



July 31, 2006

Office of the Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

VIA ELECTRONIC MAIL

Subject: Pilgrim Baxter & Associates, Ltd., Gary L. Pilgrim and
Harold L. Baxter/Administrative Proceeding File Number 3-11524

Dear Madame Secretary:

The Coalition of Mutual Fund Investors ("CMFI" or "Coalition") is pleased to submit the following comments to the U.S. Securities and Exchange Commission ("Commission"), regarding the proposed plan of distribution ("Distribution Plan") for monies placed into Fair Funds, pursuant to the Pilgrim Baxter administrative proceedings noted above.

CMFI is an Internet-based shareholder advocacy organization representing the interests of individual mutual fund investors. The Coalition is located in Washington, D.C., with a Web site that can be accessed at www.investorscoalition.com.

The proposed Pilgrim Baxter Distribution Plan is the first of many Distribution Plans to be adopted and implemented as a result of earlier Commission enforcement actions to address market timing schemes and other trading abuses. As the first proposed Distribution Plan, this Plan likely will set a precedent for other administrative proceedings where similar facts exist.

1. The Methodology Used to Develop the Distribution Plan is Analytically Correct and Fair to Investors.

In the view of CMFI, the Independent Consultant, Dr. Kenneth Lehn, and the Commission staff have developed a thoughtful and analytically correct methodology for identifying and evaluating market timing activity in the Pilgrim Baxter Funds. Dr. Lehn obtained account information for all direct purchase shareholders and established which accounts violated the stated policy of the Funds to prohibit more than four exchanges in a calendar year.

With this account data, Dr. Lehn was able to construct a table showing the number of market timing accounts and the value of all trades within these accounts. Using the "realized profits" approach to estimating the excess profits created by market timers in these Funds, Dr. Lehn found that market timing activities were "highly concentrated" in four Pilgrim Baxter Funds: (a) the Growth Fund, (b) the Technology & Communications Fund, (c) the Emerging Growth Fund, and (d) the Select Growth Fund. These four Funds were responsible for 98% of the estimated \$242.8 million of excess profits generated by market timers over the 3 ½ year study period (June 1, 1998-December 31, 2001), according to Dr. Lehn's analysis.

In order to distribute the \$250 million in disgorgement and civil penalties (plus earned interest) collected from this administrative proceeding and deposited in the Fair Funds, Dr. Lehn first will calculate the amount of estimated excess profits on a daily basis as a percentage of the total excess profits of \$242.8 million. He will make this calculation for each day of the period examined: June 1, 1998 through December 31, 2001. The daily settlement proceeds for each Pilgrim Baxter Fund on each day will be calculated as the percentage on that day times the amount of money available in the Fair Funds. Pilgrim Baxter shareholders during this period will then be entitled to a prorated share of their Funds' daily settlement proceeds, calculated as the percentage of the value of each Fund held by a shareholder on a given day times the Fund's daily settlement proceeds.

The methodology developed by Dr. Lehn is reasonable, sensible, and fair to investors. It is clear from reading the Plan that a considerable amount of work was required to evaluate the account data and develop this methodology and analysis. Unfortunately, Dr. Lehn was only able to evaluate account records from direct purchase shareholders; insufficient data was available about transactions within omnibus accounts.

As the Commission is well aware, many investors choose to transact in mutual funds through a third-party financial intermediary, such as a broker, retirement plan, or financial adviser. These investors do not deal directly with a fund; instead, shareholder statements and recordkeeping are handled by each intermediary, as well as all aspects of the customer relationship. During each trading day, financial intermediaries aggregate all purchase, redemption, and exchange requests from their customers and send one consolidated order to each mutual fund. A mutual fund handles this consolidated order as a single transaction, recording the third-party intermediary on its books as one shareholder or omnibus account. Each omnibus account order may represent the transactions of thousands of customers of a particular third-party financial institution; however, no information is generally disclosed to the compliance personnel at a mutual fund about the individual trading activities of these omnibus account investors, nor are the actual identities of the investors known to anyone but the financial intermediary.

As a result of the lack of transparency within omnibus accounts, Dr. Lehn was not able to evaluate market timing activity in these accounts. While this information would not have changed the total amount of money to be distributed from the Fair Funds in this administrative proceeding, Dr. Lehn would have had the opportunity to evaluate all account data for the time period involved, instead of relying only on direct purchaser account records. With the widespread use of omnibus accounting in the industry, direct purchaser records represent only a limited subset of the entire investor universe for these mutual funds.

2. The Procedures for Identifying and Distributing Fair Funds to Individuals Subject to Omnibus Accounting Should Be Improved.

The problems presented by omnibus accounts become more pronounced in section 8.6 of the Distribution Plan (“Procedures for Identifying and Distributing to Eligible Accountholders”), where it is clear that individual investors in the Pilgrim Baxter Funds may receive different treatment depending on the distribution channel they selected to transact in these Funds.

Under the Distribution Plan, an investor who purchased and redeemed shares directly with the Funds will be identified through Fund and transfer agent records. The identity and transactions of all direct purchase investors are available from these records. On the other hand, investors in most omnibus accounts are unknown to the Funds, as are their transactions. To address this problem, the Distribution Plan proposes to engage in an “Outreach Process.” Under this proposal, each financial intermediary using omnibus accounting will be contacted for the purpose of requesting identity and transaction information at the investor level. After a period of 60 days from the approval of the Distribution Plan, this “Outreach Process” will end. If the intermediary either will not or cannot provide this account information, the Distribution Plan provides that the intermediary will handle the distribution amounts itself, in a manner consistent with the intermediary’s legal responsibilities.

This same procedure is proposed for broker-dealer accounts where the Funds or the Pilgrim Baxter transfer agent has been provided with unique identifier and transaction information for each account, but no contact information about each investor, such as a name and address.

It is CMFI's view that investors in these Funds who chose to use third-party intermediaries are not adequately protected by these procedures involving omnibus accounts. As an alternative, the Commission should use its authority to require all financial intermediaries to disclose this identity and transaction information at the investor level, for the purpose of distributing prorated amounts from the Fair Funds to eligible investors within omnibus accounts.

Specifically, CMFI recommends that the Distribution Plan for this proceeding require that Pilgrim Baxter or its successor entity, Liberty Ridge Capital, Inc., request this information from its intermediaries with omnibus accounts, pursuant to section 270.22c-2 of the Investment Company Act regulations.

In order to provide omnibus account transparency for mutual funds using redemption fees to deter short-term trading abuses, the Commission adopted new Rule 22c-2 in March of 2005, requiring that funds enter into written information sharing agreements with all financial intermediaries to provide, upon request, the same type of identity and transaction information needed under the Distribution Plan. 70 Fed. Reg. 13328 (March 18, 2005).

In order to ensure that funds and financial intermediaries comply with this rule, the Commission placed responsibility for implementing this rule on the funds, prohibiting a fund's ability to redeem shares unless compliance has been achieved. 17 C.F.R. § 270.22c-2(a). The Commission also made the intermediary information-sharing rule a separate requirement from the decision by a fund to impose (or not impose) a redemption fee. The only funds which are exempted are: (1) money market funds; (2) funds issuing securities listed on a national securities exchange; and (3) funds that permit short-term trading through proper prospectus disclosure. 17 C.F.R. § 270.22c-2(b).

In the spring of this year, the Commission issued a proposed rule to modify Rule 22c-2 by exempting small intermediaries from the shareholder information agreement provision and proposing certain clarifying amendments. 71 Fed. Reg. 11351 (March 7, 2006). Even if these proposed changes are adopted, the requirement of an intermediary information sharing agreement is left intact for most intermediaries. This Rule should be used by the Commission as a resource to improve the process of receiving investor level information from intermediaries so that eligible investors can receive their distribution payments from the Fair Funds. Unless the Commission extends the compliance date for this Rule, the information-sharing provisions will become effective on October 16, 2006. 70 Fed. Reg. 13328 (March 18, 2005).

3. The Commission Should Permit More Than 60 Days for Intermediary Information Sharing in the Distribution Plan.

The omnibus account disclosure issue is a complex one, as financial intermediaries use a myriad of computerized recordkeeping systems to manage customer account information. The requirement in the Distribution Plan that only 60 days will be permitted for the "Outreach Process" for omnibus accounts is not going to be enough time for intermediary compliance, especially when the time period starts once the Distribution Plan is approved by the Commission.

It has taken more than 18 months (March 2005 through October 2006) for the financial services industry to develop compliance systems for the intermediary information-sharing requirement referenced above, and the Commission may still need to grant an extension because of the technical difficulties involved. As a result of the complexity in providing this information, the Commission should consider extending this "Outreach Process" time period to at least 6 months, to permit intermediaries adequate time to provide the identity and transaction information needed under the Distribution Plan.

4. Conclusion.

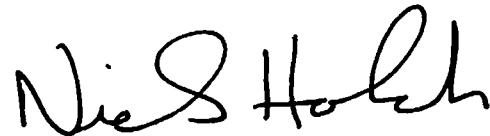
CMFI appreciates the thoughtfulness and thoroughness which went into the preparation of this Distribution Plan, especially from the perspective of the individual investors in these Funds who were harmed by the activities of the defendants in this administrative proceeding. The Commission should use its authority to require intermediaries to provide identity and transaction information at the investor level so that Pilgrim Baxter omnibus account investors can be treated in the same manner as direct purchase shareholders.

Individual investors deserve a system in which there is no difference in how mutual fund rules and regulations are applied as a result of the distribution channel used for fund transactions. Mutual fund shareholders expect uniform treatment; and it is important that investor trust in funds not be eroded further because of omnibus accounts and the economic needs of financial intermediaries.

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My organization is happy to provide further information or clarification regarding the recommendations in this comment letter if it would be helpful to the Commission's deliberations regarding this matter.

Sincerely,

A handwritten signature in black ink that reads "Niels Holch". The signature is written in a cursive style with a large, prominent "N" and "H".

Niels Holch
Executive Director
Coalition of Mutual Fund Investors

cc: The Honorable Christopher Cox
The Honorable Paul S. Atkins
The Honorable Kathleen L. Casey
The Honorable Roel C. Campos
The Honorable Annette L. Nazareth
Linda C. Thomsen, Division of Enforcement
Andrew Donahue, Division of Investment Management
Robert Plaze, Division of Investment Management