

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 DISTRIBUTION PLAN

Introduction

1. On September 21, 2012, the United States Securities and Exchange Commission (“Commission” or “SEC”) 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.

2. 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.
3. The Final Judgment found that the Commission may by motion propose a plan to distribute the money received from the 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 Court Registry Investment System (“CRIS”) (hereafter, “Distribution Fund”). No additional payments have been made and the Commission is not expecting any further payments to be made.
4. 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 a plan of distribution (“Distribution Plan”), as described directly below.

Allocation of the Distribution Fund

5. The Distribution Fund will be allocated according to the losses incurred by investors in POOF and/or PTF, or 85.4017% to POOF investors and 14.5983% to PTF investors.

6. 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.
7. Thomas Dunn ("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).
8. After withholding a reserve for the estimated fees and expenses of the Distribution Agent and Tax Administrator to complete the distribution, projected tax liabilities, and other anticipated costs, the Distribution Agent estimates the total funds available for distribution to eligible POOF and PTF investors ("Eligible Recipients") to be approximately \$5,367,140. See Exhibit "B" attached hereto for details of this calculation. Therefore, it is estimated that \$4,583,628 (85.4017%) will be allocated to eligible POOF investors and \$783,512 (14.5983%) will be allocated to eligible PTF investors.
9. 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 the Treasury ("United States Treasury").

Identifying Injured Investors

10. 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 (“Solomon”), counsel for Professional Traders Management, LLC (PTF’s manager) and Professional Offshore Traders Management, LLC (POOF’s manager, “POTM”), both of which are managed by Goldberg; and (d) Ken Marshall (“Marshall”) of Development Group, LLC, who represents various POOF investor interests.

Identifying Injured POOF Investors

11. 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. POOF investor balances were reported in terms of the number of shares held by each investor. 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. One of the investors, Professional Traders Management LLC (“PTM”), is a related party to the Defendants and therefore is being excluded from the distribution.

Identifying Injured PTF Investors

12. 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, ten (10) PTF investors have received Excess Distributions (see paragraph 24(e) below) and are therefore ineligible for distributions from the Distribution Fund. The Distribution Agent determined that injured PTF investors include those with positive net investment balances (i.e. total subscriptions

exceeding total redemptions) as of June 30, 2008 and any investors who invested funds after June 30, 2008. 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. PTF made liquidating distributions to two investors (including Michelle Berger) in 2008, which were paid after June 30, 2008, and thus those two investors are not considered injured and are ineligible to participate in a distribution.

No Claims Process

13. 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.

Detailed Methodology for Allocating Distribution Fund

14. As discussed above, 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. The Distribution Agent has determined that out of the twenty (20) PTF investors that could potentially qualify for a distribution, ten (10) PTF investors have received Excess Distributions (see paragraph 24(e) below) and are therefore ineligible for distributions from the Distribution Fund. Thus, a total of thirty-six (36) injured POOF investors and ten (10) injured PTF investors are entitled to a distribution.
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.

Methodology of Allocating Distribution Fund to POOF Investors

16. There are thirty-seven (37) investors that hold 66,808.8401 outstanding POOF shares. However, PTM, which holds 107.7872 shares of POOF, is a related party of the Defendant and therefore will be excluded from the distribution, leaving thirty-six (36) eligible investors holding 66,701.0529 outstanding shares. Payments to eligible POOF investors, to the extent funds are available, will be calculated on a *pro rata* basis based on the number of shares held by each eligible investor.
17. A list of the thirty-six (36) eligible POOF investors, the number of shares held by each, and the proposed distribution to each investor is attached hereto as Exhibit “C”.

Methodology of Allocating Distribution Fund to PTF Investors

18. The Distribution Agent initially identified twenty (20) PTF investors that could potentially qualify for a distribution. Because numerous investors exited the fund in June 2008 and Berger’s cherry-picking scheme began in July 2008, the Distribution Agent determined that injured PTF investors should include those investors who have positive net investment balances (i.e. total subscriptions exceeding total redemptions) as of June 30, 2008 who did *not* receive liquidating distributions in 2008, and any investors who invested funds after June 30, 2008. A list of the twenty (20) potentially eligible PTF investors and their respective net asset values (“NAV”) as of June 30, 2008 is attached hereto at Exhibit “D”.
19. According to the PTF investor statements, there was little investment activity in the fund after June 30, 2008. From July 2008 through October 2008, PTF investor statements

reflect additional subscriptions totaling \$1,448,800 from five investors and a \$50,000 redemption to one investor.¹ There was no investment activity from November 2008 through October 2009.

20. Beginning in November 2009, PTF began making liquidating distributions to the twenty (20) remaining PTF investors. PTF made additional liquidating distributions in February 2010, May-June 2010, and December 2010. However, these liquidating distributions were not made to investors in consistent proportions. Therefore, each investor's percentage of the fund changed after every distribution.

Prior Liquidating Distributions to PTF Investors should be Treated as Part of the Distribution Fund for PTF Investors

21. Because liquidating distributions to the twenty (20) PTF investors from November 2009 forward were not made in proportion to each investor's NAV, the proposed Distribution Plan treats those liquidating distributions as part of the Distribution Fund available to PTF injured investors and excludes investors whose liquidating payments were out of proportion to their NAV.
22. The Distribution Agent determined that each eligible PTF investor will recover at least 38.5293% of their adjusted NAV under this proposed Distribution Plan.
23. Any eligible PTF investor who received excess distributions resulting in total recoveries exceeding 38.5293% will not be entitled to distributions from PTF's share of the Distribution Fund. The Distribution Agent has determined that ten (10) PTF investors have received Excess Distributions (see paragraph 24(e) below) and are therefore ineligible for distributions from the Distribution Fund.

¹ This does not include the liquidating distributions to two investors (including Michelle Berger) in 2008, which were paid after June 30, 2008.

24. The Distribution Agent performed the below calculations to determine which PTF investors received more than 38.5293% of their adjusted NAV, the results of which are detailed in Exhibit “D”:

a. Adjusted NAV: Calculate each investor’s Adjusted NAV by starting with the investor’s NAV as of June 30, 2008, adding all investments after June 30, 2008, and subtracting all non-liquidating distributions after June 30, 2008.

b. Total Adjusted Funds Available for Distribution: Calculate the Adjusted Funds Available for Distributions to PTF injured investors by:

(1) Summing all liquidating distributions after November 1, 2009, and

(2) Adding the amount immediately above in b(1) to the funds

available to distribute to PTF injured investors.

c. Actual Recovery Rate: Calculate each investor’s Actual Recovery Rate by dividing the investor’s total liquidating distributions by the investor’s Adjusted NAV.

d. Allowable Recovery Rate: Calculate the Allowable Recovery Rate by dividing Total Adjusted Funds Available for Distribution by total Adjusted NAV.

e. Excess Distributions: If an investor’s Actual Recovery Rate exceeds the Allowable Recovery Rate, that investor has received Excess Distributions and will be excluded from a distribution from the Distribution Fund. The Commission does not intend to claw back Excess Distributions from investors.

f. Total Excess Distributions: Calculate the Total Excess Distributions by summing all investors’ Excess Distributions.

g. Final Total Funds Available for Distribution: Calculate the Final Total Funds Available for Distribution to injured PTF investors by subtracting the total Excess Distributions from the Adjusted Total Funds Available for Distribution.

h. Determining Final Allowable Recovery Rate: Because the Adjusted Total Funds Available for Distribution is used in the calculation of the total Allowable Recovery for all investors, steps (d) through (g) above must be re-performed through several iterations until the Allowable Recovery Rate remains unchanged from the prior iteration.

i. Proposed Payment to Injured PTF Investor: Proposed Payments will be calculated by multiplying each investor's Adjusted NAV by the difference between the Final Allowable Recovery Rate and the Investor's Actual Recovery Rate.

Notice to Investors and Opportunity to Object

25. Concurrently with the Commission's filing of a Motion for Order Approving Proposed Distribution Plan, the Distribution Agent will provide notice and a copy of the proposed Distribution Plan to all thirty-six (36) POOF investors and twenty (20) PTF investors along with (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.

26. Investors will be directed to submit any objections to the Distribution Agent within sixty (60) days after the date the notice and a copy of the proposed Distribution Plan is sent by the Distribution Agent, and instructed not to contact Commission staff, the Court, or the Clerk of the Court. The Distribution Agent will notify Commission staff immediately

upon receipt of any objections so that such objections may be addressed timely and efficiently.

27. After the time period allotted for submitting objections has passed:

a. If objections are received, the Distribution Agent will work with the Commission to prepare and file with the Court a summary of said objections and recommendations with regard to the same.

b. If no objections are received, the Commission will notify the Court of the same and will request that the Court approve the proposed Distribution Plan.

28. To carry out the purposes of this Distribution Plan, the Distribution Agent is authorized to make non-material adjustments or clarifications to the Distribution Plan that are consistent with the purpose and scope of the Distribution Plan, if agreed upon by the Distribution Agent and the staff of the Commission. If a change is deemed material by Commission staff, Court approval is required prior to implementation by amending the Distribution Plan.

29. Defendants and related entities will not be eligible for a distribution from the Distribution Fund.

Administration of the Plan

Control of the Distribution Fund

30. In order to disburse the Distribution Fund, the Distribution Agent will compile and submit a list of payees (including payee names, addresses, and SSNs or TINs) and payment amounts to the Commission staff no later than sixty (60) days after the Distribution Agent has used its best efforts to make use of all reasonable commercially available resources and other reasonably appropriate means to locate all Eligible

Recipients whose checks are returned to the Distribution Agent as undeliverable by the U.S. Postal Service, as described in paragraph 34 below. The Distribution Agent shall provide the final payee list to the Commission staff, and upon review, the Commission staff shall petition the Court to transfer all funds in the CRIS account to the Distribution Agent for distribution pursuant to the Distribution Plan.

31. Following the Court's approval of the Commission's petition for the authority to distribute the funds from the Distribution Fund as provided in the Distribution Plan, the Court may issue an order to the Clerk of the Court to transfer all funds in the CRIS account representing the Distribution Fund, less any expenses due the Court, to the account or accounts established by the Distribution Agent. The Distribution Agent shall commence the distributions to all Eligible Recipients (as defined in paragraph 8) as promptly as possible following the transfer of the funds. In conjunction with the motion seeking transfer of funds in the CRIS account to the Distribution Agent for distribution, the final payee list shall, upon request, be made available to the Court under seal.

32. Upon receipt of the monies from the CRIS account in this matter, the Distribution Agent shall sign a receipt acknowledging the receipt of the funds and deposit these monies in a bank account as described below:

- a. The bank account will be maintained at a United States commercial bank ("Bank") that is well-capitalized ("Well-Capitalized"), as defined by the Federal Reserve Act Subpart D, 12 C.F.R. 208.43, and is to be proposed by the Distribution Agent and not be unacceptable to the staff of the Commission. In the event that the Bank's Well-Capitalized status changes, the Distribution Agent will promptly inform the SEC staff of such change in status;

- b. The Distribution Agent shall supply a copy of the receipt to counsel for the Commission in this matter within ten (10) business days of the receipt of the monies;
- c. Pursuant to an escrow agreement (the “Escrow Agreement”) to be provided by the staff of the Commission, the Distribution Agent shall establish an escrow account (the “QSF Account”) in the name of SEC v. Berger Distribution Fund, and bearing the Employer Identification Number (“EIN”) of the Qualified Settlement Fund (“QSF”), as custodian for the distributees of the Distribution Fund. The name of the account shall be in the following form: QSF, SEC v. Berger Distribution Fund, bearing its EIN Number, as custodian for the benefit of investors allocated a distribution from the Berger Distribution Fund;
- d. The Distribution Agent and Bank shall also establish a separate deposit account (“Controlled Distribution Account”) for the purpose of funding checks to be distributed to investors by the Distribution Agent pursuant to the Distribution Plan. The Controlled Distribution Account shall bear the name of the QSF, SEC v. Berger Distribution Fund, bearing its EIN Number, as QSF, SEC v. Berger Distribution Fund, bearing its EIN Number, as custodian for the benefit of investors allocated a distribution from the Berger Distribution Fund;
- e. Any funds in the QSF Account, if invested, shall be invested in instruments backed by the full faith and credit of the United States Government, including a AAA-rated United States Treasury money market fund that directly invests 100% in short term United States Treasury securities and obligations, provided however, that the money market mutual funds’ investments in short term United States

Treasury securities will not be made through repurchase agreements or other derivative products;

- f. The Distribution Agent shall provide duplicate original bank and/or investment statements on any accounts established by the Distribution Agent to the Tax Administrator on a monthly basis and shall assist the Tax Administrator in obtaining mid-cycle statements, as necessary; and
 - g. The Distribution Agent shall deposit or invest funds in the QSF Account and Controlled Distribution Account so as to result in the maximum reasonable net return, taking into account the safety of such deposits or investments. In consultation with the staff of the Commission, the Distribution Agent shall work with the Bank on an ongoing basis to determine an allocation of funds between the QSF Account and Controlled Distribution Account.
33. All Distribution Fund checks presented for payment or electronic transfers will be subject to “positive pay” controls before being honored by the Bank. The positive pay system provides protection against fraud arising from counterfeit or amount-altered checks. The positive pay system will require, at a minimum, confirmation by the Bank that all checks presented for payment match the identifiers and amounts on the payee list prior to payment of the presented obligation. In each instance, funds will be transferred from the QSF Account to the Distribution Account on the Bank’s confirmation that a presented check matches the relevant pay criteria.
34. The Distribution Agent shall use its best efforts to make use of all reasonable commercially available resources and other reasonably appropriate means to locate all Eligible Recipients whose checks are returned to the Distribution Agent as undeliverable

by the U.S. Postal Service. However, the Eligible Recipient has the burden of providing the Distribution Agent with any changes to his or her mailing address.

35. All distribution payments shall be preceded or accompanied by a communication that includes, as appropriate:

- a. A statement characterizing the distribution;
- b. A statement that the tax treatment of the distribution is the responsibility of each recipient and that the recipient should consult his or her tax advisor for advice regarding the tax treatment of the distribution;
- c. A statement that checks will be void after one hundred and twenty (120) days after the date of issuance; and,
- d. The name of a person or entity to contact, if the Eligible Recipient has any questions regarding the distribution.

36. Any such communication shall be submitted to the staff of the Commission and the Tax Administrator for review and approval. The Distribution Fund checks, on their face or the accompanying mailing, shall clearly indicate that the money is being distributed from a Distribution Fund established by the Commission to compensate investors for harm as a result of securities law violations by Berger who engaged in a fraudulent trade allocation scheme commonly referred to as “cherry picking.”

37. Under no circumstances shall the Distribution Agent, its employees or its agents incur any liability to any person in connection with a distribution made in accordance with the list of all Eligible Recipients and their eligible distribution amount as approved by the Court, and all persons are enjoined from taking any action in contravention of this provision. Upon receipt and acceptance by an Eligible Recipient of a distribution from

the Distribution Fund, such Eligible Recipient shall be deemed to have released all claims that such Eligible Recipient may have against the Distribution Agent, its employees, agents, and attorneys in connection with the Distribution Plan and the administration of the Distribution Fund, and shall be deemed enjoined from prosecuting or asserting any such claims.

Wind Down of Distribution

38. The Distribution Agent will maintain all documents, including documents in any media, six (6) years after approval of the final accounting and thereafter will transfer the documents to Commission staff, pursuant to Commission direction.

39. Once all of the distribution payments and payments for taxes, fees and expenses have been cashed or voided, any remaining funds will be paid to the Commission for transfer to the United States Treasury.

40. The Distribution Fund will be eligible for termination, and the Distribution Agent eligible for discharge, after all of the following have occurred:

- a. The final accounting has been submitted to and approved by the Court;
- b. All tax returns have been filed;
- c. All taxes, fees and expenses have been paid; and
- d. All remaining funds have been paid to the Commission for transfer to the

United States Treasury.

Taxes

41. The Distribution Fund is a QSF within the meaning of the regulations issued under Section 468B(g) of the Internal Revenue Code of 1986, as amended. The Tax Administrator is the administrator of the QSF, for purposes of Treas. Reg. § 1.468B-

2(k)(3)(I), and shall satisfy the tax related administrative requirements imposed by Treas. Reg. § 1.468B-2.

42. The Distribution Agent shall cooperate with the Tax Administrator in providing any information necessary to ensure income tax compliance.

Payment of Costs, Fees, and Taxes, and Filing of Reports

43. All taxes and the reasonable fees and expenses of the Distribution Agent, Tax Administrator, third-party professionals and service providers incurred in the performance of their duties, will be paid from the Distribution Fund, subject to the review and approval of the Court.
44. The Distribution Agent will provide Commission staff with a progress report within twenty (20) days after the end of each quarter and a final report with a final accounting once the distribution is complete. The final report will be submitted by Commission staff to the Court for approval.
45. Progress reports shall inform Commission staff of the activities and status of the Distribution Fund during the requested reporting period, and shall specify, at a minimum, the location of the account(s) comprising the Distribution Fund, the value of those account(s), all monies earned or received into the account(s), monies distributed to Eligible Recipients under the Distribution Plan, and any monies expended to satisfy fees, expenses, and taxes incurred.
46. The final report shall include, among other things, a final accounting of all monies received, earned, spent, and distributed in connection with the administration of the Distribution Plan, and a request for approval of any unpaid taxes, fees and/or expenses. The final accounting will be in a format provided by Commission staff.

47. The Clerk of the Court shall provide the Distribution Agent with any account information relating to funds held by the Court that may be required for the progress and final reports, including providing copies of any account statements that the Distribution Agent may request.

Other Rights and Powers

48. The Distribution Agent is entitled to rely on all outstanding rules of law and court orders, and shall not be liable to anyone for any action taken or omitted by him in connection with this Distribution Plan, except upon a finding by this Court of misfeasance, gross negligence, or reckless disregard of duty under this Distribution Plan.

49. The Distribution Agent is authorized to enter into agreements with financial institutions (“Institutions”) as may be appropriate or necessary in the administration of the Distribution Fund, provided that such Institutions are not excluded pursuant to other provisions of this Distribution Plan. In connection with such agreements, the Institutions shall be deemed to be agents of the Distribution Agent under this Distribution Plan.

50. All proceedings with respect to the administration, processing, and determination of claims and the determination of all related controversies, shall be subject to the exclusive jurisdiction of this Court.

51. The Court reserves the right to amend this Distribution Plan from time to time, and retains jurisdiction over this matter for this purpose and for any and all other matters that may arise under or relate to this Distribution Plan.

Timeline

52. The Distribution Agent’s timeline for executing the Distribution Plan and making final distributions is attached as Exhibit “A”. The timeline set forth at Exhibit “A” is based on

the assumption that investor objections, if any, will not raise extraordinary issues not contemplated by the Distribution Agent at this time and that the Court provides the requested approval as anticipated.

53. The Distribution Agent may change any procedural deadline contained in the Distribution Plan for good cause shown, if agreed upon by Commission staff.

EXHIBIT “A”

DISTRIBUTION FUND

**TIMELINE FOR APPROVAL AND IMPLEMENTATION
OF A PLAN OF DISTRIBUTION**

Description of Event	Anticipated Completion Date
Mailing of notice and a copy of the proposed Distribution Plan to investors with instructions for submitting objections and preferred method of payment	7 days after proposed Distribution Plan is filed.
Deadline for submitting objections to the Distribution Agent	60 days after above notice is mailed.
Filing of summary of objections and corresponding recommendations OR notice of no objections	15 days after deadline for submitting objections
Deadline to disburse funds to approved investors pursuant to the Distribution Plan	15 days after transfer of funds to Escrow Account
Deadline to issue Distribution Agent’s final report and final accounting to Commission	30 days after the distribution of funds to Eligible Recipients have been completed and all checks to Eligible Recipients have cleared or otherwise voided

Simon Consulting, LLC

Distribution Agent

SEC v. Berger

Professional Offshore Opportunity Fund Ltd.

Professional Traders Fund, LLC

Allocation of Distribution Fund

Exhibit "B"

Calculation of Funds Available for Distribution	
Balance as of April 2, 2015	5,397,140.21
Less: Estimated Distribution Agent Fees	(20,500.00)
Less: Estimated 2014-2015 Tax Prep & Taxes Due	(7,000.00)
Less: Estimated Wire Fees	(2,500.00)
Estimated Funds Available for Distribution	5,367,140.21

Allocation of Losses by Fund					
Per SEC's Division of Economic and Risk Analysis					
Fund	No. of Trades	Amount Traded (\$)	Profit/(Loss)	% of Total Profit/(Loss)	Net Distribution by Fund
POOF	2,768	1,449,534,308	(10,059,406.00)	85.4017%	4,583,627.99
PTF	424	172,664,648	(1,719,526.00)	14.5983%	783,512.22
Total	3,192	1,622,198,956	(11,778,932.00)	100.0000%	5,367,140.21

Simon Consulting, LLC
Distribution Agent
SEC v. Berger

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

Exhibit "C"

Investor [Names Redacted]	No. of Shares	% of Total	Proposed Payments from Distribution Fund
Investor No. 1	1,049.7784	1.5739%	72,139.70
Investor No. 2	4,011.5450	6.0142%	275,669.26
Investor No. 3	2,391.3432	3.5852%	164,330.65
Investor No. 4	587.9851	0.8815%	40,405.73
Investor No. 5	3,587.8687	5.3790%	246,554.66
Investor No. 6	1,856.6913	2.7836%	127,589.92
Investor No. 7	115.7567	0.1735%	7,954.68
Investor No. 8	714.1120	1.0706%	49,073.04
Investor No. 9	629.8670	0.9443%	43,283.81
Investor No. 10	101.0505	0.1515%	6,944.09
Investor No. 11	9,321.6374	13.9752%	640,573.37
Investor No. 12	870.7161	1.3054%	59,834.72
Investor No. 13	3,210.3970	4.8131%	220,615.19
Investor No. 14	182.9800	0.2743%	12,574.20
Investor No. 15	3,603.3948	5.4023%	247,621.60
Investor No. 16	489.2938	0.7336%	33,623.77
Investor No. 17	773.5671	1.1598%	53,158.74
Investor No. 18	1,481.9021	2.2217%	101,834.79
Investor No. 19	485.0044	0.7271%	33,329.01
Investor No. 20	254.9005	0.3822%	17,516.50
Investor No. 21	2,937.2273	4.4036%	201,843.25
Investor No. 22	2,937.2274	4.4036%	201,843.26
Investor No. 23	159.3795	0.2389%	10,952.40
Investor No. 24	415.6866	0.6232%	28,565.56
Investor No. 25	487.5951	0.7310%	33,507.04
Investor No. 26 [1]	-	0.0000%	-
Investor No. 27	477.4369	0.7158%	32,808.97
Investor No. 28	77.0495	0.1155%	5,294.76
Investor No. 29	642.0794	0.9626%	44,123.04
Investor No. 30	152.5300	0.2287%	10,481.71
Investor No. 31	323.3363	0.4848%	22,219.34
Investor No. 32	100.5506	0.1507%	6,909.73
Investor No. 33	9,920.8081	14.8735%	681,747.76
Investor No. 34	8,274.2205	12.4049%	568,595.95
Investor No. 35	3,200.0000	4.7975%	219,900.72
Investor No. 36	79.5709	0.1193%	5,468.03
Investor No. 37	796.5637	1.1942%	54,739.04
Total	66,701.0529	100.0000%	4,583,627.99

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.

Simon Consulting, LLC
Distribution Agent
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Professional Traders Fund, LLC
Allocation of Funds Available for Distribution

Exhibit "D"

Investor Name	NET ASSET VALUE CALCULATION					ITERATION NO. 1		ITERATION NO. 2		ITERATION NO. 3		ITERATION NO. 4	
	06/30/08 NAV	Plus Post-06/30/08 Investment Transactions	Adjusted NAV	Liquidating Distributions	Actual Recovery (% of NAV)	Actual % Exceeds Allowable %?	Excess Distributions	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	13.6534%	NO		NO		NO		NO	
Investor No. 39	3,856,312		3,856,312	1,271,209	32.9644%	NO		NO		NO		NO	
Investor No. 40	475,870		475,870	179,160	37.6489%	NO		NO		NO		NO	
Investor No. 41	618,182		618,182	132,651	21.4582%	NO		NO		NO		NO	
Investor No. 42	836,320		836,320	129,869	15.5286%	NO	-	NO	-	NO	-	NO	-
Investor No. 43	194,954	-	194,954	45,131	23.1496%	NO	-	NO	-	NO	-	NO	-
Investor No. 44		- 250,000	250,000	99,045	39.6180%	YES	- (184.24)	YES	- (2,201.72)	YES	- (2,615.16)	YES	- (2,699.89)
Investor No. 45	175,237	-	175,237	73,740	42.0802%	YES	- (4,443.75)	YES	- (5,857.90)	YES	- (6,147.70)	YES	- (6,207.08)
Investor No. 46	309,522	-	309,522	138,600	44.7787%	YES	- (16,201.68)	YES	- (18,699.50)	YES	- (19,211.37)	YES	- (19,316.27)
Investor No. 47	980,750	-	980,750	359,320	36.6373%	NO	-	NO	-	NO	-	NO	-
Investor No. 48	1,207,064	-	1,207,064	359,320	29.7681%	NO		NO		NO		NO	
Investor No. 49	224,678	-	224,678	100,685	44.8130%	YES	(11,837.65)	YES	(13,650.78)	YES	(14,022.35)	YES	(14,098.49)
Investor No. 50	224,678	- 200,000	424,678	189,569	44.6383%	YES	(21,633.05)	YES	(25,060.16)	YES	(25,762.47)	YES	(25,906.40)
Investor No. 51	101,733	-	101,733	45,894	45.1122%	YES	- (5,664.39)	YES	- (6,485.37)	YES	- (6,653.61)	YES	- (6,688.09)
Investor No. 52	78,252	-	78,252	33,748	43.1273%	YES	- (2,803.79)	YES	- (3,435.28)	YES	- (3,564.69)	YES	- (3,591.21)
Investor No. 53	464,712	-	464,712	166,509	35.8306%	NO		NO		NO		NO	
Investor No. 54		598,800	598,800	263,980	44.0848%	YES	(27,188.71)	YES	(32,020.98)	YES	(33,011.25)	YES	(33,214.18)
Investor No. 55	93,518	-	93,518	40,635	43.4515%	YES	(3,653.96)	YES	(4,408.64)	YES	(4,563.30)	YES	(4,594.99)
Investor No. 56	256,539	-	256,539	106,794	41.6288%	YES	(5,347.44)	YES	(7,417.69)	YES	(7,841.94)	YES	(7,928.88)
Investor No. 57	412,169	- 400,000	812,169	288,391	35.5087%	NO	-	NO	-	NO	-	NO	-
Totals	10,863,857	1,398,800	12,262,657	4,065,670			(98,958.67)		(119,238.02)		(123,393.84)		(124,245.48)

- No. of Eligible Investors:	20	10	10	10	10
Plus: Funds Available for Distribution:	783,512	-	-	-	-
Adjusted Total Funds Available for Distribution:	4,849,182	4,849,182.22	4,849,182.22	4,849,182.22	4,849,182.22
Adjusted Total Excluding Excess Distributions:		4,750,223.55	4,729,944.20	4,725,788.38	4,724,936.74
Maximum Allowable Recovery (% of Total NAV):	39.5443%	38.737311%	38.571936%	38.538046%	38.531101%
Exact Match to Allowable Recovery Per Prior Iteration?:		NO	NO	NO	NO

Simon Consulting, LLC
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Professional Traders Fund, LLC
Allocation of Funds Available for Distribution

Exhibit "D"

Investor Name	NET ASSET VALUE CALCULATION					ITERATION NO. 5		ITERATION NO. 6		ITERATION NO. 7		ITERATION NO. 8	
	06/30/08 NAV	Plus Post-06/30/08 Investment Transactions	Adjusted NAV	Liquidating Distributions	Actual Recovery (% of NAV)	Actual % Exceeds Allowable %?	Excess Distributions	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	13.6534%	NO		NO		NO		NO	
Investor No. 39	3,856,312		3,856,312	1,271,209	32.9644%	NO		NO		NO		NO	
Investor No. 40	475,870		475,870	179,160	37.6489%	NO		NO		NO		NO	
Investor No. 41	618,182		618,182	132,651	21.4582%	NO		NO		NO		NO	
Investor No. 42	836,320		836,320	129,869	15.5286%	NO	-	NO	-	NO	-	NO	-
Investor No. 43	194,954	-	194,954	45,131	23.1496%	NO	-	NO	-	NO	-	NO	-
Investor No. 44		- 250,000	250,000	99,045	39.6180%	YES	(2,717.25)	YES	(2,720.81)	YES	(2,721.54)	YES	(2,721.68)
Investor No. 45	175,237	-	175,237	73,740	42.0802%	YES	(6,219.25)	YES	(6,221.75)	YES	(6,222.26)	YES	(6,222.36)
Investor No. 46	309,522	-	309,522	138,600	44.7787%	YES	(19,337.77)	YES	(19,342.17)	YES	(19,343.07)	YES	(19,343.26)
Investor No. 47	980,750	-	980,750	359,320	36.6373%	NO	-	NO	-	NO	-	NO	-
Investor No. 48	1,207,064	-	1,207,064	359,320	29.7681%	NO		NO		NO		NO	
Investor No. 49	224,678	-	224,678	100,685	44.8130%	YES	(14,114.09)	YES	(14,117.29)	YES	(14,117.95)	YES	(14,118.08)
Investor No. 50	224,678	- 200,000	424,678	189,569	44.6383%	YES	(25,935.89)	YES	(25,941.94)	YES	(25,943.17)	YES	(25,943.43)
Investor No. 51	101,733	-	101,733	45,894	45.1122%	YES	(6,695.16)	YES	(6,696.60)	YES	(6,696.90)	YES	(6,696.96)
Investor No. 52	78,252	-	78,252	33,748	43.1273%	YES	(3,596.64)	YES	(3,597.76)	YES	(3,597.98)	YES	(3,598.03)
Investor No. 53	464,712	-	464,712	166,509	35.8306%	NO		NO		NO		NO	
Investor No. 54		- 598,800	598,800	263,980	44.0848%	YES	(33,255.77)	YES	(33,264.29)	YES	(33,266.04)	YES	(33,266.39)
Investor No. 55	93,518	-	93,518	40,635	43.4515%	YES	(4,601.49)	YES	(4,602.82)	YES	(4,603.09)	YES	(4,603.14)
Investor No. 56	256,539	-	256,539	106,794	41.6288%	YES	(7,946.70)	YES	(7,950.35)	YES	(7,951.10)	YES	(7,951.25)
Investor No. 57	412,169	- 400,000	812,169	288,391	35.5087%	NO	-	NO	-	NO	-	NO	-
Totals	10,863,857	1,398,800	12,262,657	4,065,670			(124,420.01)		(124,455.78)		(124,463.10)		(124,464.58)

- No. of Eligible Investors:	20	10	10	10	10
Plus: Funds Available for Distribution:	783,512	-	-	-	-
Adjusted Total Funds Available for Distribution:	4,849,182	4,849,182.22	4,849,182.22	4,849,182.22	4,849,182.22
Adjusted Total Excluding Excess Distributions:		4,724,762.21	4,724,726.44	4,724,719.12	4,724,717.64
Maximum Allowable Recovery (% of Total NAV):	39.5443%	38.529678%	38.529386%	38.529326%	38.529314%
Exact Match to Allowable Recovery Per Prior Iteration?:		NO	NO	NO	NO

Professional Traders Fund, LLC
Allocation of Funds Available for Distribution

Exhibit "D"

Investor Name	NET ASSET VALUE CALCULATION					ITERATION NO. 9		ITERATION NO. 10		ITERATION NO. 11		ITERATION NO. 12	
	06/30/08 NAV	Plus Post-06/30/08 Investment Transactions	Adjusted NAV	Liquidating Distributions	Actual Recovery (% of NAV)	Actual % Exceeds Allowable %?	Excess Distributions	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	13.6534%	NO		NO		NO		NO	
Investor No. 39	3,856,312		3,856,312	1,271,209	32.9644%	NO		NO		NO		NO	
Investor No. 40	475,870		475,870	179,160	37.6489%	NO		NO		NO		NO	
Investor No. 41	618,182		618,182	132,651	21.4582%	NO		NO		NO		NO	
Investor No. 42	836,320		836,320	129,869	15.5286%	NO	-	NO	-	NO	-	NO	-
Investor No. 43	194,954	-	194,954	45,131	23.1496%	NO	-	NO	-	NO	-	NO	-
Investor No. 44		- 250,000	250,000	99,045	39.6180%	YES	- (2,721.71)	YES	- (2,721.72)	YES	- (2,721.72)	YES	- (2,721.72)
Investor No. 45	175,237	-	175,237	73,740	42.0802%	YES	- (6,222.39)						
Investor No. 46	309,522	-	309,522	138,600	44.7787%	YES	- (19,343.30)	YES	- (19,343.30)	YES	- (19,343.31)	YES	- (19,343.31)
Investor No. 47	980,750	-	980,750	359,320	36.6373%	NO	-	NO	-	NO	-	NO	-
Investor No. 48	1,207,064	-	1,207,064	359,320	29.7681%	NO		NO		NO		NO	
Investor No. 49	224,678	-	224,678	100,685	44.8130%	YES	(14,118.11)	YES	(14,118.11)	YES	(14,118.11)	YES	(14,118.11)
Investor No. 50	224,678	- 200,000	424,678	189,569	44.6383%	YES	(25,943.48)	YES	(25,943.49)	YES	(25,943.49)	YES	(25,943.49)
Investor No. 51	101,733	-	101,733	45,894	45.1122%	YES	- (6,696.97)	YES	- (6,696.98)	YES	- (6,696.98)	YES	- (6,696.98)
Investor No. 52	78,252	-	78,252	33,748	43.1273%	YES	- (3,598.04)						
Investor No. 53	464,712	-	464,712	166,509	35.8306%	NO		NO		NO		NO	
Investor No. 54		- 598,800	598,800	263,980	44.0848%	YES	(33,266.47)	YES	(33,266.48)	YES	(33,266.49)	YES	(33,266.49)
Investor No. 55	93,518	-	93,518	40,635	43.4515%	YES	(4,603.16)	YES	(4,603.16)	YES	(4,603.16)	YES	(4,603.16)
Investor No. 56	256,539	-	256,539	106,794	41.6288%	YES	(7,951.28)	YES	(7,951.29)	YES	(7,951.29)	YES	(7,951.29)
Investor No. 57	412,169	- 400,000	812,169	288,391	35.5087%	NO	-	NO	-	NO	-	NO	-
Totals	10,863,857	1,398,800	12,262,657	4,065,670			(124,464.91)		(124,464.96)		(124,464.98)		(124,464.98)

- No. of Eligible Investors:	20	10	10	10	10
Plus: Funds Available for Distribution:	783,512	-	-	-	-
Adjusted Total Funds Available for Distribution:	4,849,182	4,849,182.22	4,849,182.22	4,849,182.22	4,849,182.22
Adjusted Total Excluding Excess Distributions:		4,724,717.31	4,724,717.26	4,724,717.24	4,724,717.24
Maximum Allowable Recovery (% of Total NAV):	39.5443%	38.529311%	38.529311%	38.529311%	38.529311%
Exact Match to Allowable Recovery Per Prior Iteration?:		NO	NO	NO	YES

Simon Consulting, LLC
Distribution Agent
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Professional Traders Fund, LLC
Allocation of Funds Available for Distribution

Exhibit "D"

Investor Name	NET ASSET VALUE CALCULATION				SUMMARY OF TOTAL DISTRIBUTIONS			
	06/30/08 NAV	Plus Post-06/30/08 Investment Transactions	Adjusted NAV	Liquidating Distributions	Actual Recovery (% of NAV)	Proposed Payments from Distribution Fund	Total Recovery (\$)	Total Recovery (% of NAV)
Investor No. 38	353,367	(50,000)	303,367	41,420	13.6534%	75,465.21	116,885.21	38.5293%
Investor No. 39	3,856,312		3,856,312	1,271,209	32.9644%	214,601.44	1,485,810.44	38.5293%
Investor No. 40	475,870		475,870	179,160	37.6489%	4,189.43	183,349.43	38.5293%
Investor No. 41	618,182		618,182	132,651	21.4582%	105,530.26	238,181.26	38.5293%
Investor No. 42	836,320		836,320	129,869	15.5286%	192,359.33	322,228.33	38.5293%
Investor No. 43	194,954	-	194,954	45,131	23.1496%	29,983.43	75,114.43	38.5293%
Investor No. 44		- 250,000	250,000	99,045	39.6180%		99,045.00	39.6180%
Investor No. 45	175,237	-	175,237	73,740	42.0802%		73,740.00	42.0802%
Investor No. 46	309,522	-	309,522	138,600	44.7787%		138,600.00	44.7787%
Investor No. 47	980,750	-	980,750	359,320	36.6373%	18,556.22	377,876.22	38.5293%
Investor No. 48	1,207,064		1,207,064	359,320	29.7681%	105,753.44	465,073.44	38.5293%
Investor No. 49	224,678	-	224,678	100,685	44.8130%		100,685.00	44.8130%
Investor No. 50	224,678	- 200,000	424,678	189,569	44.6383%		189,569.00	44.6383%
Investor No. 51	101,733	-	101,733	45,894	45.1122%		45,894.00	45.1122%
Investor No. 52	78,252	-	78,252	33,748	43.1273%		33,748.00	43.1273%
Investor No. 53	464,712	-	464,712	166,509	35.8306%	12,541.33	179,050.33	38.5293%
Investor No. 54		598,800	598,800	263,980	44.0848%		263,980.00	44.0848%
Investor No. 55	93,518	-	93,518	40,635	43.4515%		40,635.00	43.4515%
Investor No. 56	256,539	-	256,539	106,794	41.6288%		106,794.00	41.6288%
Investor No. 57	412,169	- 400,000	812,169	288,391	35.5087%	24,532.12	312,923.12	38.5293%
Totals	10,863,857	1,398,800	12,262,657	4,065,670		783,512.22	4,849,182.22	

- No. of Eligible Investors:	20	- No. of Eligible Investors:	10
Plus: Funds Available for Distribution:	783,512		
Adjusted Total Funds Available for Distribution:	4,849,182		
Adjusted Total Excluding Excess Distributions:			
Maximum Allowable Recovery (% of Total NAV):	39.5443%	Final Recovery (%):	38.5293%
Exact Match to Allowable Recovery Per Prior Iteration?:			