

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 65017 / August 3, 2011

Administrative Proceeding
File No. 3-11524

	:	ORDER DISBURSING FUNDS,
	:	TERMINATING FAIR
In the Matter of	:	FUND, DISCHARGING
	:	PLAN ADMINISTRATOR, AND
PILGRIM BAXTER &	:	TRANSFERRING REMAINING
ASSOCIATES, LTD.,	:	FUNDS TO THE U.S.
	:	TREASURY
Respondent.	:	

On June 21, 2004, in the above-captioned matter, the Securities and Exchange Commission (“Commission”) issued an Order instituting and simultaneously settling public administrative and cease-and-desist proceedings against Pilgrim Baxter & Associates, Ltd. (the “PBA Order”). In the PBA Order, the Commission authorized and established a Fair Fund of \$90 million in disgorgement and penalties paid by Pilgrim Baxter & Associates, Ltd. (“PBA”). According to the PBA Order, the Fair Fund was to be distributed to investors injured by market timing in the PBHG Funds pursuant to a distribution plan to be developed by an Independent Distribution Consultant (the “IDC”). In September 2004, PBA engaged Kenneth Lehn, Ph.D., as the IDC.

In two related matters: *Gary L. Pilgrim*, Admin. Proc. File No. 3-11739 (Nov. 17, 2004) and *Harold J. Baxter*, Admin. Proc. File No. 3-11740 (Nov. 17, 2004), the Commission issued two orders simultaneously instituting and settling administrative and cease-and-desist proceedings against the former principals of PBA, Gary L. Pilgrim (“Pilgrim”) and Harold J. Baxter (“Baxter”). Among other things, the Commission authorized and established in each of these Orders a Fair Fund comprised of \$80 million in disgorgement and penalties paid by Pilgrim and Baxter for distribution in accordance with the distribution plan developed by the IDC, Dr. Lehn.

On June 30, 2006, the Commission published a proposed Plan of Distribution in connection with the Fair Fund, which was comprised of \$250 million plus accumulated interest (the “PBA Fair Fund”), and issued a Notice of Proposed Distribution Plan and Opportunity for Comment (Exchange Act Release No. 54073) pursuant to Rule 1103 of the Commission’s Rules on Fair Fund and Disgorgement Plans, 17 C.F.R. § 201.1103. The Commission received comments and, on November 22, 2006, the Commission approved the proposed Plan of Distribution as modified (the “Plan”) and appointed Boston Financial Data Services as Administrator to the Plan (“Plan Administrator”). (Exchange Act Release No. 54812).

The Plan provided for distribution to all eligible investors of their proportionate share of the disgorgement and civil penalties paid by PBA, Pilgrim, and Baxter to compensate such investors for injury they may have suffered as a result of market timing in PBHG Funds for the period spanning June 1998 through December 2001. Under the Plan, eligible investors in the PBHG Funds were to receive a *pro rata* share of the PBA Fair Fund, calculated by Dr. Lehn as a percentage of the value of the PBHG fund held by an accountholder on a given day multiplied by the fund’s daily settlement proceeds. The Plan further provided that any monies not distributed directly to investors (the “Residual”) was to be distributed to the PBHG Funds based on the proportion of aggregate excess profits by market timers accounted for by each PBHG Fund.

Pursuant to the Plan, a total amount of \$267,001,327.14 was disbursed directly to investors in a series of three disbursements: \$124,999,781.40 on April 12, 2007, \$73,276,568.19 on May 30, 2007, and \$68,724,977.55 on August 24, 2007.¹ Also pursuant to the Plan, on February 25, 2009, the Commission ordered the disbursement of the Residual, in the amount of \$35,380,631. (Exchange Act Rel. No. 59445).

The Plan Administrator submitted a Final Accounting pursuant to Rule 1105(f) of the Commission’s Rules on Fair Fund and Disgorgement Plans and paragraph 8.17 of the Plan, which was approved by the Commission. According to the Final Accounting, \$3,718,899.60 remains in the PBA Fair Fund. The Commission has determined to transfer to the U.S. Treasury: all funds remaining in the PBA Fair Fund after the disbursement of \$6,117.66 to the Tax Administrator (in the amount of \$3,712,781.94), and any additional funds that may be subsequently returned for the PBA Fair Fund.

Accordingly, it is ORDERED that:

- A. A disbursement of \$6,117.66 shall be made from the PBA Fair Fund to the Tax Administrator;
- B. After the payment to the Tax Administrator any remaining funds in the PBA Fair Fund shall be transferred to the U.S. Treasury;
- C. Any additional funds that may be subsequently returned for the PBA Fair Fund shall be transferred to the U.S. Treasury;

¹ See Exchange Act Rel. Nos. 55627 (Apr. 12, 2007); 55831 (May 30, 2007), and 56320 (Aug. 24, 2007), respectively.

- D. The PBA Fair Fund is terminated; and
- E. The Plan Administrator is discharged.

By the Commission,

Elizabeth M. Murphy
Secretary