

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-12121

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

Pursuant to Rules 1101 and 1104 of the Securities and Exchange Commission’s Rules on Fair Fund and Disgorgement Plans, 17 C.F.R. §201.1101 and 1104, the Division of Enforcement (“Division”) hereby submits this modified plan for the administration and distribution of funds in the disgorgement fund created in this matter (the “Modified Plan”), which modifies the plan previously proposed by the Division and published for notice and comment (the “Published Plan”).¹

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

¹ A copy of the Published Plan can be found at <http://www.sec.gov/litigation/admin/2006/34-53760-pdp.pdf>.

Release No. 52880 (Dec. 2, 2005) (the “Consent Order”). 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. This Modified Plan provides for distribution of the disgorgement fund to GAM’s and Gerson’s defrauded clients on the basis of their net losses, as defined below. Because the disgorgement fund will not be distributed according to a claims process, procedures for providing notice of the opportunity to submit claims and for making and approving claims are not necessary.

DEFINITIONS

As used herein, the following definitions shall apply:

4. “Potential 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 Potential Claimants. A list of the Potential Claimants is attached hereto as Appendix A.

5. “Eligible Claimants” shall mean those Potential Claimants who suffered a “Net Loss,” as described at paragraph 6, below, as a result of the violations at issue. A list of the Eligible Claimants and their pro rata share of total Net Losses is attached hereto as Appendix B.

6. “Net Loss” shall mean a Potential Claimant’s “Loss from the Violative Conduct,” as described at paragraph 7, below, minus any amount the Potential Claimant received from GAM or Gerson to compensate the Potential Claimant, in whole or in part, for such loss.

7. “Loss from the Violative Conduct” shall mean:

- a. With respect to the Horowitz-referred clients referred to in paragraphs III.A., D., and G. of the Consent Order, the difference between the price the Potential Claimant paid for securities and the price the Potential Claimant would have paid if Gerson had not allocated the initial, lower-priced purchase of the security to himself; and

b. With respect to the “short term trading clients” referred to in paragraphs III.D-F. of the Consent Order, the cumulative net loss on all transactions in which the client purchased a security and sold it within thirty (30) days.

8. “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.

9. “Distribution” shall mean the portion of the Disgorgement Fund to which an Eligible Claimant is entitled under the Modified Plan. An Eligible Claimant’s Distribution shall consist of the Eligible Claimant’s Net Loss, plus an additional component as described below, if there are sufficient funds in the Disgorgement Fund to cover all Eligible Claimants’ Net Losses, and if not, the Eligible Claimant’s share of the Disgorgement Fund proportional to such Eligible Claimant’s pro rata share of all Eligible Claimants’ Net Losses. An Eligible Claimant’s Distribution shall include an Additional Distribution Component, as defined at paragraph 10, below, if, after the deduction of all Eligible Claimants’ Net Losses, any amounts owing or incurred for payment of taxes, the Tax Administrator’s fees, costs, and other expenses incurred in the performance of the Tax Administrator’s duties, any other expenses incurred in the administration of the Disgorgement Fund, and any reserve established for such fees, cost, and expenses, there remains \$1,000 or more in the Disgorgement Fund (the “Remainder”).

10. “Additional Distribution Component” shall be calculated using the Federal Short Term Interest Rate on a quarterly basis from the beginning of the period in which the Eligible Claimant was injured by the violations at issue through the end of the quarter prior to the Fund Administrator’s application, pursuant to paragraph 14.e. below, for an order approving distribution of the Disgorgement Fund, or in the event that the Remainder is insufficient to pay

all Eligible Claimants the full amount of their Additional Distribution so calculated, the Eligible Claimant's pro rata share of all Eligible Claimants' Additional Distribution.

RECEIPT OF ADDITIONAL FUNDS

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

ALLOCATION OF THE DISGORGEMENT FUND

12. The Disgorgement Fund, less any amounts owing or incurred for payment of taxes, the Tax Administrator's fees, costs, and other expenses incurred in the performance of the Tax Administrator's duties, and any other expenses incurred in the administration of the Disgorgement Fund, and any reserve established for expected taxes fees, costs, or expenses, shall be allocated among Eligible Claimants according to their pro rata share of all Claimants' Net Losses, together with any Additional Distribution Component, as described at paragraph 10, above.

APPOINTMENT AND DUTIES OF ADMINISTRATOR

13. Because of the small number of Potential and Eligible Claimants, and to insure the maximum payout to these Claimants, the staff proposes that Leslie Kazon, Assistant Regional Director, New York Regional Office, be appointed as Administrator of the Disgorgement Fund ("Fund Administrator").

14. The Fund Administrator shall carry out the duties specified by this Modified Plan, including the following:

- a. oversee compliance with the terms of the Modified Plan;
- b. use reasonable efforts to locate Eligible Claimants, obtain Eligible

Claimants' taxpayer identification numbers or Social Security numbers, if any, and resolve the status of any person who disputes their exclusion from the lists of Eligible Claimants identified on Appendix B;

- c. establish a reserve fund for future expenses, if any;
- d. review and forward to a Deputy Division Director or to the Commission, as appropriate, for approval and payment, bills submitted by the Tax Administrator identified in paragraph 17, below, for services rendered to and taxes paid on behalf of the Disgorgement Fund;
- e. apply to the Commission for an order approving the distribution of the Disgorgement Fund to Eligible Claimants; and
- f. submit the report specified in paragraph 20, below.

15. The Fund Administrator shall cooperate with the Tax Administrator of the Disgorgement Fund ("Tax Administrator") in providing information necessary to accomplish the income tax compliance, ruling and advice work assigned to the Tax Administrator by the Commission. Pursuant to an order dated March 6, 2006, the Commission has appointed Damasco & Associates as the Tax Administrator.²

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

17. 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

² See Order Appointing Tax Administrator in Gerson Asset Management, Inc., Admin. Proc. File No. 3-12121, Exchange Act Release No. 53416 (March 6, 2006).

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.

18. Upon approval by the Commission of the distribution of the Disgorgement Fund, and after payment of current taxes, 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 Disgorgement Fund, 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 Eligible Claimants and the amount from the Disgorgement Fund that each Eligible Claimant is to receive) for the payment of the distributions to the Claimants. Upon satisfactory submission of this information, OFM will transmit the information to Treasury to distribute the Disgorgement Fund to Eligible Claimants, with instructions that the checks will be void if not presented for payment within 180 days of the date of the check and bear a legend so stating.

19. After the payment of all Distributions and after payment of current taxes, 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 Disgorgement Fund, 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 180 days of the date of the check, shall be paid to the United States Treasury.

20. Within one year from the distribution of the Disgorgement Fund, the Fund Administrator shall make arrangements for the final payments of taxes and Tax Administrator's fees and any other costs or expenses incurred and shall submit a final accounting to the Commission. The Distribution Fund shall be eligible for termination after all of the following have occurred: (1) the Final Accounting by the Fund Administrator has been submitted and approved by the Commission, (2) all taxes, fees, costs, and expenses, have been paid, and (3) any remaining funds or residual amounts have been transferred to the U.S. Treasury. The Fund Administrator shall seek an order from the Commission to (1) approve the Final Accounting; (2) approve sending any remaining residual amount to the United States Treasury after the final payments for taxes, fees, costs, and expense have been made; and (3) authorize the Secretary of the Commission, upon receipt of notice from the Fund Administrator that all funds have been expended, to dismiss the Fund Administrator.

21. Other than as specified in paragraph 20, above, the Fund Administrator shall not be required to report or account to the Commission.

22. 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.

23. 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 Modified Plan.

APPENDIX A

Potential Claimants

Abelin, Graciela
Albert, Arthur
Altneu, Carol
Arnaz, Lucy and Lawrence Luckinbill
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, Paul, Trustee, Lucille Ball Trust
Garbus, Albert
Garbus, David
Garbus, 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
Scharffenberger, William
Sillers, Meryl
Terzano, Patrick
Weiner, Diane
Weinstein, Sheppard

APPENDIX B

Eligible Claimants

<u>Eligible Claimant</u>	<u>Pro Rata Share</u>
Gerson, Barry	55.92 %
Gerson, Carl	19.55 %
Gerson, Sandra	13.75 %
Hall, Daverel	2.19%
Horowitz, Albert	0.55%
Horowitz, Daniel	0.30%
Silver, Meryl	7.74%