

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-12678

In the Matter of)

Haidar Capital Management, LLC,)
Haidar Capital Advisors, LLC and)
Said N. Haidar,)

Respondents.)

FINAL PLAN OF DISTRIBUTION

Overview

1. This Plan of Distribution (“Plan”) proposes a methodology for distributing disgorgement, civil penalties, and prejudgment interest paid by Haidar Capital Management, LLC, Haidar Capital Advisors, LLC (collectively, “Haidar Advisors”), and Said N. Haidar (“Haidar”) (collectively, “Respondents”) in settlement with the Securities and Exchange Commission (“SEC” or “Commission”) of administrative proceedings involving findings of deceptive market timing of certain mutual funds and annuities (“Affected Funds”). On July 6, 2007, Respondents consented to the entry of an order instituting public administrative and cease-and-desist proceedings, making findings, imposing a cease-and-desist order, and imposing remedial sanctions pursuant to Section 8A of the Securities Act of 1933, Sections 203(e) and (f) of the Investment Advisers Act of 1940, and Sections 9(b) and (d) of the Investment Company Act of 1940 (“Order”)

(Securities Act Rel. No. 8820).¹ The Order found, among other things, that between April 2001 and September 2003, Haidar Advisors engaged in an illegal market timing scheme.

2. The Order required that Respondents pay \$4,580,000 in disgorgement, civil penalties, and prejudgment interest. The Order also established a Fair Fund under Section 308(a) of the Sarbanes-Oxley Act of 2002, 15 U.S.C. § 7246, and 17 C.F.R. § 201.1100 *et seq.* promulgated thereunder (Order, Paragraph IV.D.1.). The Order further required that the Respondents retain the services of an “independent distribution consultant not unacceptable to the staff of the Commission” to develop a plan “for the distribution of the total disgorgement and penalty ordered in” the Order “and any interest or earnings thereon, according to a methodology” acceptable to the staff of the Commission. The Order also requires that the Respondents “cooperate fully with the Independent Distribution Consultant, including [by] providing access to their files, books, records, and personnel as reasonably requested for the review.” Respondents agreed to, and have paid, up to \$50,000 of the compensation and expenses of the Independent Distribution Consultant (“IDC”). Thereafter, the IDC’s compensation or expenses shall be paid first from the interest earned on the funds, and if the interest is not sufficient, then from the corpus.

3. In accordance with the Order, the Respondents have retained Professor Gordon Alexander, a professor of finance at the University of Minnesota and a former SEC economist as the IDC.² This submission constitutes the Plan required by the Order. The

¹ See Order Instituting Proceedings at www.sec.gov/litigation/admin/2007/33-8820.pdf.

² Professor Alexander has received assistance from staff at Securities Litigation and Consulting Group, Inc., an economics consulting firm based in Fairfax, Virginia. All work in this matter has been done under

Plan is subject to approval by the Commission, and the Commission retains jurisdiction over the implementation of the Plan.

Administration of the Distribution Plan

4. Purpose and Background. The Plan was developed pursuant to the Order and the SEC Rules on Fair Fund and Disgorgement Plans, 17 C.F.R. § 201.1100, *et seq.* (“Rules”). The Fair Fund constitutes a Qualified Settlement Fund under Section 468B(g) of the Internal Revenue Code, 26 U.S.C. § 468B(g), and related regulations, 26 C.F.R. § 1.468B-1 through 1.468B-5. The assets of the Fair Fund (that were paid by Respondents on August 3, 2007) are subject to the continuing jurisdiction and control of the Commission, and the Commission shall retain control of the assets of the Fair Fund, which is currently deposited at the United States Treasury Bureau of Public Debt for investment in government obligations.

5. Fund Administrator. Rule 1105(a) provides that the Commission “shall have the authority to appoint any person . . . as administrator of a plan of disgorgement of a Fair Fund and to delegate to that person responsibility for administering the plan.” Rule 1105(a) also provides that an administrator may be removed at any time by order of the Commission. Rust Consulting, Inc. (“Rust”) will act as the administrator (“Fund Administrator”) for the Plan. Rust has extensive experience in distributing SEC Fair Funds.³ The staff has no objection to the selection of Rust as Fund Administrator.

Professor Alexander’s direction. In accordance with the Order, the Respondents have paid \$50,000 for the expenses of the IDC, Professor Alexander.

³ See, for example, *In the Matter of Bank of America Capital Management, et al.*, Order Approving the Distribution Plan, Administrative Proceeding File No. 3-11818, available at <http://sec.gov/litigation/admin/2007/34-57048.pdf>.

6. Bond. Rule 1105(c) requires that the Fund Administrator “obtain a bond in the manner prescribed in 11 U.S.C. 322, in an amount to be approved by the Commission,” but allows the Commission to “waive posting of a bond for good cause shown.” The disbursements in this matter will be made by Treasury’s Financial Management Services (“FMS”) directly to the Affected Funds, with no handling of money by the Fund Administrator. The payees, and the relative amounts to be paid by FMS to each, will be reviewed and approved by the Commission prior to the disbursements. In summary, the Fund Administrator will not have discretion regarding payment amounts made from the Fair Fund. Accordingly, the bond for the Fund Administrator is waived.

Distribution Plan and Procedures

7. Specification of Eligible Fair Fund Recipients. Rule 1101(b)(2) provides that a plan shall include specification “of categories of persons potentially eligible to receive proceeds of the fund.” This first requires a decision of whether the distribution should occur (a) at the fund level, meaning that the Fair Funds would be contributed to the Affected Funds in which the Respondents’ conduct caused dilution in share value, with the distribution resulting in an increase in the net asset value of those collective asset vehicles; or (b) at the individual investor level, meaning that the distribution process would attempt to “look through” the ownership structure at the mutual fund level to identify the individual fund shareholders whose shares were diluted in value as a consequence of the Respondents’ transactions.

8. Fund Level. A fund level distribution is the appropriate mechanism for this distribution. This conclusion is based on the observations that, among other factors:

- a. The amounts likely to be paid to the large majority of individual fund shareholders would be so small as to be *de minimis*;⁴ and
- b. Implementing an individual level distribution under the circumstances here would result in significant expense and delay. Because any costs exceeding the \$50,000 contributed by the Respondents to prepare and fully implement the Distribution Plan are to be paid out of the Fair Fund, it is highly probable that an individual level distribution would significantly reduce the size of the Fair Fund. A fund level distribution would, however, avoid the costs of collecting large amounts of data from various sources and in different formats regarding daily purchases and redemptions of funds by individuals. In addition, complex and time-consuming implementation issues would be present in an individual level distribution such as this where the trading took place at hundreds of funds in numerous different fund complexes. The Respondents and the Fund Administrator in the instant proceedings lack the ability to compel disclosure by the various funds (not to mention the various brokers, advisors and other intermediaries) of the daily purchases and redemptions of funds by individuals that would be essential to any determination of which shareholders of the funds held fund shares, and how many shares they held, and how many shares were outstanding, on the various days on which the Respondents engaged in purchases and redemptions of shares of those same funds.

⁴ See, for example, *In the Matter of Millennium Partners, et al.*, Proposed Plan of Distribution, Administrative Proceeding File No. 3-12116 and 3-11292, available at <http://www.sec.gov/litigation/admin/2007/34-55841-pdp.pdf> and Order Approving Distribution Plan, Appointing an Administrator, and Waiving Bond, available at <http://www.sec.gov/litigation/admin/2007/34-56196.pdf>.

9. Methodology for Determining Distributions. The Fair Fund will be allocated in three steps. First, the dilution suffered by each Affected Fund is estimated using the next-day NAV method. This method calculates the dilution to a fund as the sum of the profits earned by market timers on purchases plus the losses avoided on sales. This method assumes that the timer inflows were fully invested at the end of the day after being received and that the investments were fully liquidated at the end of the day after being withdrawn.

9(a). The next-day NAV method has been shown to be a valid method of estimating dilution from market timing⁵ and has been used previously for fund-level allocations in previous distributions.⁶ Based upon the specific facts in this matter, the IDC believes that the next-day NAV method is a fair and reasonable approach. The next-day NAV method was applied to a database of trades produced by the Respondents. The Respondents represented that these are the trades referred to in the Order. After applying the next-day NAV method to the trades, 577 mutual funds that were in the database of trades produced by the Respondents were found to have experienced either positive or negative dilution.

9(b). Of the 577 funds for which the IDC had data, 169 were to experience negative dilution from the activities of the market timers, and 408 were to experience positive dilution. There were no other funds in the transaction database that were affected by the market timing. The second and third steps use the estimates of positive dilution experienced by 408 of the 577 mutual funds (the Affected Funds) from the first step to

⁵ See Greene, J. and C.W. Hodges, 2002. "The Dilution Impact of Daily Fund Flows on Open-End Mutual Funds," *Journal of Financial Economics* 65, 131-158, and Greene, J. and C. S. Ciccotello, 2006. "Mutual Fund Dilution from Market Timing Trades," *Journal of Investment Management* 4, 42-66.

⁶ See, for example, *In re Millennium*; see infra fn. 4, *In the Matter of Veras Capital Master Fund, et al.*, Plan of Distribution, Administrative Proceeding File No. 3-12133, available at <http://www.sec.gov/litigation/admin/2006/34-54299-pdp.pdf>, and Order Directing Disbursement of Fair Fund, available at <http://sec.gov/litigation/admin/2007/34-55363.pdf>.

allocate the Fair Fund. Therefore, in the second step, the Fair Fund is allocated *pro rata* to all funds with positive dilution since shareholders in the 169 funds with negative dilution were not harmed by the trades of the market timers.

9(c). In the second step, the amount in the Fair Fund, less reserve allowances for the IDC and Fund Administrator (“Reserve Allowances”) and allowances for the Tax Administrator and taxes (“Tax Allowances”), shall be allocated *pro rata* to all funds with positive dilution based on the estimates obtained in the first step. This reserve calculation shall be performed as close as possible to the expected date of distribution. The Reserve Allowances and the Tax Allowances calculations shall be provided by the IDC, after consultation with the Fund Administrator and Tax Administrator, to the staff for approval by the Commission. The Tax Allowances shall be adequate to cover any anticipated tax liability of the Fair Fund and related costs of tax compliance.

9(d). Consistent with similar distribution plans, this Distribution Plan sets a *de minimis* amount of \$1,000. This avoids distributing money to funds in cases where the cost of the distribution exceeds the amount distributed. Accordingly, the third step re-allocates the Fair Fund (less the allowances described above) *pro rata* based on dilution to all Affected Funds that experienced positive dilution and which had an allocation of at least \$1,000 in step two. Of the 408 mutual funds with positive dilution, 257 funds (“Eligible Funds”) were found to have dilution of at least \$1,000.

9(e). The IDC deems this method an acceptable method for allocating the Fair Fund on the specific facts of this case.⁷ Each Eligible Fund's share of the Fair Fund (“Fund Distribution Amount”) is intended to result in a payment that restores the impaired value of the Eligible Fund. Some of this impaired value is susceptible to calculation, while

⁷ See the distribution plan cited in footnote 4 for the IDC's basis for using this *de minimis* amount.

some of this impaired value is not. The method of calculation is intended by the Commission to fairly estimate the impaired value that each Eligible Fund has suffered and make a payment in that amount.⁸

10. Procedures for Locating and Notifying Responsible Persons for the Eligible Funds. Rule 1101(b)(3) provides that a plan shall include procedures “for providing notice to [potential claimants--in this case, the Eligible Funds] of the existence of the fund and their potential eligibility to receive proceeds of the fund.” The Fund Administrator will identify the entity with fiduciary responsibility for each Eligible Fund or its successor entity. Within 30 days of the approval of the Distribution Plan, the Fund Administrator will mail or send by other reasonable means each such fiduciary a notice regarding the Commission's approval of the Distribution Plan and the procedure for distribution. The Fund Administrator will request from each fiduciary information sufficient to accomplish the distribution, including the Tax Identification Number for the Eligible Fund, payment address, contact information and/or wiring instructions. Furthermore, each Eligible Fund will: (1) be notified that the Fund Distribution Amount is designated solely for the Eligible Fund and is not to be used for administrative or management fees, and (2) be required to certify in advance that the money will be deposited into the Eligible Fund as intended (“Certification”).

10(a). If an Eligible Fund does not respond, including providing the Certification, within twenty-one days from the mailing date of the notice, the Fund Administrator shall send a second notice by mail. For those Eligible Funds entitled to a Fund Distribution

⁸ An example of a fund level distribution is the Plan of Distribution in *In the Matter of Veras Capital Master Fund, et al.*, Administrative Proceeding File No. 3-12133, available at <http://www.sec.gov/litigation/admin/2006/34-54299-pdp.pdf>. See also the distribution plan cited in footnote 4.

Amount of \$50,000 or greater that do not respond to the second notice within twenty-one days of the notice's mailing date, the Fund Administrator shall make three attempts to contact the Eligible Fund (or its successor) telephonically within the next seven days. The Fund Administrator will keep records of each contact attempt for each Eligible Fund and the response received, if any. These records will be provided to Commission staff at least 30 days before the scheduled distribution is to be made.

11. No Claims-Made Process. This Fair Fund is not being distributed according to a claims-made process, so the procedures for providing notice and for making and approving claims are not applicable.

12. Procedures for the Receipt of Additional Funds. Rule 1101(b)(1) provides, among other things, that a plan shall include procedures "for the receipt of additional funds." The Fair Fund has been deposited at the Bureau of Public Debt for investment in government obligations. Other than interest from these investments, it is not anticipated that the Fair Fund will receive additional funds.

13. Checks or Electronic Transfers. The Fund Administrator may elect to make payment of the Fund Distribution Amount to an Eligible Fund by check or electronic transfer. Distribution checks or electronic transfers, on their face, or in the accompanying mailing will clearly indicate that the money is being distributed from an SEC Fair Fund.

14. Validation and Approval of Disbursement of the Fair Fund. The Fair Fund disbursement to the Eligible Funds will be implemented through FMS, which will electronically transfer funds through the Automated Clearing House ("ACH") or mail a check to each payee. The Fair Fund disbursements will be made as follows:

- a. Staff will provide the Fund Administrator with appropriate proprietary software for compiling the information necessary to be submitted to FMS.
- b. Approximately 30 days prior to the distribution date, the Fund Administrator will compile the information available into an electronic file in the Agency Input format and submit the file to the SEC Office of Financial Management to ensure the file passes all system edits. Any errors or omissions of data will be communicated back to the Fund Administrator promptly. The Fund Administrator will submit the final electronic file to the staff. However, the initial distribution shall be made no later than 150 days following approval of the Distribution Plan. Before submitting a validated payment file to the staff, the Fund Administrator will coordinate with the Tax Administrator to determine whether it is necessary to solicit an IRS Form W-9 (resident entities) or W-8 (non-resident entities) from each Eligible Fund.
- c. The Fund Administrator will validate the list of Eligible Funds and respective Fund Distribution Amounts in the electronic file to the staff. The validation will state that the list was compiled in accordance with the Distribution Plan and provides all information necessary to make a disbursement to each Eligible Fund. Unless otherwise directed by the Commission, the staff will obtain authorization from the Commission to disburse pursuant to Rule 1101(b)(6).
- d. When the electronic file and validation are approved and the order to disburse is entered, the Commission, through its Office of Financial Management, will transmit the electronic file to FMS for the transfer of funds pursuant to the

following FMS procedures. Within 48 hours of receipt by FMS, funds will be transferred by the ACH or checks will be mailed.

- e. The Fund Administrator will repeat this process as many times as necessary to complete distribution of the Fair Fund.
- f. The Fund Administrator also is responsible for accounting for all payments. In the event that any distribution is in the form of a paper check in lieu of an electronic transfer, each check will state on its face that it is valid for six months. After seven months from the date on the distribution check, FMS shall notify the Commission, which, in turn, will notify the Fund Administrator of all uncashed checks. FMS will credit the SEC account for the Distribution Fund for the amount of all uncashed checks.

15. Returned Checks Electronic Transfer Procedures. FMS will notify the Commission, which, in turn will notify the Fund Administrator of any returned items due to non-delivery, insufficient addresses, or other deficiencies. The Fund Administrator is responsible for researching and reconciling all errors that result in non-delivery and shall submit a supplemental electronic file for payment of the returned items.

16. Termination of the Fair Fund. The Fair Fund shall be eligible for termination, and the Fund Administrator shall be discharged, after all of the following have occurred: (1) a final accounting, in an SEC standard accounting format provided by the staff, has been submitted by the Fund Administrator and approved by the Commission, (2) all taxes, fees, and expenses have been paid, and (3) any amount remaining in the Fair Fund has been received by the Commission. When the Commission has approved the final accounting, the staff shall seek an order from the Commission to approve the transfer of

any amount remaining in the Fair Fund to the U.S. Treasury, and shall arrange for the termination of the Fair Fund and discharge of the IDC and Fund Administrator.

17. Taxes. The Commission has appointed Damasco & Associates as the Tax Administrator (“Tax Administrator”) of the Fair Fund (Exchange Act Rel. No. 56909, Dec. 5, 2007). The IDC, Fund Administrator, and Respondents will cooperate with the Tax Administrator in providing information necessary to accomplish income tax compliance, ruling and advice work assigned to the Tax Administrator by the Commission. The Tax Administrator shall be compensated from the Tax Allowance. The Fund Administrator and Bureau of Public Debt shall be authorized to provide account information to the Tax Administrator.

18. Amendment. The IDC and Fund Administrator shall take reasonable and appropriate steps to distribute the Fair Fund according to the Plan. The IDC will inform the staff of any changes needed in the Plan. Upon agreement with the staff, the IDC and Fund Administrator may implement immaterial changes to the Plan to effectuate its general purposes. If a change is deemed to be material by the staff, Commission approval is required prior to implementation by amending the Plan, which may be done upon the motion of any party or the Fund Administrator or upon the Commission’s own motion.

19. Procedural Deadlines. For good cause shown, the staff may extend any of the procedural deadlines set forth in this Plan.