

Exhibit 39

From: Derek S. Daley
Sent: Wednesday, August 13, 2003 12:18:06 AM
To: Peter Stamos
Subject: FW: Levered fund

Peter:

Peter, I'm very worried about the possibility you conceded at the meeting this morning (and I still hope is remote) that Ezra Merkin's Ascot fund is simply a "feeder" fund into Bernie Madoff fund. It raises several issues: his trustworthiness (inasmuch as I assume he told you otherwise or, at a minimum, failed to disclose it as a material feature of his operations) and the impact on the portfolio (considering that it would reveal two levels of the opaqueness our funds claim to avoid -- that of Merkin's fund and the oft-mentioned impenetrable veil that shrouds the BM fund).

But I'm even more interested in extracting you from a troubling situation in which you've invested so much personal capital. Both Kevin and Ashok have mentioned (Kevin in response to this morning's concession and Ashok in response to a meeting yesterday with an investor who apparently received a troubling, although admittedly less than express, "confirmation" of Merkin's piggy-backing) the potential for a troubling inconsistency between our professed insistence on transparency and the presence of less than transparent investments in the portfolio. If Merkin's funds are feeders, we should immediately cease claiming transparency in our conversations with investors (and I should stop telling investors that in an unregulated environment we provide a form of surrogate oversight over portfolio funds by obtaining access to and reviewing position-level information otherwise unavailable or difficult to obtain).

Attached is the e-mail I sent you last June about the portfolio meeting with Saul that provoked your less-than-kind "you're 100% off base" response. At the portfolio meeting and in the conversation with me that followed this e-mail, you expressed confidence that Merkin's funds were sufficiently transparent to justify investment in them. You also stated to me that the alleged lack of transparency was a function of Noreen's inability to listen (and ask probing questions), a flaw to which we were all witness, the group's collective protection of you for the slight you suffered at Merkin's hands and the inherent constraints on fully disclosing an "options" strategy. And you dismissed the extraordinarily high correlation between the two funds (Merkin's and BM's) as the inevitable result of pursuing similar "options" strategies. You were equally convinced that Merkin, with appropriate pressure, would disgorge whatever information he was incorrectly accused of concealing.

I'm sure that I was not the only person to whom you expressed confidence in Merkin.

The important point -- our principal investor, Saul, has expressed his indifference to (indeed, enthusiasm for) including a strategy that mirrors that of Madoff, whatever its opaqueness. The bad news -- not all of our investors share Saul's views.

Let me know if I can help.

Derek

-----Original Message-----

From: Derek S. Daley
Sent: Wednesday, June 18, 2003 7:28 PM
To: Peter Stamos
Subject: FW: Levered fund

Peter:

I asked Ashok about the process of resolving the rather heated discussion today (to which the personal fued/stalemate between you and Noreen admitted no compromise) about whether and the extent to which the levered fund should swap into Ezra's Ascot fund. He received the attached message from you at the same time.

I'm confused. How do decisions get made concerning the portfolio? Although circumstances



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were ripe for compromise on this and the issue of the equity managers, neither you nor Noreen would budge, despite the impassioned and entirely sober pleas of Saul and Ellen to compromise. And then, with issues still apparently open, you confirm a \$1.5 to \$3 million investment in Ascot! Admittedly I stepped out to attend to other urgent business but I think I caught the gist of the conversation about Ezra. [Incidentally, as an entirely unschooled observer, the combination of lack of transparency, history of betrayal to you and Noreen and assessment that market conditions no longer validate Ezra's approach to options leaves me seriously unimpressed with Ezra's track record and historical performance]. But I'm willing to defer to your better judgment.

Where I cannot defer, however, is as to process, which is seriously broken. Saul expressed the substance, the characteristics of the fund (e.g., conservative, no pejoratively described "high octane" players, etc.), very well. Unfortunately, I make investment decisions on the basis of substance and process. When people I love and respect sit down and have intelligent, thoughtful discussions and on that basis reach a consensus that the participants embrace as perhaps less than the ideal fund but nevertheless a skillfully crafted, well-balanced fund, I invest. I did not witness that today.

This afternoon's conversation, Marketing 1A -- in which the company sits with customers to design a product that meets their needs -- was long overdue. It should have taken place with Saul three months ago. Nevertheless, what I found fascinating was that no one disagreed with Saul's objective. The argument was over how we get there and it's unfair to paint one side as having as its objective "home runs" or a search for "high octane" players.

People can disagree on the appropriate balance of the factors you outlined at the start of the meeting. They can even disagree about the assessment of a certain managers qualitative and/or statistical merit (e.g., whether Ezra is or is likely to be transparent, whether the historical data is meaningful as applied to certain managers). Disagreements are healthy. They promote thoughtful reconsideration, especially among people as gifted as you, Noreen, Ashok and Ellen. But these disagreements were something else -- uncompromising, unyielding and expressed in very personal terms (e.g., Noreen drawing clear battle lines between us (the portfolio group) and you). It was unproductive and, when focused on inconsequential amounts \$250,000 to \$1 million in a \$50 to \$60 million fund, laughably absurd.

I sat there in complete horror. Watching a group of exceptionally skilled and gifted people about whom I care unable to harness their collective wisdom. If I were Saul, I would withhold my investment until consensus could be built and you and Noreen arrive at some happy middle ground in terms of process for the portfolio and co-existence as partners. As to my own investment, I remain confused and reluctant.

Derek

-----Original Message-----

From: Ashok Chachra
Sent: Wednesday, June 18, 2003 6:44 PM
To: Derek S. Daley
Subject: FW: Levered fund

-----Original Message-----

From: J. Ezra Merkin [mailto:JEMerkin@gabrielcapital.com]
Sent: Wednesday, June 18, 2003 6:22 PM
To: Peter Stamos
Cc: Ashok Chachra
Subject: RE: Levered fund

I am sure it is fine.

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I have been sitting here for the entire afternoon, and am sorry I missed your call. You can call again if that reassures you; if not, assume it is fine, and put it on the list for next week.

> -----
> From: Peter Stamos[SMTP:peter.stamos@spcapitalgroup.com]
> Sent: Wednesday, June 18, 2003 6:08 PM
> To: JEMerkin@gabrielcapital.com
> Cc: ashok.chacrha@spcapm.com
> Subject: Levered fund
>
> Ezra
>
> Sorry that I missed you. I've asked Ashok to call to confirm an additional
> investment in Ascot. 1.5 plus. Perhaps as much as 3 million
>
> OK?
>
> Looking forward to seeing you on Monday
>
> Soonmee and I both send our love from Napa. Though my vacations are
> beginning to sound a lot like yours
>
> Peter
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