

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 60402 / July 30, 2009

In the Matters of	:	
	:	
Bear Wagner Specialists LLC	:	
Admin. Proc. File No. 3-11445	:	
Fleet Specialist, Inc.	:	ORDER APPROVING AUDIT
Admin. Proc. File No. 3-11446	:	REPORTS, ANNOUNCING THE
LaBranche & Co. LLC	:	DECISION TO CLOSE THE
Admin. Proc. File No. 3-11447	:	DISTRIBUTION FUNDS
Spear, Leeds & Kellogg Specialists LLC	:	FOLLOWING A FINAL
Admin. Proc. File No. 3-11448	:	DISTRIBUTION, APPROVING
Van der Moolen Specialists USA, LLC	:	PUBLICATION OF A NOTICE
Admin. Proc. File No. 3-11449	:	SEEKING COMMENTS ON THE
Performance Specialist Group LLC	:	USE OF THE REMAINING FUNDS,
Admin. Proc. File No. 3-11558	:	MODIFYING PRIOR ORDER AND
SIG Specialists, Inc.	:	MODIFYING DISTRIBUTION PLAN
Admin. Proc. File No. 3-11559	:	
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	:	
Respondents.	:	
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I.

FACTS

1. In March and July 2004, the Commission entered into settlements with the seven specialist firms operating on the New York Stock Exchange. The Commission's orders (Securities Exchange Act Release Nos. 49498 – 49502 and Nos. 50075 – 50076) (the "Settlement Orders") provided, among other things, for payment of disgorgement and civil penalties totaling, in the aggregate, over \$247 million. The Settlement Orders further provided that the disgorgement and civil penalties were to be placed in seven Fair Funds (the "Distribution Funds") to be distributed pursuant to a distribution plan (the "Plan") drawn up by a fund administrator. Heffler, Radetich & Saitta L.L.P. ("Heffler") was appointed the fund administrator in October 2004.

2. On May 17, 2006, the Commission issued an order (the "May 2006 Order") approving Heffler's Plan. See Securities Exchange Act Release No. 53823. Pursuant to the Plan, Heffler must identify the customers who were injured as a result of the previously identified

violative trades, calculate each injured customer's distribution amount – which is the sum of the disgorgement amount, and the prejudgment and post-judgment interest thereon – and make distributions to the injured customers. The distributions are to be made on a rolling basis. The May 2006 Order and the Plan were modified by Commission orders dated June 15, 2007 and June 26, 2008, which cumulatively extended the initial termination date of the Distribution Funds from December 31, 2006 to June 30, 2009. See Securities Exchange Act Release Nos. 55915 and 58035.

3. Pursuant to previous Commission orders, Heffler has thus far made five distributions under the Plan, totaling, in the aggregate, over \$123 million.

a. The initial distribution was made on July 19, 2006, pursuant to a Commission Order dated July 5, 2006. See Securities Exchange Act Release No. 54102. This initial distribution involved a total disbursement of \$52,732,921.43, which was comprised of \$42,082,144.95 in disgorgement, \$6,101,253.76 in prejudgment interest, and \$4,549,522.72 in post-judgment interest.

b. On November 30, 2006, Heffler made a second rolling distribution under the Plan, pursuant to a Commission Order dated November 24, 2006. See Securities Exchange Act Release No. 54815. This second distribution involved a total disbursement of \$42,765,263.59, which was comprised of \$33,548,991.43 in disgorgement, \$4,942,721.04 in prejudgment interest, and \$4,273,551.12 in post-judgment interest.

c. On June 19, 2007, Heffler made a third rolling distribution under the Plan, pursuant to a Commission Order dated June 15, 2007. See Securities Exchange Act Release No. 55915. This third distribution involved a total disbursement of \$14,305,053.02, which was comprised of \$10,923,205.08 in disgorgement, \$1,606,357.24 in prejudgment interest, and \$1,775,490.70 in post-judgment interest.

d. On December 19, 2007, Heffler made a fourth rolling distribution under the Plan, pursuant to a Commission Order dated December 12, 2007. See Securities Exchange Act Release No. 56944. This fourth distribution involved a total disbursement of \$10,733,490.40, which was comprised of \$7,935,062.94 in disgorgement, \$1,267,325.27 in prejudgment interest, and \$1,531,102.19 in post-judgment interest.

e. On June 30, 2008, Heffler made a fifth rolling distribution under the Plan, pursuant to a Commission Order dated June 26, 2008. See Securities Exchange Act Release No. 58035. This fifth distribution involved a total disbursement of \$2,885,895.39, which was comprised of \$2,069,722.41 in disgorgement, \$354,784.94 in prejudgment interest, and \$461,388.04 in post-judgment interest.

The Independent Auditor's Reports

4. The Plan provides that the Distribution Funds shall each be subject to an independent audit if the funds have not been entirely distributed by June 30, 2007 or such other

date as ordered by the Commission, and that the independent auditor's report shall be delivered to the Office of the Secretary, for approval by the Commission.

5. Pursuant to the Plan, Heffler selected the audit firm of Parente Randolph LLC (the "Independent Auditor") to perform an independent audit of the financial statements of the Distribution Funds for the period November 30, 2004 (the Funds' inception date) to March 31, 2008. The audit was completed in October 2008 and the financial statements of each of the Distribution Funds received an unqualified opinion; that is, in the opinion of the Independent Auditor, the financial statements of each Distribution Fund present fairly, in all material respects, the financial position of such Distribution Fund. The Independent Auditor's audit reports were delivered to the Office of the Secretary in accordance with the Plan, for approval by the Commission.

Proposed Closing of the Distribution Funds Following a Final Distribution

6. The Plan further provides that Heffler will continue to work with the clearing member firms and nominees to identify the injured customers, and when Heffler determines that "efforts to identify the Injured Customers have been exhausted," Heffler will inform the Commission of its position and recommend that the matter be closed. Heffler has informed the Commission staff that Heffler views its efforts to identify the injured customers as having been exhausted, and that it is Heffler's recommendation that the Commission issue an order notifying the public of Heffler's position and informing the clearing member firms and nominees that they shall have 60 days from the date of such Order (the "Deadline") to submit responses to any prior outstanding requests made by Heffler of such entities to identify the injured customers.

7. Any injured customers identified on or before the Deadline, and found eligible by Heffler to receive a distribution amount shall be entitled to participate in a sixth and final distribution, following which distribution the matter, as pertains to identifying injured customers and making distributions, will be considered closed by the Commission, and Heffler will begin the process of closing out the Distribution Funds pursuant to the Plan.

Use of the Remaining Funds

8. The Settlement Orders provide that "the Commission shall determine the appropriate use for the benefit of investors of any funds left in the Distribution Fund" after the contemplated payments to injured customers and for administrative expenses have been made. The May 2006 Order adopting the Plan provides that "[t]he Commission believes that the determination of what to do with any Remaining Funds left . . . should be made by the Commission at a later date, after further public notice and comment." See Securities Exchange Act Release No. 53823.

9. In Heffler's estimate, there will be approximately \$135 million of remaining funds (the "Remaining Funds") left in the Distribution Funds after all the payments to the injured customers and for administrative expenses have been made. Heffler has considered the appropriate use of the remaining funds and has determined that the remaining funds should be transferred to the United States Treasury. However, in light of the May 2006 Order, which calls

for further public notice and comment prior to the Commission making its determination, it is Heffler's recommendation that the Commission issue an Order approving the publication of notice, pursuant to Rule 1103 of the Commission's Rules on Fair Fund and Disgorgement Plans ("Fair Fund Rules"), and Section 200.30-7(a)(11) of the Commission's Rules on Organization and Program Management, seeking public comment on the use of the remaining funds, in accordance with the May 2006 Order. If no public comments are received pursuant to the notice, the Commission shall issue an order to transmit the Remaining Funds to the United States Treasury.

Proposed Extension of Termination Date of Distribution Funds Under the Plan

10. In the Plan, as previously modified by the Commission's June 15, 2007 and June 26, 2008 Orders (See Securities Exchange Act Release Nos. 55915 and 58035), Heffler proposed June 30, 2009, as the termination date of the Distribution Funds, with the proviso that "such date may be subsequently amended in light of Heffler's recommendation for periodic distributions, which is based on future responses received from Clearing Members and Nominees." The Plan provides that Heffler will continue to work with the clearing member firms and nominees to identify the injured customers, and when Heffler determines that "efforts to identify the Injured Customers have been exhausted," it will submit a final report to the Commission recommending that the Distribution Funds be terminated.

11. Heffler has informed the staff that while Heffler's efforts to reach out to the clearing member firms and nominees to identify the injured customers have been exhausted, there still remains a final distribution to be made, which will likely take place around August 2009. In addition, pursuant to the Plan, injured customers receiving a check as part of the final distribution will have 180 days from the date of issuance, or until February 2010, to negotiate the same. Moreover, the Plan provides a procedure for the reissuance of checks that have been returned as undeliverable, and, pursuant to that process, checks that are reissued may be negotiated within 180 days of the date of such reissuance. Finally, Heffler has informed the staff that Heffler will require a certain amount of time to finalize and close out the Distribution Funds after all the payments have been made. Accordingly, Heffler has requested that the Commission further modify the May 2006 Order and the Plan to extend Heffler's proposed date of termination of the Distribution Funds to September 30, 2010, or such other date as ordered by the Commission.

II.

In view of the foregoing, it is ORDERED that:

1. The audit reports issued by the Independent Auditor are hereby approved.
2. There shall be a sixth and final distribution in this matter in accordance with the procedures set forth in Sections I.6. and I.7. of this Order, following which distribution the matter, as pertains to identifying injured customers and making distributions, will be considered closed by the Commission, and Heffler will begin the process of closing out the Distribution Funds pursuant to the Plan.

3. A notice be published, pursuant to Rule 1103 of the Commission's Fair Fund Rules, and Section 200.30-7(a)(11) of the Commission's Rules on Organization and Program Management, as of the date hereof seeking public comment on the use of the Remaining Funds.

4. The May 2006 Order and the Plan are hereby further modified to extend Heffler's proposed date of termination of the Distribution Funds to September 30, 2010, or such other date as may be further ordered by the Commission.

By the Commission.

Elizabeth M. Murphy
Secretary