

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

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<b>In the Matter of</b>	:	
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<b>RAYMOND JAMES FINANCIAL</b>	:	Administrative Proceeding
<b>SERVICES, INC., and</b>	:	File No. 3-11692
<b>J. STEPHEN PUTNAM,</b>	:	
	:	
<b>Respondents.</b>	:	
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**PROPOSED DISTRIBUTION PLAN**

Pursuant to Rule 1101 of the Securities and Exchange Commission’s (“Commission”) Rules of Practice, the Division of Enforcement (“Division”) hereby submits its proposed plan (the “Plan”) for the administration and distribution of funds in the Fair Fund created in this matter.

**I. Background**

1. On November 21, 2005, after a hearing in this matter before Chief Administrative Law Judge Brenda P. Murray, the Commission found Respondent Raymond James Financial Services, Inc. (“RJFS”) liable for fraud and found RJFS and Respondent J. Stephen Putnam (“Putnam”) liable for failure to supervise. The Commission ordered RJFS to pay a penalty of \$6,900,000.00, disgorgement of \$5,866.25, and prejudgment interest of \$1,866.76, for a total of \$6,907,733.01. Putnam was ordered to pay a penalty of \$200,000.00, but no disgorgement.

2. RJFS satisfied its disgorgement, prejudgment interest and penalty obligations by paying \$6,907,733.01 to the Commission on November 22, 2005 for inclusion in a Fair Fund, pursuant to Section 308(a) of the Sarbanes Oxley Act of 2002.<sup>1</sup> The funds, which were initially received by the Commission, have since been transferred to the Department of Treasury's Bureau of Public Debt ("BPD"). Pending distribution, the funds have been invested in short-term Treasury securities.

3. Rule of Practice 1101 requires the Division to submit a proposed plan for the administration and distribution of funds in a Fair Fund. The Division now submits its Plan for distributing the funds to defrauded investors.

## **II. Definitions**

As used herein, the following definitions shall apply:

1. "RJFS Fair Fund" shall mean the funds that RJFS has paid to the Commission in satisfaction of its disgorgement, prejudgment interest, and penalty obligations, plus the interest and income generated while the funds were held by the Commission or by BPD, less any fees, expenses, reserves, or taxes, if any, incurred in making the distribution.

2. "Claimants" shall mean the specific persons or entities who were harmed by RJFS's securities violations at issue in this matter, *i.e.*, by the fraud committed by RJFS through its registered representative, Dennis Herula ("Herula"), and by RJFS's failure to supervise Herula. The Commission found that Robert Fitzhenry, who invested

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<sup>1</sup> Putnam satisfied his penalty obligation by paying \$200,000 to the Commission on December 21, 2005. This payment, which included no disgorgement obligation, did not qualify for inclusion in the Fair Fund.

funds through Rheume Holdings Ltd., and Malcolm Monlezun were the two individuals harmed by RJFS's securities violations.<sup>2</sup>

### **III. Receipt of Additional Funds**

The Division does not anticipate that other than the initial payment by RJFS there will be any additional funds paid into the RJFS Fair Fund.

### **IV. Allocation of the RJFS Fair Fund**

1. The funds in the RJFS Fair Fund shall be allocated between the two Claimants on a *pro rata* basis, based upon the ratio of (a) the amount that each investor lost by virtue of RJFS's conduct to (b) the total lost by both of the Claimants.

2. The record at trial showed that Mr. Fitzhenry and Mr. Monlezun lost a combined \$10,874,065.70. Of this sum, Mr. Fitzhenry lost \$10 million (or 91.96%) and Mr. Monlezun lost \$874,065.70 (or 8.04%). The Division proposes that under the foregoing, the Claimants should receive the following distributions from the funds in the RJFS Fair Fund:

- a. Robert Fitzhenry: 91.96%
- b. Malcolm Monlezun: 8.04%

### **V. Plan Comment Period**

1. The Division shall mail a copy of this Plan to the Claimants within five (5) days of its filing. In addition, the Division shall seek to publish a notice of the Plan (the "Notice") in the SEC Docket and on the SEC Web site. Any person and/or entity

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<sup>2</sup> Although Herula also made misrepresentations to a third investor, Rashed Al Bloushi ("Al Bloushi"), the Commission found that RJFS could not be held liable for these misrepresentations because Al Bloushi did not rely on them when first making his investment, and it stated that it would "create a Fair Fund to benefit Mr. Fitzhenry and Mr. Monlezun, the investors harmed by the violations."

wishing to comment on or object to this Plan may submit their views, in writing, no later than May 1, 2006:

- a. to the Office of the Secretary, United States Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090;
- b. by using the Commission's Internet comment form (<http://www.sec.gov/litigation/admin.shtml>); or
- c. by sending an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number 3-11692 on the subject line.

2. The Division requests that after the expiration of the comment period set forth in the foregoing paragraph, the Commission issue an order approving the Distribution Plan, appointing the Fund Administrator, and authorizing the distribution of the RJFS Fair Fund in accordance with the terms of the Plan.

3. If for any reason monies from the RJFS Fair Fund are unclaimed after 60 days of the disbursement of funds to the Claimants, or if checks written by the Commission are returned by the Claimants, those funds shall be distributed to the United States Treasury.

**VI. Appointment and Duties of the Fund Administrator**

1. Due to the small number of Claimants, and to insure the maximum payout to these Claimants, the Division proposes that Luke T. Cadigan, a Senior Trial Counsel in the Boston District Office, be appointed as Fund Administrator of the RJFS Fair Fund.

2. The Fund Administrator shall carry out the duties specified by this Plan, including the following:

- a. oversee compliance with the terms of the Plan;

- b. use reasonable efforts to locate the current addresses of the Claimants and to obtain their tax identification numbers or Social Security numbers, if any;
  - c. monitor the engagement of Damasco and Associates, who was appointed as the separate tax administrator (the “Tax Administrator”) for the RJFS Fair Fund by the Commission on February 23, 2006 pursuant to and in accordance with the Commission’s “Omnibus Order Directing the Appointment of Tax Administrator in Administrative Proceedings that Establish Distribution Funds,” Rel. No. 34-53279A (“Omnibus Order”) dated February 14, 2006;
  - d. establish a reserve fund for future expenses, if any; and
  - e. submit the report specified in Paragraph 6 below.
3. In carrying out his duties, the Fund Administrator may be assisted by other Commission staff acting under his supervision.
4. The Tax Administrator shall keep records and bill the RJFS Fair Fund for the services provided to it and for the tax payments made on its behalf. Each bill shall be reviewed by the Fund Administrator. After the Fund Administrator has approved the bill for payment, the Commission will pay the bill using funds from the RJFS Fair Fund. Payment shall come first from any earnings or interest in the RJFS Fair Fund, and second, if necessary, from the principal of the RJFS Fair Fund.
5. Upon approval by the Commission of the distribution of the RJFS Fair Fund, and after all taxes and bills from the Tax Administrator have been paid and any reserve established, the Fund Administrator shall forward to the Commission’s Office of Financial Management (“OFM”) all the necessary information (including the names,

addresses, Social Security numbers, and taxpayer identification numbers, if any, of the two Claimants) for the payment of the distributions to the Claimants. In addition, the Fund Administrator shall transmit to OFM the amount from the RJFS Fair Fund that each Claimant is to receive. Upon submission of this payment information, the Commission will authorize OFM to distribute the funds to the Claimants.

6. Within 60 days after the distribution of the Fair Fund to the Claimants, the Fund Administrator shall be required to provide to the Commission, for its approval, a Final Accounting that gives an accounting of all monies earned or received and all monies spent in connection with the administration of the Plan, sets forth the distributions and payments made pursuant to the Plan, identifies any Claimants not located, describes the efforts made to locate such Claimants, and describes the Fund Administrator's performance of any other duties set forth herein. At that time, the Fund Administrator will also request the discharge of the Fund Administrator. Unless the Commission orders otherwise, the RJFS Fair Fund will terminate 30 days after the submission of the Fund Administrator's Final Accounting.

7. Other than the report specified in Paragraph 6 above, the Fund Administrator shall not be required to report or account to the Commission.

8. After the termination of the RJFS Fair Fund and the discharge of the Fund Administrator, OFM shall, upon the notification by the Fund Administrator, transfer any money remaining in the RJFS Fair Fund to the United States Treasury.

9. Pursuant to Rule 1105(d) of the Commission's Rules of Practice, 17 C.F.R. § 201.1105(d), the Fund Administrator shall receive no compensation, other than

his regular salary as an employee of the Commission, for his services in administering the RJFS Fair Fund.

10. The Fund Administrator shall be entitled to rely on any orders issued in this proceeding by the Commission, the Secretary by delegated authority, or an Administrative Law Judge, and may not be held liable to any person for any act or omission in the course of administering the RJFS Fair Fund, except upon a finding in this proceeding of willful failure to comply with the terms of the Plan or any orders issued in this proceeding. The Fund Administrator will be deemed to be acting within the scope of his employment with the Commission in administering this Proposed Plan.