752%
Investor No. 39	3,856,312	-	3,856,312	1,271,209	253,831	1,525,040	39.5466%	NO	-	43,524.66	1,568,564.43	40.6752%
Investor No. 40	475,870	-	475,870	179,160	9,030	188,190	39.5466%	NO	-	5,370.96	193,561.30	40.6752%
Investor No. 41	618,182	-	618,182	132,651	111,819	244,470	39.5466%	NO	-	6,977.18	251,447.06	40.6752%
Investor No. 42	836,320	-	836,320	129,869	200,867	330,736	39.5466%	NO	-	9,439.22	340,175.23	40.6752%
Investor No. 43	194,954	-	194,954	45,131	31,967	77,098	39.5466%	NO	-	2,200.37	79,298.02	40.6752%
Investor No. 44	-	250,000	250,000	99,045	-	99,045	39.6180%	NO	-	2,643.12	101,688.12	40.6752%
Investor No. 45	175,237	-	175,237	73,740	-	73,740	42.0802%	YES	(2,461.92)	-	73,740.00	42.0802%
Investor No. 46	309,522	-	309,522	138,600	-	138,600	44.7787%	YES	(12,701.16)	-	138,600.00	44.7787%
Investor No. 47	980,750	-	980,750	359,320	28,533	387,853	39.5466%	NO	-	11,069.34	398,922.49	40.6752%
Investor No. 48	1,207,064	-	1,207,064	359,320	118,033	477,353	39.5466%	NO	-	13,623.65	490,976.26	40.6752%
Investor No. 49	224,678	-	224,678	100,685	-	100,685	44.8130%	YES	(9,296.67)	-	100,685.00	44.8130%
Investor No. 50	224,678	200,000	424,678	189,569	-	189,569	44.6383%	YES	(16,830.17)	-	189,569.00	44.6383%
Investor No. 51	101,733	-	101,733	45,894	-	45,894	45.1122%	YES	(4,513.85)	-	45,894.00	45.1122%
Investor No. 52	78,252	-	78,252	33,748	-	33,748	43.1273%	YES	(1,918.81)	-	33,748.00	43.1273%
Investor No. 53	464,712	-	464,712	166,509	17,269	183,778	39.5466%	NO	-	5,245.02	189,022.75	40.6752%
Investor No. 54	-	598,800	598,800	263,980	-	263,980	44.0848%	YES	(20,416.62)	-	263,980.00	44.0848%
Investor No. 55	93,518	-	93,518	40,635	-	40,635	43.4515%	YES	(2,596.32)	-	40,635.00	43.4515%
Investor No. 56	256,539	-	256,539	106,794	-	106,794	41.6288%	YES	(2,446.13)	-	106,794.00	41.6288%
Investor No. 57	412,169	400,000	812,169	288,391	32,794	321,185	39.5466%	NO	-	9,166.63	330,351.75	40.6752%
<b>Totals</b>	<b>10,863,857</b>	<b>1,398,800</b>	<b>12,262,657</b>	<b>4,065,670</b>	<b>882,694</b>	<b>4,948,364</b>			<b>(73,181.65)</b>	<b>112,684.13</b>	<b>5,061,047.68</b>	

No. of Eligible Investors: 11      No. of Eligible Investors: 11

Plus: Funds Available for Distribution: 112,684  
 Adjusted Total Funds Available for Distribution: 5,061,048

Adjusted Total Excluding Excess Distributions: 4,987,866.03

Maximum Allowable Recovery (% of Total NAV): 41.2720%

Exact Match to Allowable Recovery Per Prior Iteration?: YES

Final Recovery (%): 40.6752%

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

HOWARD BRETT BERGER,

Defendant,

MICHELLE BERGER,

Relief Defendant.

12-CV-4728  
(LDW-ARL)

ECF CASE

**CERTIFICATE OF SERVICE**

I hereby certify that on January 3, 2018, I electronically filed the foregoing documents with the clerk of the court for the U.S. District Court, Eastern District of New York, using the electronic case filing system of the court. The electronic case filing system sent a “Notice of Electronic Filing” to the attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

/s/ Michael S. Lim  
Michael S. Lim  
Attorney for Plaintiff  
Securities and Exchange Commission  
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Email: limm@sec.gov

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

HOWARD BRETT BERGER,

Defendant,

MICHELLE BERGER,

Relief Defendant.

12-CV-4728  
(LDW-ARL)

ECF CASE

**[PROPOSED] ORDER FOR DISTRIBUTION OF FAIR FUND**

The Court, having reviewed the Securities and Exchange Commission's ("SEC") Third Motion for Order for Distribution of Fair Fund and the supporting Affidavit of the Distribution Agent, and for good cause shown,

**IT IS HEREBY ORDERED:**

1. The SEC shall issue a check payable to the QSF for Berger Distribution Fund, in care of the Distribution Agent, Simon Consulting, LLC, from the Commission's account under the case name designation "*SEC v. Howard Brett Berger, et al.*" for all of the funds in the Commission's accounts representing the SEC v Berger Distribution Fund ("Fair Fund" or "Fund"), totaling approximately \$795,743.93; and
2. The Commission shall send the check by overnight mail to:  
  
Simon Consulting, LLC

3200 North Central Avenue  
Suite 2460  
Phoenix, AZ 85012

3. The Distribution Agent shall distribute these funds to Eligible Investors pursuant to the final payee list in accordance with the terms of the Distribution Plan.

DATED: \_\_\_\_\_

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE