

**HEFFLER, RADETICH & SAIITA LLP**  
 ————— CERTIFIED PUBLIC ACCOUNTANTS —————

April 14, 2011

David Rosenfeld  
 Associate Regional Director  
 Division of Enforcement  
 United States Securities and Exchange Commission  
 3 World Financial Center  
 New York, New York 10281

Re: Recommendation regarding distribution funds:  
     Bear Wagner Specialists LLC  
     Fleet Specialist, Inc  
     LaBranche & Co. LLC  
     Performance Specialist Group LLC  
     SIG Specialists, Inc.  
     Spear, Leeds & Kellogg Specialists LLC  
     Van der Moolen Specialists USA, LLC

Dear Mr. Rosenfeld:

This letter is to present the status and our recommendation to terminate work on these matters and close out the distribution funds. I will provide a little background that will lead up to our recommendation.

Our firm was selected as Fund Administrator back in 2004 in the SEC settlement against the above listed seven Specialist firms, which involved the payment of \$157.8 million in disgorgement and \$89.4 million in civil penalties. The staff of the New York Stock Exchange (NYSE) identified the universe of violative transactions that formed the basis of the settlement. The NYSE provided our firm with a database file that contained 2.661 million violative transactions. The file also contained the Clearing Firm number, Clearing Firm name, trade date, security symbol, firm mnemonics, branch & sequence codes, turn around code, transaction type, number of shares, time of the trade, the loss amount and the Specialist Firm code. A follow up with the NYSE for additional information [CUSIP number, the principal/agency code and the execution price] resulted in us receiving another database file to replace the first file. This file contained approximately 3.2 million records and these records related to the 2.661 million identified damaged transactions. The NYSE representative stated the replacement file had more records than the original file because some transactions were executed as partial transactions and

---

1515 Market Street, Suite 1700 • Philadelphia, PA 19102 • 215.665.8870 • Fax 215.665.0613

---

703-B Birchfield Drive • Mount Laurel, NJ 08054 • 856.727.3322 • Fax 856.273.3738  
 www.heffler.com

had multiple execution prices. In order to provide all of the additional information they had to show each component of the transaction separately, thus adding additional records to the file.

Discussions with the staff of the NYSE were conducted to determine the best source of information to identify the investors related to the violative transactions in this settlement. It was determined that the transaction information provided by the NYSE contained the clearing firm associated with each individual transaction, thus in order to identify the underlying customer for each respective trade we needed to first contact the firm clearing that trade.

Our initial procedure was to obtain the directory of Clearing Firms from the National Securities Clearing Corporation. Our firm used the Clearing Firm number from the NYSE database to identify the Clearing Firm's name and address in the directory [the database contained 168 unique Clearing Firm numbers]. Our firm attempted to contact each of the Clearing Firms to verify we had the proper office to send the request for information. The initial database of transactions was broken down into subsets of transactions that were identified to each specific Clearing Firm based on the Clearing Firm number. A file containing the applicable transactions was sent along with a cover letter to each of the Clearing Firms contacted, explaining the matter and requesting that they provide us with the investors associated with each applicable transaction.

We received a number of responses from the Clearing Firms that contained the information requested. A total of 62 Clearing Firms (36.9%) provided a full response to our request, 40 firms (23.8%) provided a partial response that was 90% or greater of the transactions sent to them, 50 firms (29.8%) provided a partial response that was less than 90% of the requested transactions and 16 firms (9.5%) did not respond to our request. A number of Clearing Firms who contacted us indicated they did not have the information to identify the underlying investor. Instead they identified an introducing broker/dealer as the underlying customer for a transaction. In order to find the actual party for various trades we needed to contact the aforementioned introducing broker/dealer [entity that handles transactions for customers and for themselves] or the nominees [person or firm to whom securities are transferred to facilitate transactions while leaving their customer as the actual owner of the securities]. Once we successfully established contact with the identified introducing broker/dealer or nominee, we provided the transaction information to obtain the underlying customer. We broke up the response files returned by the Clearing Firms into smaller files that contained the transactions by each entity [broker/dealer or nominee]. We then contacted these entities, explained the issues in these matters and requested the same information as requested from the Clearing Firms.

We attempted to locate the investors related to the portion of the 2.661 million damaged transactions related to the 7,022 broker/dealers and nominees [many that were identified as having only one or a couple of transactions]. We actually received a response from 3,571 entities as well as the Clearing Firms to identify as many damaged customers as possible. Six distributions have occurred to date with 564,755 checks being issued for a total disgorgement and interest amount of \$141,438,690.82. These checks represented payment for 2.065 million of the 2.661 million damaged transactions [representing over 77% of the total damaged transactions]. Many of the damaged transactions had the full amount of the disgorgement paid

but some only had a portion paid as not all of the investors related to the transactions were identified by the responding entities. In this case the disgorgement was allocated based on shares between the identified investors and the remaining unidentified investors. Only the portion associated with the identified investor was distributed.

Two of the biggest issues we encountered when attempting to identify the investor associated with the damaged transaction were that a) transactions on the NYSE could be for multiple investors pooled together and b) transactions were only for a portion of the actual shares traded by the investor as the full trade had to be segregated into multiple transactions. We submitted reports to the SEC staff during the course of the administration process indicating issues with a number of the Clearing Firms, broker-dealers and nominees. Some of the issues for non-compliance included a) several of the entities did not respond to the repeated transaction requests, b) some only partially complied [firms initially provided a partial response to the transaction requests, however they never identified and submitted the balance of their transactions, and ignored repeated follow-up requests for the information], c) exhaustion of search [firms provided an initial response or responses to the transaction requests, however they were not able to identify the end customer for all of the listed transactions as they have exhausted their search], d) inability to establish contact [due to the timeframe in which the damaged transactions occurred, at the time of the data requests many of the introducing broker/dealers were no longer in business, or had merged or been taken over by another entity; therefore we were unable to establish contact with the appropriate party representing the original, identified firm]. The SEC staff requested that we identify the larger entities that had not responded to the request for information and any reason they gave. The SEC staff contacted between 20 and 25 of these entities in an effort for them to comply with our request. We did receive information from 11 of these entities but a number still could not supply us with the required data due to data being purged or not in a format that could be retrieved due to a change in software systems over the years.

We also received many comments from the entities we dealt with regarding the process to obtain the requested information. Many of them complained about the process stating it was very costly and time consuming. The requests were labor intensive as much of the older records were not maintained on current computer systems. They had to locate older systems and restore the data before they could begin the search for the requested transactions. Some also complained that the data was only maintained on micro-fiche and they had to manually search for the information. In addition, they stated that many of the transactions were bundled in their systems thus there were many cases where it was extremely difficult for the entity to provide the information requested for a particular transaction. As a result of all these issues we did not receive information for 596,000 transactions [over 22% of the 2.661 million transactions] and there were many other transactions where we only received partial information. No payments could be made for any transaction or partial transaction where information was not received. Many of the violative transactions are bundled sub-orders for various investors. Our firm would not be able to identify the investor or investors that were actually harmed for these types of transactions since we did not receive the requested information.

The next step was to generate the check registers for the investors that were identified by the various Clearing Firms, Brokers and Nominees. Prior to releasing any checks the payout file was submitted to the NCOA (the National Change of Address service of the US Postal Service). This service attempts to provide updated address information for the people included on the list submitted to them for research. The approximate charge for this service was between \$1.65 and \$2.75 per thousand records depending on the volume in each distribution. This step was required in order to qualify for any postal discounts for large mailings. NCOA returned their revisions and our files were appended with the updated information. A print file was then generated with the updated information and uploaded to a secure server at the print company location. The print company then generated and released the checks.

The same print file was provided to the bank to use for the positive pay service. This service basically allowed the bank to confirm the check being presented was the same check as was issued. The bank reviewed all checks presented for payment and notified our firm of any exceptions. Our staff then confirmed if the check was proper or was not a check we issued. This service was performed on a daily basis. The staff members reviewing the checks to confirm they were issued by our firm were neither the same staff members that approved the transactions to be paid nor the staff members that generated the distribution checks. This service proved to be very valuable and cost efficient as we were able to identify and reject several hundred fraudulent checks presented for payment to various banks across the country.

The next issue was the actual cashing of the checks by the payees. As of December 31, 2010, 136,100 of the 564,755 checks distributed [24.1%] were still outstanding representing \$24.3 million as the customers have either not received the check or chosen not to cash it. In addition, 57,371 checks were returned as undeliverable or by the introducing broker/dealers as their clients could not ultimately be located. These returned checks represented \$9.6 million. We also received checks from the introducing broker/dealers for a return of funds in cases where they cashed the original checks and then ultimately could not locate the current information for former clients. This amounted to \$3.2 million. This brings the total uncashed checks at December 31, 2010 to \$37.1 million. It has been our experience in settlement administration that checks for a relatively low dollar amount [125,607 of the 193,471 outstanding & returned checks are less than \$20 checks and another 18,787 checks are between \$20 and \$500] do not always get presented for payment. As the dollar amount of checks decreases the chance that the checks will be cashed also decreases. In accordance with the agreed upon plan of distribution we sent a follow up letter for any outstanding check \$500 or greater not returned to us as undeliverable. The outstanding check letter included the date the check was issued, the check number and check amount. The letter briefly explained why the payee was issued the check and gave a link to the settlement orders on the SEC's website. It also provided a PO Box and an email address to contact us.

A total of 5,315 letters were mailed over the six distributions. Included in this number were 486 letters that were sent to people who requested (or their broker/dealer requested) their check to be reissued but the reissued check was still not cashed. If we did not receive a response to that letter [and the letter was not returned as undeliverable], we utilized contacts established during the Specialist case [as well as any existing contacts from normal settlement administration

procedures], in order to resolve the aforementioned checks [specifically targeting higher value checks and multiple checks issued to the same entity]. In the absence of a valid contact however, we conducted research to attempt to identify whether the entity listed on the check was still in operation, merged with another company, ceased to do business, etc. A total of 323 checks were cashed as a result of sending out this letter. This represented only 6% of the 5,315 letters sent to investors requesting that they present their check for payment. Other checks were voided as the check letters were returned as undeliverable. There were 4,257 outstanding checks that were \$500 or greater at December 31, 2010.

Additionally, as explained above, a number of checks were returned as undeliverable. If a check was returned to us by the postal service without any forwarding information, we attempted to find a new address for the payee. The initial step was utilizing the Lexis/Nexis locator service to obtain any updated address information, at a cost of \$0.05 to \$0.10 per record and \$0.20 and \$0.25 for each match. The records sent to the locator service included all checks returned to us as undeliverable and any outstanding check that was \$500 or greater. This company basically does a more detailed query of available databases than the NCOA uses. We have used other locator services similar to Lexis/Nexis and the success rate and costs of each are similar for this level of search. On average, the success rate to obtain new addresses noted by using this service is approximately 35% based on past cases where social security numbers are available and approximately 20% if social security numbers are not available. In the Specialist matters we did receive Tax ID numbers for many of the responses received. For any check where we received corrected address information, we reissued an updated check with the expectation it would be deposited or returned to us to be voided and/or reissued again [based on valid and reasonable instruction from the check recipient]. A number of checks returned to us did not include updated address information. We utilized our established contacts to obtain updated address information where available; furthermore in the absence of a valid contact we conducted research to determine the ultimate disposition of the entity listed on the check (once again specifically targeting the higher value checks and multiple checks being sent to the same entity). We believe that we have exhausted reasonable efforts to locate the investors who have not received or cashed their checks.

There are other locator services that can be used in an attempt to find updated addresses but those services would be a costly alternative. One service that our firm has used on occasion charges approximately \$5.00 for each name submitted and an additional \$15 - \$20 if an updated address is located. They also have an additional charge if they search for any estates related to deceased investors. Another company that provided us a quote indicated they would charge a flat fee of \$75 for each name they attempt to locate updated information. This matter had a large number of outstanding checks and returned checks without a forwarding address. As of December 31, 2010 there were 57,371 undeliverable checks totaling \$9,580,494.73 returned to us of which 9,076 were \$100 or greater totaling \$8,588,298.91. In addition, 16,436 of the 136,100 outstanding checks were \$100.00 or greater and totaled \$22,384,255.29. If we sent all returned and outstanding checks (25,512) that were \$100 or greater to one of these locator services the cost would be over \$125,000 just to submit the names to search and over \$350,000 if they were able to locate approximately half of the names. The second service that charges a flat fee would have cost approximately \$2 million to send each record. Neither service can guarantee

being successful in locating the individuals. These figures do not include any fees incurred to print the reissued checks, postage and continuing with the accounting services. These services include generating the check register database, reconcile the escrow accounts for a number of months until the funds are closed, respond to continued correspondence, send out transaction data when requested for the checks issued, additional banking service fees and work on IRS notices, levies and filings. The total cost of all services noted can add another \$150,000 to \$200,000 to the total costs assuming the funds remain open another six months.

Accounting for all of the issues noted, the total funds remaining in the escrow accounts as of December 31, 2010 amount to \$159.8 million of which \$56.7 relate to the original disgorgement amount. This is broken down as follows:

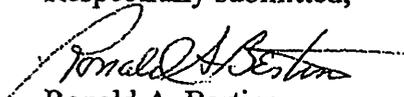
Disgorgement	\$ 157.8
Civil Penalty	<u>89.4</u>
Settlement	247.2
Interest Earned on Funds	<u>30.1</u>
Gross Available Funds	277.3
Gross Distributions	(141.4)
Taxes & Other Expenses Paid	<u>(13.2)</u>
Net Funds Remaining	122.7
Outstanding & Returned Checks	<u>37.1</u>
Residual Funds	159.8
Civil Penalty	89.4
Approximate Interest Earned	<u>13.7</u>
Civil Penalty Component	<u>(103.1)</u>
Residual Disgorgement Funds	<u>\$ 56.7</u>

Our firm has served as a claims or fund administrator in over 500 matters, handling anti-trust cases since 1960 and securities cases since 1974. Engagements have ranged in size from processing several hundred proof of claim forms to more than 10,000,000, with mailings to more than 39,000,000 potential class members. In our extensive experience as a claims administrator we have been involved in many cases where funds remained undistributed due to claimants not being located. We did not reprint and reissue any outstanding or returned checks to the same address we had on file unless specifically requested by the harmed investor due to damaged or stale dated checks or in response to the outstanding check letter sent to investors with checks of \$500 or more. We are of the opinion this would not have resulted in the delivery of previous undeliverable checks and, in all likelihood, would not have motivated a large portion of investors in this matter who had not cashed their original checks to cash their reissued checks. Perhaps the next level of locator services might supply new addresses for some of the undeliverable checks or checks that remained uncashed. However, given the expense involved and the unknown success results that such a service would provide (sending follow up letters to those whose harmed amount equaled or exceeded \$500 yielded only a 6% response rate), we believe that, in light of the work already performed during the six years of administration of these funds, the time, effort and money that would be expended for further attempts at distribution are not warranted. Based on this, our recommendation to the Commission is to terminate work on these

matters, close the distribution funds, and that the Commission should determine the best use of the remaining funds.

We are available to discuss any of the issues in this letter. Please contact us at your convenience with any questions or comments.

Respectfully submitted,



Ronald A. Bertino

Partner

Litigation Support Services Group