

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 79139 / October 21, 2016**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-14854**

**In the Matter of**

**GMB Capital Management LLC (currently known as “Clearstream Investments LLC”), GMB Capital Partners LLC, Gabriel Bitran and Marco Bitran,**

**Respondents.**

**NOTICE OF PROPOSED PLAN OF DISTRIBUTION AND OPPORTUNITY FOR COMMENT**

Notice is hereby given, pursuant to Rule 1103 of the United States Securities and Exchange Commission’s (“Commission”) Rules on Fair Fund and Disgorgement Plans (“Rules”), 17 C.F.R. § 201.1103, that the Division of Enforcement has submitted to the Commission a proposed plan of distribution (“Distribution Plan”) for the distribution of monies paid by GMB Capital Management LLC (currently known as “Clearstream Investments LLC”) (“GMB Management”), GMB Capital Partners LLC (“GMB Partners”), Gabriel Bitran, and Marco Bitran (collectively, the “Respondents”) in the above-captioned matter.

On April 20, 2012, the Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Section 21C of the Securities Exchange Act of 1934, Section 9(b) of the Investment Company Act of 1940, and Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and Cease-and-Desist Order (“Order”) against the Respondents.<sup>1</sup> The Order found that in 2005, Gabriel Bitran founded GMB Capital Management LLC for the stated purpose of managing hedge funds using quantitative models he developed, based on his academic optimal pricing research, to trade primarily in exchange traded funds (“ETFs”). According to the Order, Gabriel Bitran and Marco Bitran solicited potential investors with three primary selling points: (1) very successful performance track records purportedly based on actual trades using real money from 1998 to the inception of the hedge funds; (2) the firm’s use of Gabriel Bitran’s proprietary optimal pricing model to trade ETFs; and (3) Gabriel Bitran’s pedigree and his involvement as the founder and portfolio manager of the hedge funds.

<sup>1</sup> Securities Act Rel. No. 9315 (Apr. 20, 2012).

Over a period of three years, raising over \$500 million for eight hedge funds and various managed accounts, Respondents made misrepresentations to investors about each of these selling points, and at times, all three of them. As a result of this misconduct, the Order found the Respondents willfully violated Section 17(a)(2) of the Securities Act of 1933 (“Securities Act”), Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 10b-5 thereunder, and 206(4) of the Investment Advisers Act of 1940 (“Advisers Act”) and Rule 206(4)-8 thereunder; GMB Management, Gabriel Bitran and Marco Bitran willfully violated Sections 206(1) and 206(2) of the Advisers Act; GMB Management willfully violated Section 204(a) of the Advisers Act and Rule 204-2(a)(16) thereunder; and, Gabriel Bitran and Marco Bitran willfully aided and abetted and caused GMB Management’s and/or GMB Partners’ violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 204(a), 206(1), 206(2) and 206(4) of the Advisers Act and Rules 204-2(a)(16) and 206(4)-8 thereunder. The Order required the Respondents to pay a total of \$4,800,000 in disgorgement and civil money penalties to the Commission and created a Fair Fund pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended.

## **OPPORTUNITY FOR COMMENT**

Pursuant to this Notice, all interested persons are advised that they may obtain a copy of the Distribution Plan from the Commission’s public website at <http://www.sec.gov/litigation/fairfundlist.htm>. Interested persons may also obtain a written copy of the Distribution Plan by submitting a written request to Adriene Mixon, Esq., United States Securities and Exchange Commission, 444 South Flower Street, Suite 900, Los Angeles, CA 90071. All persons who desire to comment on the Distribution Plan may submit their comments, in writing, no later than thirty (30) days from the date of this Notice:

1. to the Office of the Secretary, United States Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090;
2. by using the Commission’s Internet comment form (<http://www.sec.gov/litigation/admin.shtml>); or
3. by sending an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov).

Comments submitted should include “Administrative Proceeding File No. 3-14854” in the subject line. Comments received will be publicly available. Persons should submit only information that they wish to make publicly available.

## THE DISTRIBUTION PLAN

The Fair Fund is comprised of the \$4,800,000 in disgorgement and penalties paid by the Respondents. The Distribution Plan proposes to transfer the Fair Fund, pursuant to Rule 1102(a) of the Rules, 17 C.F.R. § 201.1102(a), to the Court Registry Investment System account established in the related criminal action, *United States v. Bitran*, No. 14-cr-10234-MLW (D. Mass. 2014) (the “Criminal Action”), for distribution to harmed investors in accordance with the restitution process in the Criminal Action.<sup>2</sup>

By the Commission.

Brent J. Fields  
Secretary

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<sup>2</sup> In accordance with Rule 1102(a), the Criminal Action arises from substantially the same facts as those at issue in this proceeding and spans the same time period.