

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-13454

In the Matter of

HENNESSEE GROUP LLC and
CHARLES J. GRADANTE,

Respondents.

PROPOSED PLAN OF DISTRIBUTION

1. *Purpose and Background.* This Proposed Plan of Distribution (the “Plan”) has been developed pursuant to the Commission’s Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order against Hennessee Group LLC (“Hennessee Group”) and Charles J. Gradante (“Gradante”) (collectively, “Respondents”), dated April 22, 2009 (the “Order”) (Investment Advisers Act Release No. 2871). Simultaneously with the entry of the Order, the Commission accepted settlement offers from Respondents in which they consented to the entry of the Order without admitting or denying the Order’s findings. The Plan provides for the distribution of disgorgement, prejudgment interest, and a civil monetary penalty to the Respondents’ clients who were harmed by the conduct described in the Order. This Plan is subject to approval by the Commission, and the Commission retains jurisdiction over the implementation of the Plan.

In the Order, the Commission found that Hennessee Group, a hedge fund consultant and investment adviser that recommends hedge funds for client investment, and Gradante, its principal, made certain representations to prospective clients concerning the quality and rigor of its due diligence process for evaluating hedge funds. Hennessee Group also routinely represented to clients and prospective clients that it would not recommend investments in hedge funds that did not satisfy all phases of its due diligence. With regard to the Bayou Funds,¹ the Commission found that Hennessee Group, at Gradante’s direction, did not perform several key elements of its advertised due diligence practices.

¹ The term “Bayou Funds” refers to Bayou Fund LLC and its four successor funds: Bayou Superfund, LLC; Bayou Accredited Fund, LLC; Bayou Affiliates Fund, LLC; and Bayou No Leverage Fund, LLC.

The Commission found that, from February 2003 through August 2005, approximately forty of the Respondents' clients invested a total of over \$56 million in the Bayou Funds after receiving Hennessee Group's recommendations. Most of those monies were lost and dissipated by the Bayou Funds' principals, who defrauded their investors by falsely reporting the Bayou Funds' performance in client account statements, periodic newsletters, and year-end financial statements that included phony audit opinions fabricated by one of the Bayou Funds' principals.

The Commission further found that Respondents, in their capacities as investment advisers, owed fiduciary duties to their clients to perform the services that they represented they would provide and to disclose all material departures from the representations that they made to their clients. Despite their representations about their services, with regard to the Bayou Funds and the Bayou Funds' management, Hennessee Group and Gradante did not perform two of the five elements of the due diligence evaluation that they had represented to their clients they would undertake. In addition, Hennessee Group and Gradante failed to adequately respond to information that they received that raised doubts regarding the identity of the Bayou Funds' outside auditor and which suggested that there existed a potential conflict of interest between one of the Bayou Funds' principals and its purported outside auditor.

As a result of this conduct, the Commission found that Hennessee Group and Gradante willfully violated Section 206(2) of the Investment Advisers Act of 1940 ("Advisers Act"), which prohibits any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client, and that Gradante caused Hennessee Group's violations of Section 206(2) of the Advisers Act.

The Commission censured the Respondents and required them to cease and desist from committing or causing any further violations of the Advisers Act. The Commission further required Respondents jointly and severally to pay \$714,644.12 in disgorgement and prejudgment interest and a civil penalty in the amount of \$100,000.² Respondents also were required to adopt policies to ensure adequate disclosures in the future and to provide copies of the Commission's Order to all current and prospective clients for a period of two years. The Commission further ordered that the disgorgement, interest, and civil penalty be paid into a Fair Fund created pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002.

In accordance with the Order, on May 15, 2009, Hennessee Group paid a civil penalty in the amount of \$100,000 to the Commission. On April 21, 2010, Hennessee Group paid \$414,644.15 in disgorgement and prejudgment interest to the Commission. Pursuant to the Order, a Fair Fund was established for these funds, totaling \$514,644.15 (the "Fair Fund"). The funds are currently held in the Commission's Deposit Fund account at the United States Treasury.

² In February 2010, the Commission determined to credit a \$300,000 payment to be made by Hennessee Group to the Bayou Funds bankruptcy estate against the \$714,644.12 of disgorgement and prejudgment interest owed by Respondents pursuant to the Order.

2. *Fund Administrator.* Yuri B. Zelinsky, an Assistant Director in the Division of Enforcement, is the proposed fund administrator for the Plan (“Fund Administrator”). As a Commission employee, the Fund Administrator shall receive no compensation, other than his regular salary as a Commission employee, for his services in administering the Fair Fund. In accordance with Rule 1105(c), no bond is required since the Fund Administrator is a Commission employee. In carrying out his duties, the Fund Administrator may be assisted by other Commission staff acting under his supervision.

The Fund Administrator will, among other things: oversee the administration of the Fair Fund, obtain accurate mailing information for the eligible Fair Fund recipients, prepare accountings, cooperate with the tax administrator in providing the information necessary to accomplish income tax compliance, and, as described below, distribute money from the Fair Fund in accordance with the Plan.

3. *Specification of Eligible Fair Fund Recipients.* The Fund Administrator shall distribute Plan funds to those customers of Hennessee Group who (a) have been harmed by the conduct described in the Order; and (b) have not received compensation from Hennessee Group in an amount at least equal to the advisory fees paid to the Bayou Funds by those customers, or on behalf of those customers, related to their investments in the Bayou Funds (individually, each “Eligible Investor,” and collectively, the “Eligible Investors”). On the basis of information obtained by Commission staff, the Fund Administrator will identify the Eligible Investors.

4. *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.

5. *Qualified Settlement Fund.* The Fair Fund constitutes a Qualified Settlement Fund (“QSF”) 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.

6. *Control of Distribution Fund.* The Commission has control of the Fair Fund and shall retain control of the assets of the Fair Fund until distribution to the Eligible Investors. The Fair Fund will be distributed by the United States Department of the Treasury’s Financial Management Service (“FMS”). The Fund Administrator shall use the assets and earnings of the Fair Fund to provide payments to Eligible Investors and to provide the Tax Administrator with assets to pay tax liabilities and tax compliance fees and costs.

7. *Tax Administrator.* The Commission has appointed Damasco & Associates as the Tax Administrator (“Tax Administrator”) of the Fair Fund. *See Hennessee Group LLC and Charles J. Gradante* (Exchange Act Rel. No. 61447, Jan. 29, 2010). The Fund Administrator will ensure that all required information shall be made

available to the Tax Administrator and will cooperate with the Tax Administrator in providing information necessary to accomplish the income tax compliance, ruling and advice work assigned to the Tax Administrator by the Commission. The Tax Administrator shall be compensated by the Fair Fund.

8. *Expenses of Administration.* Fees and other expenses of administering the Plan shall be paid first from the interest earned on the funds, and, if the interest is not sufficient, then from the corpus.

9. *Methodology for Determining Distribution Amounts.* The Fund Administrator will determine the amount to be distributed to each Eligible Investor in the following manner. First, the Fund Administrator will determine, with reference to the information collected by the staff of the Commission regarding the Eligible Investors' losses, the advisory fees paid to Hennessee Group by the Eligible Investors, or on their behalf, related to the Eligible Investors' investments in the Bayou Funds. Second, the Fund Administrator will determine what percentage of the Eligible Investors' total loss is represented by each Eligible Investor's loss. Finally, for each Eligible Investor, the Fund Administrator will multiply this percentage by the amount of disgorgement and civil monetary penalties that have been paid by the date on which the distribution amounts are calculated, along with any accrued interest and less any taxes, fees or other expenses of administering the Plan. This amount represents each Eligible Investor's distribution amount.

10. *Financial Management Service; Validation and Approval of Disbursement of the Fair Fund.* The Fair Fund disbursement to investors will be implemented through FMS, which will electronically transfer funds through the Automated Clearing House ("ACH") or mail a check to each payee. Commission staff will provide the Fund Administrator with appropriate proprietary software for compiling the information necessary to be submitted to FMS. The Fund Administrator will compile the information into the specified file format and submit this electronic file to the assigned Commission staff. The Fund Administrator will validate the payees and amounts in the file to the Commission staff. The validation will state that the electronic file was compiled in accordance with the Plan and provides all information necessary for FMS to make disbursement through the ACH or by check. The Fund Administrator will coordinate with the appropriate Commission staff to ensure the electronic file passes all system edits for a timely distribution. Upon receipt of a properly validated file, the Commission staff will obtain authorization from the Commission to disburse pursuant to Commission Rule 1101(b)(6). When the electronic file and validation are approved and the order to disburse is entered, the Commission staff 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. FMS will notify the Commission staff, which, in turn, will notify the Fund Administrator of any returned items due to non-delivery, insufficient addresses, and/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.

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 one year. After one year from the date on the distribution check, FMS shall notify the Commission staff, which, in turn, will notify the Fund Administrator of all uncashed checks. FMS will credit the Commission account for the Fair Fund for the amount of all uncashed checks.

11. *Information mailing to accompany payments.* All payments shall be preceded by a communication that includes, as appropriate: (a) a statement characterizing the distribution; (b) a description of the tax information reporting required of the QSF and related tax consequences; (c) a statement that checks will be void after one year; and (d) the name of a person to contact, to be used in the event of any questions regarding the distribution. Any such information letter or other communication about this distribution plan shall be submitted to the assigned Commission staff for review and approval. Distribution checks, on their face or in the accompanying mailing, will clearly indicate that the money is being distributed from a Fair Fund established by the Commission.

12. *Notice of Proposed Plan and Opportunity for Comment.* Notice of this Plan shall be published in the SEC Docket and on the Commission website [<http://www.sec.gov>]. Any person or entity wishing to comment on the Plan must do so in writing by submitting their comments within thirty (30) days of the date of the Notice (i) by sending a letter to the Office of the Secretary, United States Securities and Exchange Commission, 100 F Street, N.E., Washington, DC 20549-1090; (ii) by using the Commission's Internet comment form (www.sec.gov/litigation/admin.shtml); or (iii) by sending an e-mail to rule-comments@sec.gov. Comments submitted by e-mail or via the Commission's website should include the Administrative Proceeding File Number (Admin. Proc. File No. 3-13454) in the subject line. Comments received will be available to the public. Commenters should only submit information that they wish to make publicly available.

13. *Accountings.* Once all funds are disbursed through FMS of the U.S. Treasury, the Fund Administrator will submit a final accounting on the standardized accounting form provided by the Commission staff for approval by the Commission prior to termination of the Fair Fund and discharge of the Fund Administrator.

14. *Amendments and Procedural Deadline Extensions.* The Fund Administrator shall take reasonable and appropriate steps to distribute the Fair Fund according to the Plan. Where the Fund Administrator deems necessary, after agreement with Commission staff, the Fund Administrator may implement immaterial changes to the Plan to effectuate its general purposes. If a change is deemed material by Commission staff, Commission approval is required prior to implementation by amending the Plan, which may be done upon the motion of any party, the Fund Administrator, or upon the Commission's own motion. For good cause shown, the Commission staff may extend any of the procedural deadlines set forth in this Plan.

15. *Assistance by Respondents.* Hennessee Group LLC and Charles J. Gradante will assist the Fund Administrator by providing requested information necessary for the administration and implementation of the Plan.

16. *Disposition of Undistributed Funds.* A residual account within the Fair Fund is established for any amounts remaining after all assets have been distributed. The residual account may include funds reserved for future taxes and related expenses, distributions from checks that have not been cashed, from checks that were not delivered or from funds returned to the Fund Administrator, tax refunds for overpayment or for waiver of penalties. All undistributed funds in the residual account will be transferred to the U.S. Treasury after the final accounting is approved by the Commission.

17. *Order Approving the Proposed Plan.* At the end of the thirty (30) day notice and public comment period, the staff of the Commission will seek an Order approving the Plan. Following approval of the Plan, the Fund Administrator will use his best efforts to implement the distribution as soon as practicable.

18. *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) the final accounting has been submitted by the Fund Administrator for approval of, and has been 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 terminate the Fair Fund and to discharge the Fund Administrator.