

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

SECURITIES AND EXCHANGE COMMISSION Case No. CV

0938

Plaintiff,

v.

LAWRENCE R. GOLDFARB and BAYSTAR  
CAPITAL MANAGEMENT, LLC,

Defendants.

~~PROPOSED~~ FINAL JUDGMENT AS TO DEFENDANTS LAWRENCE R. GOLDFARB  
AND BAYSTAR CAPITAL MANAGEMENT, LLC

The Securities and Exchange Commission having filed a Complaint and Defendants  
Lawrence R. Goldfarb and Baystar Capital Management, LLC (collectively, "Defendants") having  
entered a general appearance; consented to the Court's jurisdiction over Defendants and the subject  
matter of this action; consented to entry of this Final Judgment without admitting or denying the  
allegations of the Complaint (except as to jurisdiction); waived findings of fact and conclusions of  
law; and waived any right to appeal from this Final Judgment:

## I.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants and Defendants' agents, servants, employees, attorneys-in-fact, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Sections 206(1), 206(2), and 206(4) of the Investment Advisers Act of 1940 ("Advisers Act") [15 U.S.C. §§ 80b-6(1), (2), and (4)] and Rule 206(4)-8 thereunder [17 C.F.R. § 275.206(4)-8] by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

- (a) employing any device, scheme, or artifice to defraud any client or prospective client;
- (b) engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client;
- (c) making any untrue statement of a material fact or omitting to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading, to any investor or prospective investor in a pooled investment vehicle; or
- (d) otherwise engaging in any act, practice, or course of business that is fraudulent, deceptive, or manipulative with respect to any investor or prospective investor in a pooled investment vehicle.

## II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants are jointly and severally liable for disgorgement of \$12,112,416, together with prejudgment interest thereon in the amount of \$1,967,371. Defendant Goldfarb also is separately liable for a civil penalty in the amount of \$130,000 pursuant to Section 209(e) of the Investment Advisers Act. Defendants shall satisfy these obligations by paying pursuant to the terms of the payment schedule set forth in paragraph III below after entry of this Final Judgment to the Clerk of this Court, together with a cover

1 letter identifying Goldfarb and Baystar Capital Management, LLC as defendants in this action;  
2 setting forth the title and civil action number of this action and the name of this Court; and specifying  
3 that payment is made pursuant to this Final Judgment. Defendants shall simultaneously transmit  
4 photocopies of such payment and letter to the Commission's counsel in this action. By making these  
5 payments, Defendants relinquish all legal and equitable right, title, and interest in such funds, and no  
6 part of the funds shall be returned to Defendants. Defendants shall pay post-judgment interest on any  
7 delinquent amounts pursuant to 28 U.S.C § 1961.

9 The Clerk shall deposit the funds into an interest bearing account with the Court Registry  
10 Investment System ("CRIS") or any other type of interest bearing account that is utilized by the  
11 Court. These funds, together with any interest and income earned thereon (collectively, the "Fund"),  
12 shall be held in the interest bearing account until further order of the Court. In accordance with 28  
13 U.S.C. § 1914 and the guidelines set by the Director of the Administrative Office of the United States  
14 Courts, the Clerk is directed, without further order of this Court, to deduct from the income earned on  
15 the money in the Fund a fee equal to ten percent of the income earned on the Fund. Such fee shall  
16 not exceed that authorized by the Judicial Conference of the United States.

18 The Commission may by motion propose a plan to distribute the Fund subject to the Court's  
19 approval. Such a plan may provide that the Fund shall be distributed pursuant to the Fair Fund  
20 provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. Regardless of whether any such  
21 Fair Fund distribution is made, amounts ordered to be paid as civil penalties pursuant to this  
22 Judgment shall be treated as penalties paid to the government for all purposes, including all tax  
23 purposes. To preserve the deterrent effect of the civil penalty, Defendant Goldfarb shall not, after  
24 offset or reduction of any award of compensatory damages in any Related Investor Action based on  
25 Defendant Goldfarb's payment of disgorgement in this action, argue that he is entitled to, nor shall he  
26 further benefit by, offset or reduction of such compensatory damages award by the amount of any  
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part of Defendant Goldfarb's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Defendant Goldfarb shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this Judgment. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Defendant Goldfarb by or on behalf of one or more investors based on substantially the same facts as alleged in the Complaint in this action.

### III.

Defendants shall pay \$14,079,787 in five installments according to the following schedule:

(1) \$30,000 within ten [10] days of entry of this Final Judgment plus post-judgment interest pursuant to 28 U.S.C. § 1961; (2) \$25,000 within ninety [90] days of entry of this Final Judgment plus post-judgment interest pursuant to 28 U.S.C. § 1961; (3) \$1,025,000 within one hundred and eighty [180] days of entry of this Final Judgment plus post-judgment interest pursuant to 28 U.S.C. § 1961; (4) \$25,000 within two hundred and seventy [270] days of entry of this Final Judgment plus post-judgment interest pursuant to 28 U.S.C. § 1961; and (5) the remainder within three hundred and sixty-five [365] days of entry of this Final Judgment.

Defendant Goldfarb shall pay an additional \$130,000 within three hundred and sixty-five [365] days of entry of this Final Judgment plus post-judgment interest pursuant to 28 U.S.C. § 1961.

If Defendants fail to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth above, all outstanding payments under this Final Judgment, including post-judgment interest, minus any payments made, shall become due and payable immediately without further application to the Court.

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment until March 16, 2015, unless extended by Court order. Any motion to extend jurisdiction must be filed *before* jurisdiction expires.

V.

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.

Dated: March 16, 2011. \_\_\_\_\_

