

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDINGS
File No. 3-13532

In the Matter of

**Prime Capital Services, Inc.,
Gilman Ciocia, Inc.,
Michael P. Ryan,
Christie A. Andersen,
Eric J. Brown,
Matthew J. Collins,
Kevin J. Walsh, and
Mark W. Wells,**

Respondents.

**PROPOSED PLAN
OF DISTRIBUTION**

I. BACKGROUND

A. Summary

1. On March 16, 2010, the Securities and Exchange Commission (the “Commission”) issued an Order Making Findings and Imposing Remedial Sanctions Pursuant to Section 8A of the Securities Act of 1933 and Sections 15(b) and 21C of the Securities Exchange Act of 1934 as to Prime Capital Services, Inc. and Gilman Ciocia, Inc. (Rel. No. 33-9113) (the “Order”). Simultaneously with the entry of the Order, the Commission accepted settlement offers from Respondents Prime Capital Services, Inc. (“PCS”) and Gilman Ciocia, Inc. (“G&C”) in which they consented to the entry of the Order without admitting or denying the Order’s findings.

2. PCS was ordered to pay a total of \$144,262.58 in disgorgement and prejudgment interest to the Commission, and G&C was ordered to pay a total of \$450,001.00 in disgorgement

and civil penalties to the Commission. The Commission established a Fair Fund pursuant to Section 308 of the Sarbanes-Oxley Act of 2002 for these payments (the “Fund”). The funds received by the Commission have been deposited at the U.S. Treasury. Payments from other respondents in this administrative proceeding may be added to the Fund if so ordered by the Commission. Other than these items and interest earned on the invested funds, it is not anticipated that the Fund will receive additional funds.

3. This submission serves as the proposed Plan of Distribution (“Distribution Plan” or the “Plan”) for the Fund. This Fund was established to provide for the ultimate distribution of disgorgement and civil money penalties to PCS customers injured by the unsuitable and/or fraudulent sales of variable annuities described in the Order, and for an additional PCS customer also injured by the unsuitable and/or fraudulent sales of variable annuities who provided substantial assistance to the Division of Enforcement in connection with this administrative proceeding. The Distribution Plan is subject to approval by the Commission.

B. Nature of the Conduct and Commission Proceedings

4. The Order finds, among other things, that PCS, a broker-dealer registered with the Commission and a member of the Financial Industry Regulatory Authority, is a wholly-owned subsidiary of G&C. A significant percentage of the revenue generated by PCS from 1999 through February 2007 came from sales of variable annuities. PCS and G&C consolidate their financial statements and are under common control.

5. The Order further finds that from approximately November 1999 through February 2007 (the “relevant period”), four representatives associated with PCS who were employed by G&C (the “registered representatives”) offered and sold variable annuities to senior citizen customers in Delray Beach, Boynton Beach, Melbourne and Boca Raton, Florida, and

that during some or all of the relevant period, the registered representatives induced customers into purchasing variable annuities by means of material misrepresentations and omissions. Many of the variable annuities sold by the registered representatives were unsuitable investments based on the customers' ages, incomes, liquid assets and investment objectives. For example, because of their advanced age, some customers who wanted full access to their money were unlikely to outlive the period during which they would pay surrender fees on their variable annuities, and other customers were induced to invest more than seventy-five percent of their liquid assets in variable annuities with limitations and/or fees on withdrawals. In addition, variable annuities limited access to the invested principal in a way that was expressly contrary to some customers' objectives for their money.

6. As a result of this conduct, the Commission found that PCS had willfully violated Section 17(a) 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; Section 15(c) of the Exchange Act; Section 17(a) of the Exchange Act and Rule 17a-3 thereunder; and failed reasonably to supervise its registered representatives pursuant to Section 15(b)(4)(E) of the Exchange Act. The Commission further found that G&C willfully aided, abetted, and caused PCS's violations of Section 17(a) of the Securities Act; Section 10(b) of the Exchange Act and Rule 10b-5 thereunder; and Section 15(c) of the Exchange Act. The Order provided that PCS pay disgorgement of \$97,389.05 and prejudgment interest of \$46,873.53, for a total payment of \$144,262.58, and that G&C pay \$1 in disgorgement and civil penalties of \$450,000.

II. DEFINED TERMS

7. *Plan Administrator.* Robert J. Keyes, Associate Regional Director and Chief of Regional Office Operations of the New York Regional Office 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 Fund. In accordance with Rule 1105(c), no bond is required since the Fund Administrator is a Commission employee.

8. *Tax Administrator.* The Commission has appointed Damasco & Associates as the Tax Administrator (“Tax Administrator”) of the Fund. (Rel. No. 34-62264, June 10, 2010.) The Fund Administrator will ensure that all required information shall be made available to the Tax Administrator and 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 the Fund.

9. *Eligible Investor.* Those investors who paid fees and charges associated with their variable annuity investments – including but not limited to administrative fees, mortality and expense risk costs, and surrender penalties – who are described in the Order and/or who testified about their variable annuity investment experience at the administrative hearing (individually, each “Eligible Investor,” and collectively, the “Eligible Investors”).

III. DISTRIBUTION PROCESS

10. *No Claims-Made Process.* This 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.

11. *Methodology for Determining Distribution Amounts.* The Fund Administrator will determine the amount to be distributed to each Eligible Investor in the following manner. First, the Fund Administrator will determine the total amount each Eligible Investor paid in

administrative, surrender and other charges associated with any variable annuity the investor bought from the registered representatives (“Total Charges”). Second, the Fund Administrator will deduct from each Eligible Investor’s Total Charges any amount received by the investor as a result of regulatory orders, settlements, mediations and/or arbitrations (“Net Charges”). Third, the Fund Administrator will determine any other costs necessarily and actually paid by each Eligible Investor as a result of their pursuing their complaint about their variable annuity investments made with registered representatives, such as filing fees and attorney’s fees (“Consequential Costs”). Market losses or gains in Eligible Investors’ variable annuity investments will not be considered in the Fund Administrator’s calculation of Total Charges, Net Charges or Consequential Costs.

12. *Procedures for Locating and Notifying Eligible Investors.*

(a) On the basis of information obtained by the staff of the Commission, the Fund Administrator will identify the Eligible Investors. Within thirty (30) days of the approval of this Plan, the Fund Administrator will send each Eligible Investor a notice by United States Postal Service regarding the Commission’s approval of the Plan, a statement characterizing the distribution, a description of the tax information reporting and other related tax matters, and the procedure for distribution. The Fund Administrator will request information from each Eligible Investor sufficient to accomplish the distribution in accordance with applicable tax requirements and in consultation with the Tax Administrator.

(b) If an Eligible Investor fails to respond within thirty (30) days from the mailing of the notice, the Fund Administrator shall then make no fewer than two (2) attempts to contact the Eligible Investor telephonically. The second attempt shall in no event take place more than forty-five (45) days from the mailing of the notice.

(c) If an Eligible Investor fails to respond to the Fund Administrator's contact attempts as described in this paragraph, its allocated distribution amount shall be considered an undistributed asset and placed in a residual account within the Fund.

13. *Procedure for Distribution of the Fund.* The Fund Administrator shall distribute the Plan funds in the following manner and in accordance with the scheduled deposits into the Fund:

- a. Within 60 days from the approval of the Plan, the Fund Administrator will seek authorization from the Commission for payment of 90 % of the amount deposited to that date in the Fund to the Eligible Investors pro rata as to the amount of their Net Charges.
- b. Within 90 days of the receipt of the final deposit, after deduction of any amounts required to pay taxes or the costs of the Tax Administrator, the Fund Administrator will seek authorization from the Commission for the balance remaining to be paid in the following order of priorities:
 - i. to the Eligible Investors pro rata as to the amount of their Net Charges;
 - ii. if the Net Charges are paid in full, to the Eligible Investors pro rata as to the amount of their Consequential Costs; and
 - iii. if the Net Charges and Consequential Costs are paid in full, the balance to the United States Treasury.

14. *Financial Management Service; Validation and Approval of Disbursing the Distribution Funds.*

(a) The Fund distribution to Eligible Investors will be implemented by the Commission and disbursed through the Financial Management Service, United States Treasury (“FMS”), which will mail checks or electronically transfer funds through the Automated Clearing House (“ACH”) to each payee as instructed by the Fund Administrator. The Fund Administrator will compile the payee information and amounts due to each payee, in accordance with the Plan, into an electronic file for submission to FMS to make the disbursement. Pursuant to Rule 1101(b)(6), the staff will obtain authorization from the Commission to disburse funds.

(b) FMS will notify the Commission, which in turn, 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.

(c) The Fund Administrator also is responsible for accounting for all payments. Each check cut by FMS will state on the face of the check that it is valid for one year. After one year from the date on the distribution check, FMS shall notify the Commission, which in turn, will notify the Fund Administrator, of all uncashed checks and will credit the Distribution Fund for the amount of all uncashed checks.

IV. ADMINISTRATIVE PROVISIONS

15. *Qualified Settlement Fund.* The 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.

16. *Control of Distribution Fund.* The Commission has control of the Fund and shall retain control of the assets of the Fund until distribution to the Eligible Investors. The Fund is

currently deposited at the United States Treasury Bureau of Public Debt. The Fund will be distributed by the Financial Management Service, United States Treasury. The Fund Administrator shall use the assets and earnings of the Fund to provide payments to Eligible Investors and to provide the Tax Administrator with assets to pay tax liabilities and tax compliance fees and costs.

17. *Expenses of Administration.* Fees and other expenses of administering the Plan shall be paid first from the interest earned on the funds, and, if the interest is not sufficient, then from the corpus.

18. *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 and other related tax matters; (c) a statement that checks will be void after one year; and (d) the names of the Fund Administrator and appropriate Commission staff to contact, to be used in the event of any questions regarding the distribution. Distribution checks, on their face or in the accompanying mailing, will clearly indicate that the money is being distributed from a Fund established by the Commission.

19. *Accountings.* The Fund Administrator will submit a final accounting, on a standardized accounting form provided by the staff, for approval by the Commission prior to termination of the Fund and discharge of the Fund Administrator. Since the funds are being held at the United States Treasury and a Tax Administrator has been appointed, no interim accountings will be conducted.

20. *Amendment.* The Fund Administrator will obtain approval from the Commission prior to the implementation of any material changes in the Plan. If material changes are required, the Plan may be amended pursuant to Rule 1105(g).

21. *Termination of the Fund and Undistributed Amounts.* Upon distribution of the funds, and after allowing for the appropriate time for any distributions in the form of a paper check, the Fund Administrator shall make arrangements for the final payment of taxes and Tax Administrator fees and shall make a final accounting to the Commission. 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, fees, and expenses have been paid, and (3) all remaining funds or any residual funds have been received by the Commission. The Fund Administrator shall seek an order from the Commission to (1) approve the final accounting; (2) approve sending all remaining residual funds and any residual amount to the United States Treasury; and (3) terminate the Fund and discharge the Fund Administrator.

22. *Notice of Proposed Plan and Opportunity for Comment.* Notice of this Plan shall be published in the SEC Docket, on the Commission's website [<http://www.sec.gov>], and on the Respondents' websites [<http://primefs.com>] and [<http://www.gilcio.com>]. Any person or entity wishing to comment on the Plan must do so in writing by submitting their comments within thirty 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. 3-13532) in the subject line. Comments received will be available to the public. Commenters should only submit information

that they wish to make publicly available. In addition, the Fund Administrator has mailed a copy of the Plan to the last known address of each Eligible Investor.