

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

ADMINISTRATIVE PROCEEDING
File No. 3-12121

IN THE MATTER OF	:	PROPOSED
GERSON ASSET MANAGEMENT, INC.,	:	PLAN FOR THE
and SETH GERSON,	:	ADMINISTRATION AND
RESPONDENTS.	:	DISTRIBUTION OF THE
		<u>DISGORGEMENT FUND</u>

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

BACKGROUND

1. On December 2, 2005, the Commission issued an Order in which it found that Gerson Asset Management, Inc. (“GAM”), a registered investment adviser, and Seth Gerson, its sole owner, officer, and employee, engaged in “cherry picking” – the unfair allocation of profitable trades to Gerson at the expense of GAM clients – in violation of the antifraud provisions of the Securities Exchange Act of 1934 (“Exchange Act”) and the Investment Advisers Act of 1940 (“Advisers Act”). Gerson Asset Management, Inc., et al., Exchange Act Release No. 52880 (Dec. 2, 2005). GAM and Gerson consented to the issuance of the Order without admitting or denying the Commission’s findings. As remedial sanctions, the Commission revoked GAM’s registration as an investment adviser, ordered GAM to comply with its undertaking to cease operations, barred Gerson from association with any broker, dealer, or investment adviser, and prohibited Gerson from serving or acting as an employee, officer,

director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter. In addition, the Commission ordered Gerson to pay disgorgement in the amount of \$160,237 plus prejudgment interest. However, the Commission waived payment of prejudgment interest, and did not impose a civil penalty on GAM or Gerson, based upon GAM and Gerson's sworn representations of their financial condition.

2. On December 23, 2005, Gerson satisfied his disgorgement obligation by paying \$160,237 to the Commission. The disgorgement funds have been delivered to the Commission's Office of Financial Management ("OFM"), and are being held in an account at the Department of Treasury.

3. The staff submits the following Plan pursuant to Rule 1101 of the Commission's Rules on Fair Fund and Disgorgement Plans, 17 C.F.R. §201.1101. The Plan provides for distribution of the disgorgement fund to GAM's and Gerson's defrauded clients. Because this disgorgement fund is not being distributed according to a claims-made process, procedures for providing notice and for making and approving claims are not necessary.

DEFINITIONS

As used herein, the following definitions shall apply:

4. "Claimants" shall mean those individuals and entities who were GAM investment advisory clients during the period May 1, 2000 through February 28, 2004, and who were harmed by the violations at issue in this matter, other than Gerson, his wife, Lisa Fisher, and their son, Benjamin Gerson, who are deemed ineligible to participate in the distribution because their accounts were controlled by Gerson and benefitted from the violations. On the basis of documentation obtained by the Division during its investigation, the Division has identified the

Claimants. A list of the Claimants is attached hereto as Appendix A.

5. "Disgorgement Fund" shall mean the \$160,237 in disgorgement paid by Gerson, less fees, expenses, reserves, or taxes, if any, incurred in making the distribution.
6. "Distribution" shall mean the portion of the Disgorgement Fund to which a Claimant is entitled under the Plan, as approved by the Commission.

RECEIPT OF ADDITIONAL FUNDS

7. Other than the initial payment of \$160,237 by Gerson and interest accrued thereon, the Division does not anticipate that there will be any additional funds paid into the Disgorgement Fund.

ALLOCATION OF THE DISGORGEMENT FUND

8. A Claimant's Distribution shall be equal to the Claimant's realized and unrealized losses in the accounts managed by GAM resulting from the improper trade allocations at issue in this matter, plus interest at the Internal Revenue Service rate of interest on tax underpayments and refunds, as calculated by the Administrator. Interest shall be calculated from the last day of the six month period in which each loss occurred. In the event there are not sufficient funds in the Disgorgement Fund to pay the full amount of losses and interest so calculated to each Claimant, then losses shall be distributed pro rata to each Claimant based proportionately on the amount that each Claimant's losses bear to the combined losses of all Claimants until all Claimants' losses are reimbursed in full, and any remaining funds in the Disgorgement Fund shall be distributed pro rata to each Claimant in similar fashion as interest as calculated above.

PLAN COMMENT PERIOD

9. The Commission shall publish a notice of the Plan (the “Notice”) in the SEC Docket and on the SEC website. The Division shall mail a copy of the Plan to the last known address of all individuals and entities who were GAM investment advisory clients during the period May 1, 2000 through February 28, 2004 (“GAM’s clients”), within five (5) days of the publication of the Plan. Any interested party wishing to comment on, or object to, this Plan must submit their comments, in writing, no later than June 5, 2006:

- a. to the Office of the Secretary, United States Securities and Exchange Commission, 100 F Street, N.E., 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. Please include the appropriate Administrative Proceeding File Number 3-12121 on the subject line.

10. The staff requests that after the expiration of the comment period set forth in the foregoing paragraph, if no objections are filed, the Commission issue an order approving the Plan, appointing the Fund Administrator, and ordering the disbursement of the Disgorgement Fund for distribution in accordance with the terms of the Plan.

APPOINTMENT AND DUTIES OF ADMINISTRATOR

11. Because of the small number of Claimants, and to insure the maximum payout to these Claimants, the staff proposes that Leslie Kazon, Assistant Regional Director, Northeast Regional Office, be appointed as Administrator of the Disgorgement Fund (“Fund Administrator”).

12. 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 Claimants, obtain Claimants' taxpayer identification numbers or Social Security numbers, if any, and resolve the status of any person who disputes their exclusion from the list of Claimants identified on Appendix A;
- c. provide notice to Claimants at their last known address of the existence of the Disgorgement Fund, their potential eligibility to receive a Distribution from the Disgorgement Fund, and resolve any issues raised by a Claimant with respect to the Distribution;
- d. the filing, where required by applicable regulation of the Internal Revenue Service, of the Internal Revenue Service Code Forms 1099 reflecting the amount distributed to a Claimant pursuant to the Distribution Plan;
- e. establish a reserve fund for future expenses, if any;
- f. review and forward to a Division Deputy Director or to the Commission, as appropriate, for approval and payment, bills submitted by the Tax Administrator identified in paragraph 13, below, for services rendered to and taxes paid on behalf of the Disgorgement Fund; and
- g. submit the report specified in Paragraph 18, below.

13. Pursuant to an order dated March 6, 2006, the Commission has appointed Damasco & Associates as the Tax Administrator of the Disgorgement Fund ("Tax

Administrator").¹ The Fund Administrator shall 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.²

14. In carrying out her duties, the Fund Administrator may be assisted by other Commission staff acting under her supervision.

15. The Tax Administrator shall keep records and bill the Disgorgement 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 and forwarded to a Division Deputy Director, or to the Commission, as appropriate, for approval and payment. After the bills and taxes, if any, have been approved for payment, the Commission will pay the bill using funds from the Disgorgement Fund. Payment shall come first from any earnings or interest in the Disgorgement Fund, and second, if necessary, from the principal of the Disgorgement Fund.

16. Upon approval by the Commission of the distribution of the Disgorgement Fund, and after current taxes and bills from the Tax Administrator have been paid and any reserve established, the Fund Administrator shall forward to OFM, in the form specified by OFM, all the necessary information for preparing checks or electronic payments (including as specified the names, addresses, Social Security numbers, or taxpayer identification numbers, of the Claimants and the amount from the Disgorgement Fund that each Claimant is to receive) for the payment of the distributions to the Claimants. Upon satisfactory submission of this information, OFM will

¹ See, Order Appointing Tax Administrator in Gerson Asset Management, Inc., Admin. Proc. File No. 3-12121, Exchange Act Release No. 53416 (March 6, 2006).

² See, Omnibus Order Directing the Appointment of Tax Administrator in Administrative Proceedings that Establish Distribution Funds, Exchange Act Release No. 53279A (Feb. 14, 2006).

transmit the information to Treasury to distribute the Disgorgement Fund to Claimants.

17. After the payment of all Distributions and after payment of the Tax Administrator's fees, costs, other expenses incurred in the performance of the Tax Administrator's duties, and any other expenses incurred in the administration of the Plan, any remaining money in the Disgorgement Fund, including any amounts returned to the Commission and the amount of any outstanding checks that have not been presented for payment within one year of the date of the check, shall be paid to the United States Treasury.

18. Within 15 months after one year from the distribution of the Disgorgement Fund to the Claimants, the Fund Administrator shall provide to the Commission, for its approval, a final accounting of all monies earned or received and all monies spent in connection with the administration of the Plan, and a report that 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 that she be discharged as Fund Administrator. Unless the Commission orders otherwise, the Disgorgement Fund will terminate thirty (30) days after the submission of the Fund Administrator's report and final accounting.

19. Other than as specified in Paragraph 17, above, the Fund Administrator shall not be required to report or account to the Commission.

20. 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 her regular salary as an employee of the Commission, for her services in administering the Disgorgement Fund.

21. 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 Disgorgement Fund. The Fund Administrator will be deemed to be acting within the scope of her employment with the Commission in administering this Proposed Plan.

APPENDIX A

**CLAIMANTS IN THE MATTER OF GERSON ASSET MANAGEMENT, INC.
AND SETH GERSON, ADMIN. PROC. FILE NO. 3-12121**

Last Name	First Name
Abelin	Graciela
Albert	Arthur
Altneu	Carol
Arnaz and Lawrence Luckinbill	Lucy
Asnes	Bonnie
Baumann	Vicki
Cleary	Robert and Mary
Cohen	Leslie and Clifford
Cohn	John
Collins	Henry and Madelyn
Cutler	Ann
Dobbs	K Gregg
Dobbs	Sadie
Donson	Nathaniel and Miriam
Elswit	Lisa
Eyerman	Steven
Feingold	Diana
Feingold	Joseph and Regina
Feldman	Ralph
Feldman	Samuel
Figman	David
Frimmer, Trustee, Lucille Ball Trust	Paul
Garbus	Albert
Garbus	David
Garus	Martin
Gerson	Barry
Gerson	Carl
Gerson	Sandra
Gniewek	Raymond and Judith
Gold	Lois
Goldberg	Max
Golden	Mollie
Gordon	Joan
Grande	John and Joan
Grunstein	William and Muriel
Hall	Davarel
Heavner	Ralph
Herman	Daniel
Herman	Pauline
Hexter	Jennifer
Horowitz	Albert
Horowitz	Daniel
Horowitz	Miriam
Katz	Harriet
Krevitt	Philip
Lacuria	Anthony and Joel
Mosner	Rose
Mutz	Marie
Neuwirth	Elizabeth
Patiky	Annabelle
Perlmutter	Martha
Rizzo-Tolk	Rosemarie
Sacken	Rosemary
Sayres	Don

**CLAIMANTS IN THE MATTER OF GERSON ASSET MANAGEMENT, INC.
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Scharffenberger	William
Silvers	Meryl
Terzano	Patrick
Weiner	Diane
Weinstein	Sheppard