

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-14854

In the Matter of

GMB Capital Management LLC (currently known as “Clearstream Investments LLC”), GMB Capital Partners LLC, Gabriel Bitran and Marco Bitran,

Respondents.

PROPOSED PLAN OF DISTRIBUTION

I. OVERVIEW

1. The Division of Enforcement (“Division”) proposes the following plan of distribution (“Distribution Plan”) to the United States Securities and Exchange Commission (“Commission”) pursuant to Rule 1101 of the Commission’s Rules on Fair Fund and Disgorgement Plans (“Rules”), 17 C.F.R. § 201.1101. If approved, pursuant to Rule 1102(a) of the Rules, 17 C.F.R. § 201.1102(a),¹ the Distribution Plan would transfer the disgorgement and penalties paid by GMB Capital Management LLC (currently known as “Clearstream Investments LLC”) (“GMB Management”), GMB Capital Partners LLC (“GMB Partners”), Gabriel Bitran, and Marco Bitran (collectively, the “Respondents”) to the court registry account established in the related criminal action, *United States v. Bitran*, No. 14-cr-10234-MLW (D. Mass. 2014) (the “Criminal Action”), for distribution to harmed investors in accordance with the restitution

¹ Rule 1102(a) provides that “a plan for the administration of a Fair Fund . . . may provide for payment of funds into a court registry . . . in any case pending in federal or state court against a respondent or any other person based upon a complaint alleging violations arising from the same or substantially similar facts as those alleged in the Commission’s order instituting proceedings.”

process in the Criminal Action. As explained below, the Division has concluded that distributing the funds collected in the Commission's administrative proceeding through the Criminal Action's restitution process is fair and reasonable, employing a more efficient use of resources to benefit investors harmed as a result of the Respondents' misconduct than would two separate distribution processes.²

2. The notice and comment procedures for the Distribution Plan are set forth below. The Distribution Plan is subject to approval by the Commission.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Settlement of the Commission's Administrative Proceeding

3. On April 20, 2012, the Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Section 21C of the Securities Exchange Act of 1934, Section 9(b) of the Investment Company Act of 1940, and Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and Cease-and-Desist Order ("Order")³ against the Respondents.

4. The Order stated that in 2005, Gabriel Bitran founded GMB Management for the stated purpose of managing hedge funds using quantitative models he developed, based on his academic optimal pricing research, to trade primarily in exchange traded funds ("ETFs"). According to the Order, Gabriel Bitran and Marco Bitran solicited potential investors with three primary selling points: (i) very successful performance track records purportedly based on actual trades using real money from 1998 to the inception of the hedge funds; (ii) the firm's use of

² Consistent with the approach used by district courts when considering whether to approve a distribution plan, the Commission's objective is to distribute Fair Funds in a fair and reasonable manner, taking into account relevant facts and circumstances. *See Official Committee of Unsecured Creditors of WorldCom, Inc. v. SEC*, 467 F.3d 73, 82 (2d Cir. 2006), citing *SEC v. Wang*, 944 F.2d 80, 88 (2d Cir. 1991).

³ Securities Act Rel. No. 9315 (Apr. 20, 2012).

Gabriel Bitran's proprietary optimal pricing model to trade ETFs; and (iii) Gabriel Bitran's pedigree and his involvement as the founder and portfolio manager of the hedge funds. Over a period of three years, in connection with raising over \$500 million for eight hedge funds and various managed accounts, Respondents made misrepresentations to investors about each of these points, and at times all three. As a result of this misconduct, the Order found the Respondents willfully violated Section 17(a)(2) of the Securities Act of 1933 ("Securities Act"), Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder, and 206(4) of the Investment Advisers Act of 1940 ("Advisers Act") and Rule 206(4)-8 thereunder; GMB Management, Gabriel Bitran and Marco Bitran willfully violated Sections 206(1) and 206(2) of the Advisers Act; GMB Management willfully violated Section 204(a) of the Advisers Act and Rule 204-2(a)(16) thereunder; and, Gabriel Bitran and Marco Bitran willfully aided and abetted and caused GMB Management's and/or GMB Partners' violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 204(a), 206(1), 206(2) and 206(4) of the Advisers Act and Rules 204-2(a)(16) and 206(4)-8 thereunder.

5. Without admitting or denying the findings of the Order, the Respondents made offers of settlement and consented to the entry of the Order. The Order required Respondents to pay a total of \$4,800,000 in disgorgement and civil money penalties to the Commission and created a Fair Fund pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended. Pursuant to the Order, the Respondents paid the sums as ordered by the Commission. The funds are currently on deposit with the United States Department of the Treasury (the "Fair Fund").

6. The Commission appointed Damasco & Associates LLP, a certified public accounting firm, as Tax Administrator for the Fair Fund on January 30, 2013, to administer tax-

related obligations that the Fair Fund may incur as a Qualified Settlement Fund under the Department of the Treasury Regulation § 1.468B-1(c).⁴

B. The Criminal Action

7. In accordance with Rule 1102(a) of the Rules, 17 C.F.R. § 201.1102(a), the Commission concludes that the allegations in the Criminal Action arise from the same or substantially similar facts as those alleged in the Commission's Order. On August 12, 2014, in *United States v. Bitran*, No. 14-cr-10243-MLW (D. Mass. 2014), Gabriel Bitran and Marco Bitran were charged with one count of conspiracy (18 U.S.C. § 371) for conspiring to commit securities fraud (15 U.S.C. § 78j(b) and 78ff), wire fraud (18 U.S.C. § 1343), and falsification of records (18 U.S.C. § 1519). The charges are based on substantially similar facts as the Commission's Order's findings and spans the identical time period. Therefore, the Division concludes that distributing funds paid in the Commission's administrative proceeding through the Criminal Action's restitution process is fair and reasonable, because it employs a more efficient use of resources to benefit investors harmed as a result of the Respondents' misconduct, than would two separate distribution processes.

III. JOINT DISTRIBUTION OF THE FAIR FUND AND CRIMINAL RESTITUTION FUND

8. Once the Commission approves this Distribution Plan, the Commission staff will take necessary steps to transfer the Fair Fund, plus any accrued interest, less any outstanding taxes and fees, to the court registry account established in the Criminal Action.

IV. NOTICE AND COMMENT PERIOD

9. The Notice of Proposed Plan of Distribution and Opportunity for Comment ("Notice") will be published in the SEC Docket and on the Commission's website at

⁴ See Order Appointing Tax Administrator, Exchange Act Rel. No. 68774 (Jan. 30, 2013).

<http://www.sec.gov/litigation/fairfundlist.htm>. Any person wishing to comment on the Distribution Plan must do so in writing by submitting their comments to the Commission within thirty (30) days of the date of the Notice: (i) to the Office of the Secretary, United States Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090; (ii) by using the Commission's Internet comment form (<http://www.sec.gov/litigation/admin.shtml>); or (iii) by sending an email to rule-comments@sec.gov. Comments submitted by email or via the Commission's website should include "Administrative Proceeding File Number 3-14854" in the subject line. Comments received will be publicly available. Persons should only submit comments that they wish to make publicly available.