

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-12737

In the Matter of

**FOLGER NOLAN FLEMING DOUGLAS
CAPITAL MANAGEMENT, INC.,
NEIL C. FOLGER and
DAVID M. BROWN,**

Respondents.

PROPOSED PLAN OF DISTRIBUTION

1. *Purpose and Background.* This Proposed Plan of Distribution (the “Plan”) has been developed pursuant to the Commission’s Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940 (Rel. No. IA-2639) against Folger Nolan Fleming Douglas Capital Management, Inc. (“Folger Nolan Capital Management”), Neil C. Folger and David M. Brown, dated August 23, 2007 (the “Order”). The Plan provides for the distribution of the disgorgement and prejudgment interest provided for in the Order to those clients of Folger Nolan Capital Management who would have paid lower commissions on trades but for the conduct described in the Order. Simultaneously with the entry of the Order, the Commission accepted settlement offers from Folger Nolan Capital Management, Folger and Brown in which each consented to the entry of the Order without admitting or denying the Order’s findings.

The Order found, among other things, that Folger Nolan Capital Management was a registered investment adviser formerly known as Folger Nolan Fleming Douglas, Incorporated (“Folger Nolan”). The Order further found that, from January 1, 2002 through April 1, 2004, Folger Nolan Capital Management was a division within Folger Nolan which, at the time, was a dually registered broker-dealer and investment adviser. During this time period, the general practice of registered representatives associated with Folger Nolan’s broker-dealer was to refer existing customers seeking investment advisory services (“referred clients”) to Folger Nolan’s registered investment adviser. Folger Nolan entered into agreements with these referred clients to send their trades through Folger Nolan’s broker-dealer. Folger Nolan charged these referred clients commission rates that exceeded the rates of advisory clients not referred from Folger Nolan’s broker-dealer (“non-referred clients”). Folger Nolan did not disclose to the referred clients other custody and execution options such as using a lower cost discount broker. In

addition, Folger Nolan did not disclose the firm's potential conflict of interest arising out of its investment adviser receiving referrals from registered representatives associated with its broker-dealer.

As a result of Folger Nolan's lack of disclosure, the referred clients paid higher commissions with little corresponding benefit, and therefore Folger Nolan Capital Management violated its duty to seek to obtain best execution for its clients. By failing to disclose its potential conflict of interest and other brokerage options, and by failing to seek to obtain best execution, the Order found that Folger Nolan Capital Management breached its fiduciary duty to its clients and thereby violated Section 206(2) of the Investment Advisers Act of 1940 ("Advisers Act"), and caused its clients to pay excess commissions of approximately \$213,528.

The Order provided that Folger Nolan Capital Management pay disgorgement and prejudgment interest in the total amount of \$244,921 and further required the distribution of these funds to the harmed clients in accordance with a distribution plan. Folger Nolan Capital Management was also ordered to pay a penalty of \$100,000 to the U.S. Treasury.

In accordance with the Order, on August 31, 2007, Folger Nolan Capital Management paid the \$244,921 in disgorgement and prejudgment interest to the Commission and the \$100,000 penalty to the U.S. Treasury. A distribution fund was established for the disgorgement and prejudgment interest ("Distribution Fund"). The Distribution Fund is being held in an account at the U.S. Treasury's Bureau of Public Debt ("BPD"). The assets of the Distribution Fund are subject to the continuing jurisdiction and control of the Commission.

This Plan is subject to approval by the Commission, and the Commission retains jurisdiction over the implementation of the Plan.

2. *Fund Administrator.* Brendan P. McGlynn, an Assistant Regional Director in the Commission's Division of Enforcement, is proposed to act as the fund administrator for the Plan (the "Fund Administrator"). As a Commission employee, the Fund Administrator shall receive no compensation, other than his regular salary as a Commission employee, for his services in administering the Plan. In accordance with Rule 1105(c), no bond is required since the Fund Administrator is a Commission employee.

The Fund Administrator will, among other things: oversee the administration of the Plan, obtain accurate mailing information for Eligible Clients (as defined below), prepare accountings, cooperate with the tax administrator in providing the information necessary to accomplish income tax compliance, and, as described below, distribute money from the fund in accordance with this Plan. In carrying out his duties, the Fund Administrator may be assisted by other Commission staff acting under his supervision.

3. *Persons Eligible to Participate in the Distribution Fund.* The staff of the Commission previously identified approximately 120 Folger Nolan Capital Management referred client accounts which, between January 1, 2002 and April 1, 2004, were charged commissions on trades that exceeded what those referred clients would have paid had their trades been executed through a discount broker or through Folger Nolan's own commission schedule for non-referred

clients. The Fund Administrator shall distribute Plan funds to the identified client accounts (individually, each “Eligible Client,” and collectively, the “Eligible Clients”).

4. *No claims-made process.* This Distribution Fund is not being distributed according to a claims-made process, so the procedures for providing notice and for making and approving claims are not applicable.

5. *Qualified Settlement Fund.* The Distribution Fund constitutes a Qualified Settlement Fund (“QSF”) under Section 468B(g) of the Internal Revenue Code, 26 U.S.C. §468B(g), and related regulations, 26 C.F.R. §§1.468B-1 through 1.468B-5.

6. *Intentions of Distribution.* The intention of the Plan is to distribute the Distribution Fund to approximately 120 Folger Nolan client accounts, each of which is an Eligible Client, who paid excessive commissions to Folger Nolan from January 1, 2002 to April 1, 2004, as a result of the conduct described in the Order. The methods of calculation are intended to fairly and reasonably estimate the excess commissions incurred by each referred client plus a proportionate share of interest and make a payment in that amount.

7. *Methodology for Determining Distribution Amounts.* The Fund Administrator will determine the amount to be distributed to each Eligible Client in the following manner. First, the Fund Administrator will determine the ratio of each Eligible Client’s excess commissions to the total excess commissions paid by all Eligible Clients. Next, for each Eligible Client, the Fund Administrator will multiply this ratio by the total amount of disgorgement and prejudgment interest paid by Folger Nolan Capital Management, plus any accrued interest and less any taxes. This amount will represent each Eligible Client’s distribution amount. In the view of the Fund Administrator, this methodology constitutes a fair and reasonable allocation of the Distribution Fund. Based on this methodology, the anticipated distribution to each Eligible Client will average approximately \$2,055, and will range from approximately \$20 to approximately \$33,000.

8. *Financial Management Service; Validation and Approval of Disbursement of the Distribution Fund.* The Distribution Fund disbursement to investors will be implemented through the United States Department of the Treasury’s Financial Management Service (“FMS”), which will electronically transfer funds through the Automated Clearing House (“ACH”) or mail a check to each payee. Commission staff will provide the Fund Administrator with appropriate proprietary software for compiling the information necessary to be submitted to FMS. Approximately 30 days prior to the distribution date, the Fund Administrator will compile the information available into an electronic file in the Agency Input format and submit to the SEC Office of Financial Management to ensure the file passes all system edits. Any errors or omissions of data will be communicated back to the Fund Administrator promptly. The Fund Administrator will submit the final electronic file to the assigned Commission staff. The Fund Administrator will validate the payees and amounts in the file to the Commission staff. The validation will state that the electronic file was compiled in accordance with the Plan and provides all information necessary for FMS to make disbursement through the ACH or by check. Upon receipt of a properly validated file, the Commission staff will obtain authorization from the Commission to disburse pursuant to Rule 1101(b)(6). When the electronic file and validation are

approved and the order to disburse is issued, the Commission will transmit the electronic file to FMS for the transfer of funds pursuant to the following FMS procedures.

Within 24 to 48 hours of receipt by FMS, funds will be transferred by the ACH or checks will be mailed. FMS will notify the Fund Administrator of any returned items due to non-delivery, insufficient addresses, and/or other deficiencies. The Fund Administrator is responsible for researching and reconciling all errors that result in non-delivery and shall submit a supplemental electronic file for payment of the returned items.

The Fund Administrator also is responsible for accounting for all payments. In the event that any distribution is in the form of a paper check in lieu of an electronic transfer, each check will state on its face that it is valid for one year. After one year from the date on the distribution check, FMS shall notify the Fund Administrator of all uncashed checks. FMS will credit the SEC account for the Distribution Fund for the amount of all uncashed checks.

9. *Information mailing to accompany payments.* All payments shall be preceded or accompanied by a communication that includes, as appropriate: (a) a statement characterizing the distribution; (b) a description of the tax information reporting required of the QSF and related tax consequences; (c) a statement that checks will be void after one year; and (d) the name of a person to contact, to be used in the event of any questions regarding the distribution. Any such information letter or other communication about this distribution plan shall be submitted to the assigned Commission staff for review and approval. Distribution checks, on their face, or in the accompanying mailing, will clearly indicate that the money is being distributed from a Distribution Fund established by the SEC.

10. *Tax Administrator.* The Commission has appointed Damasco & Associates as the Tax Administrator (“Tax Administrator”) of the Distribution Fund. (Rel. No. 34-59976, May 27, 2009). The Fund Administrator and Folger Nolan Capital Management will 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. The Tax Administrator shall be compensated by Respondents.

11. *Tax Provisions.* The Fund Administrator will ensure that all required information shall be made available to the Tax Administrator. The Fund Administrator shall use the assets and earnings of the Distribution Fund to provide payments to Eligible Clients and to provide the Tax Administrator with assets to pay tax liabilities.

12. *Accountings.* Once all funds are disbursed through FMS of the U.S. Treasury, the Fund Administrator will submit a final accounting for approval by the Commission prior to termination of the Distribution Fund and discharge of the Fund Administrator.

13. *Expenses of Administration.* Folger Nolan Capital Management will pay all fees and costs associated with the administration of the Plan, except for tax liabilities, which shall be paid according to Rule 1105(e).

14. *Assistance by Respondents.* Folger Nolan Capital Management will assist the Fund Administrator by providing requested information necessary for the administration and implementation of the Plan.

15. *Notice of Proposed Plan and Opportunity for Comment.* Notice of this Plan shall be published in the SEC Docket and on the Commission website (www.sec.gov). Any person or entity wishing to comment on the Plan must do so in writing by submitting their comments within thirty (30) days of the date of the notice (i) by sending a letter to the Office of the Secretary, United States Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549-1090; (ii) by using the Commission's Internet comment form (www.sec.gov/litigation/admin.shtml); or (iii) by sending an e-mail to rule-comments@sec.gov. Comments submitted by e-mail or via the Commission's website should include the Administrative Proceeding File Number (Admin. Proc. File No. 3-12737) in the subject line. Comments received will be available to the public. Commenters should only submit information that they wish to make publicly available.

16. *Order Approving the Proposed Plan and Order of Disbursement.* At the end of the thirty (30) day notice period, the staff of the Commission will seek an order to approve the Plan. The staff will seek an order of disbursement of the Distribution Funds within thirty (30) days of plan approval.

17. *Amendments and Procedural Deadline Extensions.* The Fund Administrator will inform the Commission staff of any changes in the Plan. If a change is determined to be material, Commission approval is required prior to implementation by amending the Plan, which may be done upon the motion of any party, the Fund Administrator, or upon the Commission's own motion.

For good cause shown, the Commission staff may extend any of the procedural dates set forth in this Plan.

18. *Procedures for the Receipt of Additional Funds.* This Distribution Fund has been deposited at the Bureau of Public Debt for investment in government obligations. Other than interest from these investments, it is not anticipated that the Distribution Fund will receive additional funds.

19. *Disposition of Undistributed Funds.* A residual account within the Distribution Fund is established for any amounts remaining after all assets have been distributed. The residual account may include funds reserved for future taxes and related expenses, distributions from checks that have not been cashed, from checks that were not delivered or from funds returned to the Fund Administrator, tax refunds for overpayment or for waiver of penalties. All undistributed funds in the residual account will be transferred to the U.S. Treasury after the final accounting is approved by the Commission.

20. *Termination.* 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 and fees have been paid, and (3) all

remaining funds or any residual amounts have been transferred to the U.S. Treasury. Staff shall seek an order from the Commission to (1) approve the Final Accounting; (2) approve sending the remaining residual amounts to the United States Treasury after the final tax payment has been made; and (3) authorize the Secretary of the Commission, upon receipt of notice from the staff assigned to this matter, that all funds have been expended, to issue an order terminating the Distribution Fund and discharging the Fund Administrator.

21. *Distribution Timing.* The Fund Administrator will use his best efforts to start the distribution within thirty (30) days of plan approval and to complete the distribution within sixty (60) days of the distribution start date.