

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940  
Release No. 2458 / December 7, 2005

INVESTMENT COMPANY ACT OF 1940  
Release No. 27181 / December 7, 2005

Administrative Proceeding  
File No. 3-11524

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In the Matter of	:	Order Directing Appointment
	:	of Tax Administrator
PILGRIM BAXTER &	:	
ASSOCIATES, LTD.,	:	
	:	
Respondent	:	

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By order dated June 21, 2004, the Commission ordered respondent Pilgrim Baxter & Associates, Ltd. (“PBA” or “Respondent”) to pay disgorgement and a penalty. Pursuant to that Order, PBA entered into an escrow agreement with a federally insured banking institution (the “Bank”), appointing the Bank as the escrow agent. Also pursuant to that Order, on July 14, 2004, PBA paid a total of \$ 90,000,000, composed of disgorgement and a penalty, to the Commission (the “Distribution Fund”) and PBA deposited the Distribution Fund in an interest bearing account at the Bank.

By order dated September 29, 2005, the Commission issued an order directing the Bank to transfer all amounts held in escrow to the Commission’s Office of Financial Management upon the maturity of all securities in the escrow account. In accordance with the September 29, 2005 Order, on October 27, 2005, the Bank transferred the Distribution Fund to the Commission’s Office of Financial Management, which then deposited that amount in an interest bearing account at the Bureau of Public Debt.

Under the Internal Revenue Code and related regulations the Distribution Fund constitutes a Qualified Settlement Fund (“QSF”).<sup>1</sup> The Commission has solicited proposals from several tax firms, and has determined that Damasco & Associates, located in San Francisco, California, is best suited to act as tax administrator in this proceeding in connection with the QSF

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<sup>1</sup> Internal Revenue Code, 26 U.S.C. § 468B(g); regulations, 26 C.F.R. §§ 1.468B-1 through 1.468B-5.

for the period beginning at the time of its transfer to an interest bearing account at the Bureau of Public Debt.

Accordingly,

IT IS ORDERED that:

- A. Pursuant to Rule 1105(a) of the Commission's Rules on Fair Fund and Disgorgement Plans, Damasco & Associates be appointed as tax administrator (the "Tax Administrator") for the QSF with limited authority and power to: (1) act as the administrator for tax purposes for the qualified settlement fund ("QSF"); (2) prepare, sign, and file the necessary tax returns and tax-related documents for the QSF; (3) obtain the necessary tax-related documents and identifiers, such as an employee identification number, on behalf of the QSF; (4) perform other tax-related and reporting duties on behalf of the Funds as required by Department of the Treasury regulations relating to QSF administrators; and (5) communicate on behalf of the QSF on matters set forth in this paragraph.
- B. The bond requirement of Rule 1105(c) of the Commission's Rules on Fair Fund and Disgorgement Plans is waived for good cause shown, specifically, as further described below, because the Tax Administrator shall never have custody or control of the QSF;
- C. The Tax Administrator shall submit, at least 30 days prior to any date on which a tax payment is required on behalf of the QSF, or as soon as is practicable, documents showing the amount necessary to satisfy the tax liability of the QSF as well as all other documents supporting such amount. The Tax Administrator shall submit such documents to Respondent, with a copy to the Commission staff member assigned to this proceeding. Respondent shall pay the amount of the documented taxes to the Tax Administrator by check or wire transfer. The Tax Administrator, in turn, shall be responsible for paying the taxes to the IRS and the relevant state taxing authority, if any, on behalf of the QSF.
- D. The Tax Administrator shall comply with all reporting requirements applicable to a qualified settlement fund as defined in Treasury Regulations Section 1.468B-1(a), as amended, and shall file on a timely basis all required federal, state, and local tax returns, and shall contemporaneously provide copies of such filings to the assigned Commission staff member.

- E. The Tax Administrator shall keep records and bill each QSF for the services provided to it. Each bill shall be reviewed by the assigned Commission staff member. The Tax Administrator will submit the bill to Respondent for payment by check or wire transfer. The fees billed shall be as agreed upon in the Tax Administrator's engagement letter accepted by the Commission on March 8, 2005.

By the Commission.

Jonathan G. Katz  
Secretary