UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 56115 / July 20, 2007

ADMINISTRATIVE PROCEEDING
File No. 3-11317

In the Matter of	:	
	:	ORDER APPROVING
Putnam Investment Management, LLC	:	MODIFIED DISTRIBUTION PLAN
	:	
Respondent.	:	

I.

On November 13, 2003, the Securities and Exchange Commission ("Commission") issued an Order Making Findings and Imposing Partial Relief, Including a Final Censure, Remedial Undertakings and a Cease and Desist Order Pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 and Sections 9(b) and 9(f) of the Investment Company Act of 1940 against Putnam Investment Management LLC ("Putnam") and, on April 8, 2004, the Commission issued an Order Making Findings and Imposing Supplemental Remedial Sanctions Pursuant to Section 203(e) of the Investment Advisers Act of 1940 and Section 9(b) of the Investment Company Act of 1940 against Putnam Investment Management LLC (together, the "Putnam Settlement Orders"). Among other things, the Putnam Settlement Orders directed Putnam to pay $50 million in civil penalties, $5 million in disgorgement, plus additional disgorgement as calculated by an Independent Assessment Consultant, which additional amount was calculated to be $42,914,120. The Putnam Settlement Orders also required that Putnam retain an Independent Distribution Consultant ("IDC") to develop a plan to distribute the disgorgement, penalty and additional payment as part of a Fair Fund to harmed investors to compensate them for (i) their aliquot share of losses as calculated by the Assessment Consultant pursuant to the Partial Settlement Order, and (ii) a proportionate share of advisory fees paid by funds that suffered such losses during the period of such market timing. In April 2004, Putnam selected Prof. Peter Tufano, Sylvan C. Coleman Professor of Financial Management, Senior Associate Dean and Director of Faculty Development of Harvard Business School, to serve as the IDC.

On February 22, 2007, Prof. Tufano submitted a proposed distribution plan (the "Plan") that provides for the distribution of $97.9 million plus interest, together with an additional $55.6 million paid in a related action brought by the Commonwealth of Massachusetts, to shareholders harmed by the improper trading alleged in the actions. The plan provides that the amount owed to shareholders will be calculated per fund-quarter and distributed based on shareholders' average daily holdings per quarter. Where possible, Putnam will aggregate money owed to a shareholder

in connection with both actions into a single payment, including money owed across all funds and accounts, for the purposes of maximizing payments made to shareholders and reducing administrative costs. Shareholders eligible to receive distributions may have held shares directly as Putnam retail customers or through one of many different intermediaries, including brokerage firm "omnibus accounts," qualified and non-qualified retirement plans, 529 plans, trusts or foreign distribution agents. Retail shareholders will be sent a check directly from the Fair Fund. The plan provides omnibus accounts, other than retirement plans, that are receiving distributions of $1,000 or more the options of (1) distributing the funds to beneficial shareholders themselves in accordance with the plan; (2) providing data to the Fair Fund to permit the Fair Fund to distribute the funds to beneficial shareholders in accordance with the plan; or (3) providing data to the Fair Fund to permit the Fair Fund to calculate the distributions to beneficial shareholders, but thereafter make the actual distributions to beneficial shareholders on their own. The plan instructs that retirement plan distributions will be handled by retirement plans in accordance with their fiduciary and contractual obligations. Eligible shareholders would not need to go through a claims process.

In accordance with the Commission's Rules on Fair Fund and Disgorgement Plans (the "Fair Fund Rules"), 17 C.F.R. § 201.1100, et seq., the Plan proposes a Fund Administrator and sets forth, among other things, the methodology for allocating distributions under the Plan, procedures for the administration of the Fund, and provisions for the termination of the Putnam Fair Fund.

Putnam Fiduciary Trust Co., Inc. ("PFTC"), proposed in the Plan as the Fund Administrator, has not posted the bond generally required of third parties under Fair Fund Rule 1105(c). Rather, the Plan incorporates several layers of protection for the Putnam Fair Fund. Among other things, under the Plan: (1) the Fund Administrator will have no custody, and restricted control, of the Fund; (2) the funds will be held by Treasury until immediately before transmittal of checks or wires to eligible investors; (3) upon transfer from Treasury, funds will be held in an escrow account, separate from Bank assets, until presentation of a check, at which time funds will be transferred to a controlled distribution account; (4) presented checks or wires will be subject to "positive pay" or similar controls before being honored by the bank; and (5) both the bank and the fund administrator will maintain, throughout this process, insurance and/or a financial institution bond that covers errors and omissions, misfeasance, and fraud.

On March 30, 2007, the Commission published the Plan and issued a Notice of Proposed Distribution Plan and Opportunity for Comment (Exchange Act Release No. 54440A) pursuant to Rule 1103 of the Fair Fund Rules, 17 C.F.R. § 201.1103. The Notice advised interested parties that they could obtain a copy of the proposed Distribution Plan from the Commission's public website, www.sec.gov/litigation/admin/2007 and Putnam's public website, https://www-uat.putnam.com/individual/. The Notice advised all interested parties that they could obtain a written copy of the proposed Distribution Plan by submitting a written request to Ian D. Roffman, United States Securities and Exchange Commission, 33 Arch Street, Boston, Massachusetts 02110. All persons who desired to comment on the Distribution Plan could submit their comments, in writing, no later than April 30, 2007.

In response to the Notice, the Spark Institute, Inc. ("Spark"), Merrill Lynch & Co., Inc. ("Merrill Lynch") and Mr. Greg Estey ("Estey") submitted public comments to the Office of the

Secretary. The Commission staff engaged in subsequent communications with the IDC to discuss the issues that each commenter raised in its respective letter. In general, the Spark letter seeks relief on behalf of intermediaries for non-IRA Retirement Accounts eligible for a distribution under the Plan from allocation requirements and costs arising in connection with distributions under the Putnam Plan. Merrill Lynch's letter raises questions about, among other things, limitations on liability and security for data that omnibus accounts may submit to the IDC as part of the distribution process. Mr. Estey's letter raises questions about, among other things, disposition of undistributed funds, exclusion of certain potential recipients, costs, public information and *de minimis* amounts.

After careful consideration, the Commission has concluded that the Plan should be approved in accordance with the changes described below in Section II.B. The Commission has further determined that, for good cause shown, the bond required under Fair Fund Rule 1105(c) will be waived and that PFTC is appointed as the Fund Administrator, as set forth in the Plan.

II.

A. Public Comments on the Plan

1. The Spark Letter

Spark is an organization whose members are "a broad based cross section of retirement plan service providers, including . . . banks, mutual fund companies, third party administrators and benefits consultants. Spark members include most of the largest service providers in the retirement plan industry and the combined membership services more than 90% of all defined contribution plan participants." In its letter dated April 27, 2007, Spark requests: (1) that the Plan permit retirement plan omnibus account service providers to calculate the allocation of the proceeds among the retirement plans within such omnibus accounts according to average share or dollar balances of the plans' investment in the affected funds during the relevant period, and (2) that the Plan provide that Putnam will reimburse retirement plan omnibus account service providers for the reasonable costs incurred by such service providers in calculating the allocations itself.

The Commission has considered these requests, and the Commission staff has discussed them with the IDC. The Plan proposed by the IDC provides non-IRA retirement plan record-keepers and fiduciaries alternative methodologies for distribution. Specifically, the Plan offers retirement plan fiduciaries the option of distributing proceeds to current participants on a pro rata or per capita basis or using such proceeds to pay reasonable expenses of the retirement plan, if the retirement plan permits such use and if the fiduciary determines, consistent with all applicable guidance from the Department of Labor[1], that such use is consistent with the exercise

[1] The DOL issued Field Assistance Bulletin No. 2006-01 (April 19, 2006) ("FAB") regarding Fair Fund distributions to retirement plans in market-timing and late-trading matters and the duties of IDCs and retirement plan record-keepers and plan fiduciaries. Among other things, the FAB provides that record-keepers that receive distributions on behalf of their employee benefit clients generally will assume fiduciary obligations. The FAB explains that record-keepers may consider whether the costs of effectuating a distribution outweigh any benefit to the intended beneficiaries as well as other alternatives that would be consistent with its fiduciary obligations. The FAB also describes that record-keepers may avoid assuming fiduciary status if they allocate funds according to the

of its fiduciary obligations. By expressly including these alternative methodologies in the plan, the plan provides the record-keepers and plan fiduciaries additional particular methodologies for distributing plan proceeds and provides additional ways for record-keepers to conduct a distribution consistent with the relevant guidance issued by the Department of Labor.

In response to Spark's letter, the Plan has been modified to provide record-keepers who service multiple plans with an option of allocating distribution proceeds among those plans according to either an average share or dollar balance of the retirement plans' investment in the Putnam funds during the relevant period.

With regard to Spark's request for cost reimbursement, the retirement plan service provider, not the IDC or Fund Administrator, is in the best position to estimate reimbursement costs. Moreover, the Plan provides non-IRA retirement plan administrators with options designed to significantly reduce the costs of distribution for retirement plan service providers. For example, retirement plans may conduct their own cost-benefit analysis to determine, consistent with Department of Labor guidance and fiduciary obligations, the most cost-effective method of distribution, including making distributions to current participants or historical participants and allocating the distribution based on pro rata, per capita or other algorithm. In view of the comparatively low-cost alternatives included in the Plan specifically for non-IRA Retirement Accounts, retirement plan record-keepers should determine the most cost effective way to handle the distribution.

2. The Merrill Lynch Letter

Merrill Lynch, one of the omnibus intermediaries that is expected to receive a distribution under the Plan, makes several requests in a comment letter. First, Merrill Lynch requests that the Plan be modified to provide for reimbursement of all reasonable costs of omnibus firms that chose both to calculate the payments to beneficial owners of Putnam mutual fund shares and to execute the distribution to beneficial owners themselves. The Plan, however, already contains two lower cost alternatives for omnibus account holder distributions. Omnibus account holders may provide data to the IDC to permit the IDC to distribute the funds to eligible recipients in accordance with the plan. Under this alternative, Putnam will pay the costs of calculating payments and executing the distribution and will reimburse the omnibus account holder for all reasonable out-of-pocket costs incurred in collecting and preparing the data. Alternatively, omnibus account holders may provide data to the IDC for the IDC to calculate payments, but the omnibus account holder will execute the distribution to eligible recipients. Under this alternative, Putnam will pay the costs of calculating payments and will reimburse the omnibus account holder for all reasonable out-of-pocket costs incurred in collecting and preparing the data, but the omnibus account holder will pay the costs associated with executing the distribution. Because the Plan already contains low-cost alternatives, the staff does not recommend modifying the Plan to provide for additional reimbursements.

Second, Merrill Lynch requests that the Plan include an acknowledgment that omnibus firms "are only expected to make commercially reasonable efforts to acquire and provide data

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methodology set forth in the Plan or if the plan-level fiduciary approves of a distribution methodology determined by the record-keeper.

that exceeds applicable record retention requirements." The Plan, however, need not be amended because it already contains a provision that explicitly permits omnibus accounts to propose alternative methodologies to the IDC when operational limitations prevent the omnibus accounts from complying with the terms of the Plan.

Third, Merrill Lynch suggests that the Plan contain a clause limiting the liability of omnibus accounts in facilitating the distributions. Neither the Commission nor the IDC has authority to expand or contract the liability of financial intermediaries. If a financial intermediary is subject to any liability, it is as a result of the intermediary's relationship with its client. Therefore, the Plan does not provide for any limitation on liability of financial intermediaries.

Finally, Merrill Lynch is concerned that the transmission of client sensitive information (e.g., name, address, social security number) will expose financial intermediaries to regulatory and reputational risk if the data is mishandled, disclosed, or distributed in an unauthorized manner.[2] Merrill Lynch suggests that the Plan contain security and confidentiality obligations and indemnification of financial intermediaries for any misuse or loss of client data. In response to Merrill Lynch's comment, the Plan has been modified to state that the Fund Administrator must comply with "all federal and state laws, rules and regulations applicable to the Putnam funds and the Fund Administrator pertaining to the preservation of the security and confidentiality of shareholder and client information."

3. The Greg Estey Letter

Mr. Greg Estey, in a letter dated May 1, 2007, requests that several modifications be made to the Plan. First, Mr. Estey suggests that "undistributed compensation should be distributed to identified current and former shareholders instead of being paid back into the funds." Currently, the Plan acknowledges that there will be undistributed pools of money in the Fair Fund. These pools will result primarily from unlocatable shareholders, shareholders who

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[2] To the extent Merrill Lynch's comment about regulatory risk refers to the Commission's Regulation S-P (17 C.F.R. Part 248), which limits the ability of financial intermediaries regulated by the Commission to disclose nonpublic personal information to nonaffiliated third parties, Regulation S-P provides exceptions for disclosures for certain purposes, including:

- To comply with federal, State, or local laws, rules and other applicable legal requirements. *See* 17 C.F.R. § 248.15(a)(7)(i). For distributions ordered by the Commission, this exception would cover disclosures of nonpublic personal information necessary for making the distributions.
- As necessary to effect, administer, or enforce a transaction that a consumer requests or authorizes, including if the disclosure is required, or is a usual, appropriate, or acceptable method to administer or service benefits or claims relating to the transaction or the product or service business of which it is a part. *See* 17 C.F.R. §§ 248.14(a), 248.14(b)(2)(ii). In the Plan, disclosure may be required if the financial intermediary elects to have the Fund Administrator handle the distributions.

Moreover, Regulation S-P also imposes limits on the redisclosure and reuse of nonpublic personal information. *See* 17 C.F.R. 248.11. For example, if a financial intermediary subject to Regulation S-P were ordered by the Commission to transmit nonpublic personal information to a nonaffiliated third party for purposes of making distributions under the Plan, and the intermediary did so in reliance on an exception in §§ 248.14 or 248.15, the third party receiving the information could use it only for the purpose of making the distributions.

decline payments and *de minimis* amounts. The Plan provides that undistributed pools will be distributed to the funds that suffered harm. The Commission has considered alternatives for distribution of the undistributed pools, including the alternatives recommended by Mr. Estey. Because the precise amount of the undistributed pool will not be known until the end of the distribution process and because of the high cost and lengthy period of time that would be associated with a second distribution to eligible recipients, the undistributable pool will be distributed to the harmed mutual funds. In addition, based on current estimates of the size of the undistributed pool for each fund, in most instances these amounts will not be large enough to affect the net asset value of any affected fund. The Plan further provides that these pools will be recorded and distributed to their respective funds without any advance public disclosure to minimize the possibility of any market timing with respect to the funds as a result of these payments.

Second, Mr. Estey requests that "all current and former Putnam fund managers and analysts involved in the management or support of any of the affected funds during the problematic period should be excluded from receiving compensation under this plan." The Plan provides that the two Putnam portfolio managers who were charged by the Commission, Justin Scott and Omid Kamshad, will be excluded from receiving distribution.

Third, Mr. Estey requests that "Putnam should pay all costs incurred by intermediaries in administering the distribution plan." The Plan provides two low-cost alternatives for omnibus account holder distributions, including an option that Putnam pay for and execute the distribution and reimburse out-of-pocket costs associated with collecting and preparing the necessary data. For retirement plan intermediaries, the Plan provides options designed to significantly reduce the costs of distribution for retirement plan service providers, consistent with guidance issued by the Department of Labor

Fourth, Mr. Estey requests that "[t]he compensation algorithm should be published. This will, of course, enable intermediaries with fiduciary responsibilities to use it." The Plan provides that Putnam will provide the compensation algorithm to any omnibus account holder or retirement plan intermediary to use in connection with making a distribution pursuant to the Plan. In addition, the IDC has published an Independent Assessment Report, which provides a detailed description of the methodology for calculating losses associated with the conduct charged by the Commission.

Finally, Mr. Estey suggests that "extra effort is called for to enable identification of ultimate investors' fragmented holdings as one." Specifically, Mr. Estey explains that he is concerned about "the risk of incorrectly classifying investors as having *de minimis* amounts," and he requests that the list of *de minimis* intermediaries be published, that the *de minimis* determination for potential recipients be appealable, that individual investors below the *de minimis* amount be notified, and that individual shareholders' *de minimis* status be appealable. The Plan provides that any determination of eligibility or calculation of payment is appealable, including a determination that a shareholder's or intermediary's distribution would be *de minimis*. The Plan further provides that omnibus account holders below the omnibus *de minimis* threshold will be directly notified of that fact. Individual notification to all shareholders whose distribution would be *de minimis* would be cost prohibitive. However, in lieu of individual notifications, the Plan requires that Putnam provide customer support, including a dedicated call

center with a toll-free number and a website, to answer shareholder inquiries about the distribution and to provide information about the appeals process. All shareholders will be able to use these resources to determine if their calculated distribution amount was *de minimis* and to obtain information about appealing that determination.

B. Modifications To The Plan

The following modifications have been made to the Plan:

- language clarifying that omnibus shareholders of record which choose to execute a distribution to ultimate shareholders themselves will be required to return any undistributed funds resulting from unlocatable shareholders, shareholders who decline payments, *de minimis* amounts or any other reason. The returned funds will be added to the Undistributed Pools for distribution to the harms mutual funds (paragraph 37).

- language providing that record-keepers who service multiple Retirement Plans may allocate distribution proceeds among those plans according to either an average share or dollar balance of the Retirement Plans' investment in the Putnam funds during the relevant period (paragraph 42).

- language expressly stating that the Fund Administrator is required to comply with all federal and state laws, rules and regulations applicable to the Putnam funds and the Fund Administrator pertaining to the preservation of the security and confidentiality of shareholder and client information (paragraph 49).

- language clarifying that the IDC will submit the validated payment file to the Commission staff for disbursement of funds and to bring paragraph 66 into conformity with paragraph 71 (paragraph 66).

These modifications provide additional flexibility, clarify certain distribution processes and further facilitate distribution of the Fair Fund, but do not substantially alter the previously published Plan. The Commission, in its discretion, does not believe that further modifications are necessary or the modifications described in this Order require re-publication of the Plan for further public comment.

C. The Bond Requirements of Fair Fund Rule 1105(c)

Fair Fund Rule 1105(c) provides:

> *Administrator to Post Bond*. If the administrator is not a Commission employee, the administrator shall be required to obtain a bond in the manner prescribed in 11 U.S.C. 322, in an amount to be approved by the Commission. The cost of the bond may be paid for as a cost of administration. The Commission may waive posting of a bond for good cause shown.

17 C.F.R. § 201.1105(c). The Commission believes that the risk-protection provisions of the

Plan, discussed in paragraphs 19 and 50 of the Plan, constitute good cause for waiving the posting of the bond under Rule 1105(c).

II.

Accordingly, IT IS ORDERED that:

A. Pursuant to Rule 1104 of the Fair Fund Rules, 17 C.F.R. § 201.1104, the Distribution Plan is modified as described above, and approved with such modification;

B. Putnam Fiduciary Trust Co., Inc. is appointed as the Fund Administrator; and

C. The bond requirement of Rule 1105(c) of the Commission's Rules on Fair Fund and Disgorgement Plans, 17 C.F.R. 201.1105(c), is waived for good cause shown.

By the Commission.

Nancy M. Morris
Secretary