

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

**SECURITIES ACT OF 1933**  
**Release No. 8820 / July 6, 2007**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 2617 / July 6, 2007**

**INVESTMENT COMPANY ACT OF 1940**  
**Release No. 27883 / July 6, 2007**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-12678**

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**In the Matter of**

**Haidar Capital Management, LLC,  
Haidar Capital Advisors, LLC, and  
Said N. Haidar,**

**Respondents.**

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**: ORDER INSTITUTING PUBLIC  
: ADMINISTRATIVE AND CEASE-AND-  
: DESIST PROCEEDINGS, MAKING  
: FINDINGS, IMPOSING A CEASE-  
: AND-DESIST ORDER, AND  
: IMPOSING REMEDIAL SANCTIONS,  
: PURSUANT TO SECTION 8A OF THE  
: SECURITIES ACT OF 1933, SECTIONS  
: 203(e) AND (f) OF THE INVESTMENT  
: ADVISERS ACT OF 1940, AND  
: SECTIONS 9(b) AND (d) OF THE  
: INVESTMENT COMPANY ACT OF  
: 1940  
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The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”), Sections 203(e) and (f) of the Investment Advisers Act of 1940 (“Advisers Act”) and Sections 9(b) and (d) of the Investment Company Act of 1940 (“Investment Company Act”) against Haidar Capital Management, LLC, Haidar Capital Advisors, LLC (collectively, Haidar Advisors), and Said N. Haidar (“Haidar”).

**II.**

In anticipation of the institution of these proceedings, Haidar Advisors and Haidar have submitted an Offer of Settlement (the “Offer”), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a

party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, Haidar Advisors and Haidar consent to the entry of this Order Instituting Public Administrative and Cease-and-Desist Proceedings, Making Findings, Imposing a Cease-and-Desist Order, and Imposing Remedial Sanctions, Pursuant to Section 8A of the Securities Act of 1933, Sections 203(e) and (f) of the Investment Advisers Act of 1940, and Sections 9(b) and (d) of the Investment Company Act of 1940 ("Order"), as set forth below.

### III.

On the basis of this Order and Respondents' Offer, the Commission finds<sup>1</sup> that:

#### **Respondents**

1. Haidar Capital Management, LLC, is a single member limited liability company formed under the laws of the State of New York. Haidar Capital Management, LLC served as the investment adviser for four private funds and is not registered with the Commission.

2. Haidar Capital Advisors, LLC, is a single member limited liability company formed under the laws of the State of New York. Haidar Capital Advisors, LLC was the administrative or managing member of three private funds and is not registered with the Commission.

3. Said N. Haidar, age 45, is a resident of New York, New York. He is the managing member and sole shareholder of Haidar Capital Management and Haidar Capital Advisors.

#### **Facts**

4. From April 2001 to September 2003 (the "relevant period"), Haidar Advisors traded an average of approximately \$143 million in US mutual funds and annuities through a market timing strategy that Haidar Advisors' traders executed.<sup>2</sup> During the relevant period, Haidar Advisors and Haidar violated Section 17(a)(3) of the Securities Act by engaging in deceptive tactics, such as using multiple accounts, utilizing broker-dealers who used multiple registered representative numbers and purchasing variable annuities, to hide Haidar Advisors' identity from mutual funds, and otherwise

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<sup>1</sup> The findings herein are made pursuant to Respondents' Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

<sup>2</sup> Market timing includes: (i) frequent buying and selling of shares of the same mutual fund or (ii) buying or selling mutual fund shares in order to exploit inefficiencies in mutual fund pricing. Market timing, while not illegal *per se*, can harm other mutual fund shareholders because it can dilute the value of their shares, if the market timer is exploiting pricing inefficiencies, or disrupt the management of the mutual fund's investment portfolio and can cause the targeted mutual fund to incur costs borne by other shareholders to accommodate frequent buying and selling of shares by the market timer.

facilitate Haidar Advisors' market timing strategies.<sup>3</sup> During the relevant period, Haidar Advisors earned in excess of \$3.3 million in management and advisory fees from its market timing trading.

*Haidar Advisors Used Multiple Trading Entities and Accounts to Hide Their Identities*

5. During the relevant period, Haidar Advisors, at Haidar's direction, created eight new wholly owned subsidiaries for two parent hedge funds (collectively, the "Haidar Advisors Affiliates") to execute mutual fund trades. These wholly owned subsidiaries had unique tax identification numbers but included the same investors as the parent hedge fund and shared a bank account with the parent hedge fund. When a mutual fund family identified Haidar Advisors or the Haidar Advisors Affiliates as a market timer and blocked them from trading, Haidar Advisors continued timing the mutual fund family through another Haidar Advisors Affiliate or account, thereby concealing its identity from the mutual fund family. By September 2003, Haidar Advisors had opened in excess of 100 accounts at more than 20 broker-dealers. Through these efforts, Haidar Advisors avoided detection by the mutual funds and continue executing market timing trades in mutual funds that had imposed "block notices" to restrict their market timing activities.<sup>4</sup>

6. Haidar Advisors' Confidential Offering Memoranda for its various hedge funds confirm that Haidar Advisors used multiple accounts and entities and annuity contracts to execute trades in mutual funds that had previously imposed restrictions on Haidar Advisors due to market timing. In pertinent part, the Offering Memoranda, in a section entitled "Limitations on Switching Strategies," states:

The future success of [Haidar Advisors'] trading strategy depends on several different factors. Primary among these factors is the continued availability of the free and unlimited switching option within a family of funds. [Haidar Advisors] may utilize special purpose vehicles . . . and purchase annuity contracts to maintain or increase such availability. Fund families have been slowly restricting the availability of the exchange privilege, and this trend is expected to continue. In addition, there is no assurance that [Haidar Advisors] will be able to continue to utilize special

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<sup>3</sup> On November 30, 2001, Haidar's outside counsel provided him with a research memorandum relating to his mutual fund market timing strategy. Specifically, the memorandum addressed Haidar Advisors' use of multiple shareholder accounts under the same shareholder name and accounts for the benefit of one person but traded under separate d/b/a accounts or traded using subsidiaries. In pertinent part, Haidar Advisors' counsel concludes that its "research has not uncovered a fact pattern whereby (i) the SEC has sought to impose a penalty against an adviser or (ii) a mutual fund has sued a shareholder, in each case for market-timing activities where a person that has been precluded from trading mutual fund shares because of market-timing then sets up an account under a new name but with the same beneficial owners."

<sup>4</sup> Block notices restricted market timing trading by, among other things, prohibiting future trades in specific accounts, by particular registered representatives or by broker-dealer and typically included a statement concerning the mutual fund's aversion to market timing.

purpose vehicles or annuity contracts . . . to trade mutual fund shares.

7. Haidar managed the overall operations of Haidar Advisors, including the creation of the Haidar Advisors Affiliates and the opening of brokerage accounts and the transfer of funds among the Haidar Advisors-affiliated entities. Haidar personally signed all of the applications for new tax identification numbers, all account opening documents and all wire transfer letters authorizing Haidar Advisors' broker-dealers to move Haidar Advisors' money to accounts that had not yet been blocked by the mutual funds.

*Use of Multiple Registered Representative Numbers to Circumvent Block Notices*

8. Many mutual funds also identified market timers by tracking the number broker-dealers assigned to their registered representatives (*i.e.*, registered representative numbers). In an effort to hide their identities and circumvent block notices imposed by the mutual funds, some registered representatives at broker-dealers used by Haidar Advisors, at Haidar Advisors direction, used multiple registered representative numbers to execute Haidar Advisors' market timing trades. In setting up Haidar Advisors' accounts at various broker-dealers, Haidar Advisors' traders discussed the use of alternative registered representative numbers to evade block notices and considered the broker-dealers' ability to execute trades using multiple registered representative numbers in evaluating prospective broker-dealer relationships.

*Haidar Advisors Traded In Amounts That Were More Likely To Avoid Mutual Fund Scrutiny*

9. Haidar Advisors employed structured trading strategies to further disguise its timing activities from blocking mutual funds. Specifically, Haidar Advisors divided large trades, using the Haidar Advisors Affiliates, into several smaller trades in an effort to "fly under the radar" of mutual funds that detected timers by monitoring trades with high dollar values. Haidar Advisors monitored the dollar amount that attracted attention from the mutual fund compliance personnel and traded in dollar amounts under that threshold in order to avoid mutual fund scrutiny. In each instance, no legitimate purpose required Haidar Advisors to structure the trades in that manner because the accounts and Haidar Advisors Affiliates included the same investors and employed the same trading strategy.

*Haidar Advisors Used Variable Annuities to Disguise Their Identities*

10. Haidar Advisors conducted market timing using variable annuity contracts.<sup>5</sup> Variable annuities were an attractive vehicle for Haidar Advisors to use to

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<sup>5</sup> Variable annuities are insurance contracts which typically invest the cash premiums in mutual fund shares and which typically offer access to multiple mutual funds. Variable annuities are securities and insurance companies offer their variable annuity products through prospectuses filed with the Commission, which may describe the insurance companies' policies on market timing. As with market timing of mutual funds, market timing through variable annuities can result in increased expense to, and cause dilution in, the underlying mutual fund portfolios. Additionally, market timing through variable annuities may harm not

gain market timing capacity because issuers of variable annuities aggregate trades in their contracted fund complexes and transmit the trades on a net basis. Thus, trading through variable annuity contracts can hide the identity of timers, facilitating their timing.<sup>6</sup>

11. In addition to using variable annuities to conceal its identity from the mutual funds, Haidar Advisors also engaged in deceptive conduct to facilitate its variable annuity trading. Specifically, when variable annuity contracts were restricted for excessive trading, Haidar Advisors would surrender the contract and continue market timing in the same variable annuities' mutual fund sub-accounts, using a different variable annuity contract purchased in the name of a different Haidar Advisors Affiliate or using a different account number.<sup>7</sup>

### **Violations of the Federal Securities Laws**

12. As a result of the conduct described above, Haidar Advisors and Haidar willfully committed violations of Section 17(a)(3) of the Securities Act, which prohibits engaging in any transaction, practice or course of business, in the offer or sale of securities, directly or indirectly, which would operate as a fraud or deceit upon the purchaser.<sup>8</sup>

### **Cooperation by Haidar Advisors and Haidar**

13. In determining to accept the Offer, the Commission considered cooperation afforded the Commission staff by the Respondents.

### **Undertakings**

Respondents have undertaken to:

14. Haidar Advisors shall, within 120 days of the date of this Order, retain an independent compliance consultant ("Independent Compliance Consultant"), not unacceptable to the staff of the Commission, to conduct a review of Haidar Advisors' policies and procedures reasonably designed to detect and prevent violations of the federal securities laws related to trading of open-end investment companies that are registered under the Investment Company Act of 1940 ("Mutual Funds"); (ii) recommend any additional policies and procedures which, on the basis of its review, the consultant

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only investors holding the same variable annuity, but also other investors in the underlying mutual funds being timed, such as investors in variable annuities issued by other insurance companies.

<sup>6</sup> Haidar Advisors also favored annuity trading because: (i) the annuity structure enabled Haidar Advisors to switch between fund families in a single day, and (ii) Haidar Advisors believed that the annuity fund families were contractually obligated to accept the trades.

<sup>7</sup> Haidar Advisors purchased multiple annuity contracts, naming its own employees as annuitants, but Haidar Advisors funded the contracts, and all profits from the trading were for Haidar Advisors' benefit.

<sup>8</sup> "Willfully" as used in this Order means intentionally committing the act which constitutes the violation. Cf. *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000); *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965).

believes are reasonably designed to ensure that Haidar Advisors complies with federal securities laws, relating to the trading of those Mutual Funds; and (iii) submit to the Commission staff, within 30 days of the completion of the review, a report outlining the results of the Independent Compliance Consultant's review, and what recommendations, if any, the Independent Compliance Consultant made. In conjunction with the Independent Compliance Consultant's review:

(a) Haidar Advisors shall adopt the recommendations of the Independent Compliance Consultant; provided, however, that within 60 days of the completion of the review, Haidar Advisors shall in writing advise the Independent Compliance Consultant and the staff of the Commission of any recommendations that it considers to be unnecessary or inappropriate. With respect to any recommendations that it considers to be unnecessary or inappropriate, Haidar Advisors need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedure or system designed to achieve the same objective or purpose. As to any recommendation on which Haidar Advisors and the Independent Compliance Consultant do not agree, such parties shall attempt in good faith to reach an agreement within 90 days of the completion of the review. In the event that Haidar Advisors and the Independent Compliance Consultant are unable to agree on an alternative proposal acceptable to the staff of the Commission, Haidar Advisors will abide by the determinations of the Independent Compliance Consultant.

(b) Haidar Advisors shall, after 18 months from the date of this Order, require the Independent Compliance Consultant (i) to conduct an additional review to determine whether Haidar Advisors adopted the above recommendations and whether Haidar Advisors' policies and procedures are reasonably effective in maintaining Haidar Advisors' compliance with federal and state securities laws, and (ii) submit to the Commission's staff, within 30 days of the review, a report outlining the results of the review.

(c) The Independent Compliance Consultant's compensation and expenses shall be borne by Haidar Advisors. The Respondents shall cooperate fully with the Independent Compliance Consultant with access to their files, books, records, and personnel as reasonably requested for the reviews.

(d) Haidar Advisors shall require that the Independent Compliance Consultant, for the period of the engagement and for a period of two years from completion of the engagement, not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Haidar Advisors, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. Haidar Advisors shall require that any firm with which the Independent Compliance Consultant is affiliated in performance of his or her duties

under the Order not, without prior written consent of the staff of the Commission, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Haidar Advisors, or any of Haidar Advisors' present or former affiliates, directors, officers, employees, or agents acting in the capacity as such for the period of the engagement and for a period of two years after the engagement.

15. Respondents shall retain, within 30 days of the entry of the Order, the services of an independent distribution consultant ("Independent Distribution Consultant") not unacceptable to the staff of the Commission. Respondents shall pay up to \$50,000 of the compensation and expenses of the Independent Distribution Consultant. Such compensation and expenses shall include, without limitation, (i) the compensation of a tax administrator for the preparation of tax returns and/or for seeking any IRS rulings; (ii) the payment of taxes; and (iii) the payment of any distribution or consulting services as may be reasonably required by the Independent Distribution Consultant. Thereafter, the Independent Distribution Consultant's compensation or expenses shall be deducted from any amounts of disgorgement or penalty paid by the Respondents pursuant to this Order and any investment returns or interest earned thereon. The Respondents shall cooperate fully with the Independent Distribution Consultant, including providing access to their files, books, records, and personnel as reasonably requested for the review. Respondents shall require the Independent Distribution Consultant to develop a Distribution Plan for the distribution of the total disgorgement and penalty ordered in Paragraph IV.D. of this Order, and any interest or earnings thereon, according to a methodology developed in consultation with Respondents and acceptable to the staff of the Commission.

(a) Respondents shall require the Independent Distribution Consultant to submit to Respondents and the staff of the Commission the Distribution Plan no more than 150 days after the entry of the Order.

(b) The Distribution Plan developed by the Independent Distribution Consultant shall be binding unless, within 210 days after the date of the entry of the Order, Respondents or the staff of the Commission, advises, in writing, the Independent Distribution Consultant of any determination or calculation from the Distribution Plan that it considers to be inappropriate and states in writing the reasons for considering such determination or calculation inappropriate.

(c) With respect to any calculation with which Respondents or the staff of the Commission do not agree, such parties shall attempt in good faith to reach an agreement within 240 days of the date of the entry of the Order. In the event that Respondents and the staff of the Commission are unable to agree on an alternative determination or calculation, the determinations of the Independent Distribution Consultant shall be binding.

(d) Within 175 days of the date of entry of this Order, Respondents shall require that the Independent Distribution Consultant submit the Distribution Plan for the administration and distribution of disgorgement and penalty funds pursuant to Rule 1101 [17 C.F. R. § 201.1101] of the Commission's Rules of Practice. Following a Commission order approving a final plan of distribution, as provided in Rule 1104 [17 C.F.R. § 201.1104] of the Commission's Rules of Practice, Respondents shall require that the Independent Distribution Consultant, with Respondents, take all necessary and appropriate steps to administer the final plan for distribution of disgorgement and penalty funds.

(e) Respondents shall require that the Independent Distribution Consultant, for the period of the engagement and for a period of two years from completion of the engagement, not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondents, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. Respondents shall require that any firm with which the Independent Distribution Consultant is affiliated in performance of his or her duties under the Order not, without prior written consent of the staff of the Commission, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondents, or any of Respondents' present or former affiliates, directors, officers, employees, or agents acting in the capacity as such for the period of the engagement and for a period of two years after the engagement.

16. Respondents undertake to cooperate fully with the Commission in any and all investigations, litigations or other proceedings relating to or arising from the matters described in this Order. In connection with such cooperation, Respondents have undertaken:

- (a) To produce, without service of a notice or subpoena, any and all documents and other information reasonably requested by the Commission's staff;
- (b) To use their best efforts to cause their employees to be interviewed by the Commission's staff at such times as the staff reasonably may direct;
- (c) To use their best efforts to cause their employees to appear and testify truthfully and completely without service of a notice or subpoena in such investigations, depositions, hearings or trials as may be requested by the Commission's staff;
- (d) That in connection with any testimony of Haidar Advisors to be conducted at deposition, hearing or trial pursuant to a notice or subpoena, Haidar Advisors and Haidar: (i) agrees that any such notice or subpoena for Haidar Advisors employees and officers appearance and testimony



may be served by regular mail on its counsel, Ropes & Gray, LLP, attn: Richard Marshall, 1211 Avenue of the Americas, New York, NY 10036-8704; and (ii) agrees that any such notice or subpoena for Haidar Advisor appearance and testimony in an action pending in a United States District Court may be served, and may require testimony, beyond the territorial limits imposed by the Federal Rules of Civil Procedure; and

(e) To make best efforts to produce to the Independent Distribution Consultant documents sufficient to identify all Mutual Funds (as defined in paragraph 14 above) in which Haidar Advisors executed trades in its private funds during the relevant period.

17. For good cause shown, the Commission's staff may extend any of the procedural dates set forth above.

#### IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions specified in Respondents' Offer.

Accordingly, it is hereby ORDERED that:

- A. Respondents Haidar Capital Management and Haidar Capital Advisors are hereby censured;
- B. Respondents shall cease and desist from committing or causing any violations and any future violations of Section 17(a)(3) of the Securities Act;
- C. Respondents shall comply with the undertakings specified in Paragraphs 14 and 15 above; and
- D. Respondents shall pay disgorgement, prejudgment interest and civil money penalties as follows:
  1. Within 30 days of the entry of this Order, Respondents, jointly and severally, shall pay disgorgement of \$3,300,000, prejudgment interest of \$1,180,000 and a civil penalty in the amount of \$100,000.
    - a. Such payments shall be: (i) made by United States postal money order, certified check, bank cashier's check or bank money order; (ii) made payable to the Securities and Exchange Commission; (iii) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (iv) submitted under cover letter that identifies Respondents, the file number of these

proceedings, a copy of which cover letter and money order or check shall be sent to Katherine Addleman, Associate Regional Administrator, Securities and Exchange Commission, Burnett Plaze, Suite 1900, 801 Cherry Street, Unit 18, Fort Worth, Texas 76107.

- b. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, a Fair Fund shall be established for the funds described in Section IV.D.1 above. Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondents agree that they shall not, after offset or reduction in any Related Investor Action based on Respondent's payment of disgorgement in this action, further benefit by offset or reduction of any part of Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondents by or on behalf of one or more investors based on substantially the same facts that are the subject of the Commission's Findings in the Order.

By the Commission.

Nancy M. Morris  
Secretary