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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

<p>SECURITIES AND EXCHANGE COMMISSION, and COMMODITY FUTURES TRADING COMMISSION, Plaintiffs, v. DAREN L. PALMER and TRIGON GROUP, INC.</p>	<p>Civ. No. 09-075-E-EJL (dks) Civ. No. 09-076-E-EJL (dks) The Honorable Edward J. Lodge RECEIVER'S MOTION FOR APPROVAL TO PAY FOURTH INTERIM DISTRIBUTION AND MEMORANDUM IN SUPPORT</p>
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R. Wayne Klein, the Court-Appointed Receiver (the "Receiver") of Trigon Group, Inc. ("Trigon") and all the assets of Daren L. Palmer (the "Receivership Entities" and/or "Palmer"), hereby moves for Court permission to make a fourth interim distribution of Receivership funds to allowable claimants ("Claimants").

RECEIVER'S NINTH APPLICATION SEEKING COURT APPROVAL OF FEES AND EXPENSES - Page 1

BACKGROUND

This case began on February 26, 2009 with companion lawsuits filed by the SEC and CFTC.¹ On the same day, the Court appointed the Receiver to take control of Trigon and the assets of Palmer.²

On January 21, 2010, the Court granted the Receiver's Motion for Approval of Proof of Claim Form.³ The SEC filed a proposed Plan of Partial Distribution on June 9, 2010.⁴ On December 6, 2010, the Court issued an order approving the Plan of Partial Distribution.⁵ After a number of objections were filed, the Receiver reached a settlement agreement with objectors and other claimants.⁶ On March 7, 2011, the Court approved the settlements with the objectors, the distribution methodology, and the initial distribution payment.⁷

On March 10, 2011, the Receiver paid \$2,000,000.00 to 24 Claimants. An additional \$1,018,252.33 was paid to objectors and other claimants who otherwise would not have received payments as part of the first distribution. The settlements with the objectors and others claimants included the objectors and other claimants relinquishing any claims to future distributions from the Receivership Estate. This leaves 24 Claimants as the only remaining beneficiaries of the

¹ Document No. 1.

² Document No. 8.

³ Document No.'s 53, 54.

⁴ Document No. 72.

⁵ Document No. 111.

⁶ Document No. 126.

⁷ Document No. 130.

Receivership Estate.

On March 5, 2012, the Receiver made a second distribution totaling \$300,000.00 to the remaining 24 allowable Claimants. This was pursuant to an order from the Court dated March 2, 2012.⁸ A third distribution, in the amount of \$800,000.00, was authorized by the Court on September 21, 2012.⁹

FUNDS IN THE RECEIVERSHIP ESTATE

Currently, the Receiver is holding approximately \$802,000.00 in the bank account of the Receivership Estate. The bank balance was substantially increased with the net proceeds from the sale of the Palmer mansion in Idaho Falls. The Receiver believes this amount is more than is needed to pay for ongoing operational expenses of the Receivership, litigation costs, and fees for the Receiver and his attorneys.¹⁰ Accordingly, the Receiver believes that a fourth interim distribution of \$689,130.04¹¹ would deliver additional funds to the victims of this Ponzi scheme without impairing the Receiver's ability to continue managing the Receivership Estate.

ELIGIBLE CLAIMANTS, EFFECT OF THE INTERIM DISTRIBUTION

There are 24 remaining Claimants who are eligible to receive distributions from the Receivership Estate. Their claims show the following aggregate totals:

Summary of Prior Distributions

⁸ Document No. 145.

⁹ Document No. 110 (09-CV-076).

¹⁰ The Receiver and his counsel filed a fee application on December 31, 2013 for work performed from October 1, 2012 to September 30, 2013. Document 164. The request for fees and expenses totals \$34,725.42.

¹¹ As explained below, this amount represents 10% of the unpaid losses of the remaining Claimants.

Verified investment amounts	\$10,633,717.90
Distributions from Trigon	-\$624,917.50
“Allowable Claim Amount”	\$9,991,300.40
First interim distribution	-\$2,000,000.00
Second interim distribution	-\$300,000.00
Third interim distribution	-\$800,000.00
Remaining allowable claim amount	\$6,891,300.40
Fourth interim distribution	-\$689,130.04
Remaining allowable claim amount	\$6,202,170.36

A \$689,130.04 distribution represents 10.0% of the remaining allowable claim amount. At least one additional distribution is anticipated in the future.¹² With this distribution, a total of \$4,807,382.37 will have been distributed to investors. For the 24 Claimants who are still eligible to receive distributions from the Receivership Estate, this fourth distribution will mean that the Receiver will have distributed 37.92% of the total allowable claim to these Claimants.

A list of the 24 Claimants who will receive payments under this proposed distribution, along with the amounts to be paid to each one, is attached at Exhibit A. The Claimants are listed by Claim number, not their names, for privacy reasons. The Receiver will provide a list containing the names of the Claimants to the Court upon request.

LEGAL ANALYSIS

¹² The Receivership Estate still holds two commercial building lots in Ammon, Idaho and Eagle, Idaho that are being marketed. The Receiver also has several judgments, including one on appeal, that he hopes to collect.

The Order Appointing Receiver (“Order”)¹³ provides that the Court retains the authority to determine when distributions are to be made, requiring the Receiver to hold Receivership funds “pending further order of this Court.” Order at 3. In making a determination such as this, the Ninth Circuit has recognized that a primary purpose of equity receiverships “is to promote the orderly and efficient administration of the estate by the district court for the benefit of creditors.” *SEC v. Universal Fin.*, 803 F.2d 1034, 1038 (9th Cir. 1986).

District courts have broad power and wide discretion to determine the appropriate relief in an equity receivership. *SEC v. Lincoln Thrift Ass’n*, 577 F.2d 600, 606 (9th Cir. 1978); *SEC v. American Capital Invs., Inc.*, 98 F.3d 1133, 1143 (9th Cir. 1996); *SEC v. Black*, 163 F.3d 188, 199 (3d Cir. 1998); *SEC v. Elliott*, 953 F.2d 1560, 1569-70 (11th Cir. 1992). Plans for distribution of funds will be reviewed for abuse of discretion. *CFTC v. Topworth Int’l, Ltd.*, 205 F.3d 1107, 1115-16 (9th Cir. 1999); *SEC v. Certain Unknown Purchasers of the Common Stock of & Call Options for the Common Stock of Santa Fe Int’l Corp.*, 817 F.2d 1018, 1020 (2d Cir. 1987). Under the broad discretion afforded district courts, a plan generally will be upheld if it serves to orderly and efficiently distribute funds to investors. *Topworth*, 205 F.3d at 1115.

In this case, the plan of distribution has already been approved by the Court. All objections have been resolved.¹⁴ This fourth interim distribution will be made to the particular group of Claimants whose claims have already been verified, and the payments will be made to Claimants using the same pro-rata basis that was approved and used in the first interim distribution. This makes the proposed interim distribution “fair and reasonable.” *See SEC v. Wang*, 944 F.2d 80, 85 (2d Cir. 1991).

¹³ Document No. 8.

¹⁴ Document No. 130.


CONCLUSION

A fourth interim distribution will aid the Claimants without impairing the Receiver's ability to continue carrying out his duties. A \$689,130.04 distribution to victims using the same methodology as the first three interim distributions is fair and reasonable.

DATED this 16th day of January, 2014.

HAWLEY TROXELL ENNIS & HAWLEY LLP

By



John F. Kurtz, Jr., Attorneys for the
Receiver, R. Wayne Klein

CERTIFICATE OF SERVICE


I hereby certify that on this 16th day of January, 2014, I caused to be sent via first-class mail, postage prepaid, a true and correct copy of the foregoing Receiver's Application Seeking Court Approval of Fees and Expenses to:

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Defendant



John F. Kurtz, Jr.

TRIGON RECEIVERSHIP										
Proposed Fourth Distribution										
Claim #	Investor Name	Verified Investment	Total Pre- Receivership Distributions	Allowable Claim Amount	Initial Distribution Payment	Amount of Second Distribution	Amount of Third Distribution	Total Distributions From Receivership	Remaining Unpaid Allowable Claim Amount	Proposed Fourth Distribution
Eligible Claimants										
2001		\$2,700,000.00	\$537,500.00	\$2,162,500.00	\$131,046.42	\$76,262.44	\$203,366.51	\$410,675.37	\$1,751,824.63	\$175,182.46
2030		\$124,000.00	\$19,000.00	\$105,000.00	\$11,703.61	\$3,502.42	\$9,339.80	\$24,545.83	\$80,454.17	\$8,045.42
2017		\$340,000.00	\$22,417.50	\$312,582.50	\$56,769.83	\$9,603.42	\$25,609.12	\$91,982.36	\$220,600.14	\$22,060.01
2032A		\$100,000.00	\$6,000.00	\$94,000.00	\$18,760.98	\$2,824.53	\$7,532.09	\$29,117.61	\$64,882.39	\$6,488.24
2003		\$2,778,700.00	\$40,000.00	\$2,738,700.00	\$648,033.31	\$78,485.35	\$209,294.27	\$935,812.93	\$1,802,887.07	\$180,288.71
2035		\$50,000.00	\$0.00	\$37,500.00	\$9,285.37	\$1,059.20	\$2,824.53	\$13,169.10	\$24,330.90	\$2,433.09
2002		\$1,000,000.00	\$0.00	\$1,000,000.00	\$247,609.79	\$28,245.35	\$75,320.93	\$351,176.07	\$648,823.93	\$64,882.39
2004		\$25,000.00	\$0.00	\$25,000.00	\$6,190.24	\$706.13	\$1,883.02	\$8,779.40	\$16,220.60	\$1,622.06
2006		\$200,000.00	\$0.00	\$200,000.00	\$49,521.96	\$5,649.07	\$15,064.19	\$70,235.22	\$129,764.78	\$12,976.48
2007		\$50,000.00	\$0.00	\$50,000.00	\$12,380.49	\$1,412.27	\$3,766.05	\$17,558.80	\$32,441.20	\$3,244.12
2008		\$55,500.00	\$0.00	\$55,500.00	\$13,742.34	\$1,567.62	\$4,180.31	\$19,490.27	\$36,009.73	\$3,600.97
2009		\$420,000.00	\$0.00	\$420,000.00	\$103,996.11	\$11,863.05	\$31,634.79	\$147,493.95	\$272,506.05	\$27,250.61
2012		\$100,000.00	\$0.00	\$100,000.00	\$24,760.98	\$2,824.53	\$7,532.09	\$35,117.61	\$64,882.39	\$6,488.24
2013		\$250,000.00	\$0.00	\$250,000.00	\$61,902.45	\$7,061.34	\$18,830.23	\$87,794.02	\$162,205.98	\$16,220.60
2016		\$160,000.00	\$0.00	\$160,000.00	\$39,617.57	\$4,519.26	\$12,051.35	\$56,188.17	\$103,811.83	\$10,381.18
2022		\$250,000.00	\$0.00	\$250,000.00	\$61,902.45	\$7,061.34	\$18,830.23	\$87,794.02	\$162,205.98	\$16,220.60
2023		\$378,000.00	\$0.00	\$378,000.00	\$93,596.50	\$10,676.74	\$28,471.31	\$132,744.55	\$245,255.45	\$24,525.54
2024		\$500,000.00	\$0.00	\$500,000.00	\$123,804.89	\$14,122.67	\$37,660.46	\$175,588.03	\$324,411.97	\$32,441.20
2025		\$125,000.00	\$0.00	\$125,000.00	\$30,951.22	\$3,530.67	\$9,415.12	\$43,897.01	\$81,102.99	\$8,110.30
2026		\$35,000.00	\$0.00	\$35,000.00	\$8,666.34	\$988.59	\$2,636.23	\$12,291.16	\$22,708.84	\$2,270.88
2027		\$898,787.00	\$0.00	\$898,787.00	\$222,548.46	\$25,386.55	\$67,697.47	\$315,632.48	\$583,154.52	\$58,315.45
2028		\$11,000.00	\$0.00	\$11,000.00	\$2,723.71	\$310.70	\$828.53	\$3,862.94	\$7,137.06	\$713.71
2029		\$20,000.00	\$0.00	\$20,000.00	\$4,952.20	\$564.91	\$1,506.42	\$7,023.52	\$12,976.48	\$1,297.65
2033		\$62,730.90	\$0.00	\$62,730.90	\$15,532.78	\$1,771.86	\$4,724.95	\$22,029.59	\$40,701.31	\$4,070.13
Total		\$10,633,717.90	\$624,917.50	\$9,991,300.40	\$2,000,000.00	\$300,000.00	\$800,000.00	\$3,100,000.00	\$6,891,300.40	\$689,130.04

Created 1/16/12 by Wklein; revised 12/21/13

EXHIBIT A