

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 79440 / December 1, 2016

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.

ORDER APPROVING PLAN OF DISTRIBUTION AND AUTHORIZING TRANSFER OF FAIR FUND

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”)¹ against 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”). The Order found that in 2005, Gabriel Bitran founded GMB Capital Management LLC 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: (1) very successful performance track records purportedly based on actual trades using real money from 1998 to the inception of the hedge funds; (2) the firm’s use of Gabriel Bitran’s proprietary optimal pricing model to trade ETFs; and (3) Gabriel Bitran’s pedigree and his involvement as the founder and portfolio manager of the hedge funds. Over a period of three years, raising over \$500 million for eight hedge funds and various managed accounts, Respondents made misrepresentations to investors about each of these selling points, and at times, all three of them.

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, Section 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

¹ Securities Act Rel. No. 9315 (Apr. 20, 2012).

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 Rule 204-2(a)(16) and 206(4)-8 thereunder. 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, which is currently on deposit with the United States Department of the Treasury (the "Fair Fund").

On October 21, 2016, the Commission issued a Notice of Proposed Plan of Distribution and Opportunity for Comment ("Notice")² pursuant to Rule 1103 of the Commission's Rules on Fair Fund and Disgorgement Plans ("Rules").³ The Notice advised interested persons that they could obtain a copy of the proposed plan of distribution ("Distribution Plan") from the Commission's public website at <http://www.sec.gov/litigation/fairfundlist.htm> or by submitting a written request to Adriene Mixon, Esq., United States Securities and Exchange Commission, 444 South Flower Street, Suite 900, Los Angeles, CA 90071.

The Notice also advised that all persons desiring to comment on the Distribution Plan could submit their comments, in writing, no later than thirty (30) days from the date of the Notice (1) to the Office of the Secretary, United States Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090; (2) by using the Commission's Internet comment form (<http://www.sec.gov/litigation/admin.shtml>); or (3) by sending an email to rule-comments@sec.gov. The Commission received no comments on the Distribution Plan.

The Distribution Plan proposes to transfer the Fair Fund, plus any accrued interest, less any outstanding taxes and fees, pursuant to Rule 1102(a) of the Rules,⁴ to the court registry account established in the related criminal action, *United States v. Bitran*, No. 14-cr-10243-MLW (D. Mass. 2014) (the "Criminal Action"), for distribution to harmed investors in accordance with the criminal restitution process in the Criminal Action. The Commission finds that the allegations in the Criminal Action arise from the same conduct by Gabriel Bitran, Marco Bitran, and their company, GMB Capital Management LLC, as alleged in the Commission's Order and span the same relevant time period. Under these circumstances, the Division of Enforcement has concluded that transferring the funds to the Criminal Action for distribution through the criminal 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.

The Division of Enforcement therefore now requests that the Commission approve the Distribution Plan as published and authorize the transfer of funds to the Criminal Action.

² Exchange Act Rel. No. 79139 (Oct. 21, 2016).

³ 17 C.F.R. § 201.1103.

⁴ 17 C.F.R. § 201.1102(a).

Accordingly, it is hereby ORDERED that:

- A. Pursuant to Rule 1104 of the Rules, 17 C.F.R. § 201.1104, the Distribution Plan is approved; and
- B. Pursuant to Rule 1102(a) of the Rules, 17 C.F.R. §201.1102(a), the Commission staff shall transfer the Fair Fund in the amount of \$4,800,000, plus any accrued interest, less any outstanding taxes and fees to the Court Registry Investment System account established in the Criminal Action for distribution to harmed investors.

By the Commission.

Brent J. Fields
Secretary