

John F. Kurtz, Jr., ISB No. 2396
Hawley Troxell Ennis & Hawley LLP
877 Main Street, Suite 1000
P.O. Box 1617
Boise, ID 83701-1617
Telephone: 208.344.6000
Facsimile: 208.954.5232
Email: jkurtz@hawleytroxell.com

Attorneys for Receiver, R. Wayne Klein

UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO

| | | |
|-----------------------------------|---|-------------------------------|
| SECURITIES AND EXCHANGE |) | Case No.: CV 09-075-E-EJL |
| COMMISSION, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| and |) | |
| |) | |
| COMMODITY FUTURES TRADING |) | Case No.: CV 09-076-E-EJL |
| COMMISSION, |) | |
| |) | The Honorable Edward J. Lodge |
| Plaintiff, |) | |
| |) | |
| vs. |) | RECEIVER’S MOTION FOR |
| |) | APPROVAL OF SETTLEMENT |
| DAREN L. PALMER and TRIGON GROUP, |) | AGREEMENTS WITH OBJECTORS |
| INC., a Nevada Corporation, |) | AND OTHER CLAIMANT; |
| |) | MEMORANDUM IN SUPPORT |
| Defendants. |) | |
| |) | |

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 approval of a settlement agreement with a group of six objectors

RECEIVER’S MOTION FOR APPROVAL OF SETTLEMENT AGREEMENTS
WITH OBJECTORS AND OTHER CLAIMANT; MEMORANDUM IN
SUPPORT - 1

(“Objectors”) and a settlement agreement with a non-objecting claimant. These settlement agreements, if approved, will allow the prompt distribution of funds being held by the Receiver to the remaining claimants.

MEMORANDUM IN SUPPORT

I. BACKGROUND

The Court appointed the Receiver on February 26, 2009, in connection with governmental enforcement actions filed by the Securities and Exchange Commission and the Commodity Futures Trading Commission. On January 21, 2010, the Court approved the Receiver’s request to begin the claims process. On May 13, 2010, the Receiver filed his report and recommendations on the claims process. On June 9, 2010, the SEC filed its Motion for Approval of Plan of Partial Distribution, requesting Court approval of a distribution methodology and permission to distribute \$2 million to qualifying claimants. On August 4 and 5, 2010, counsel for six Objectors filed objections, opposing the SEC’s distribution plan. On November 3, 2010, the Court held a hearing in Pocatello on the SEC’s motion. At that hearing, and in subsequent rulings, the Court stayed further proceedings while the Objectors, the Receiver, and the SEC engaged in mediation efforts to resolve the claims of the Objectors.

A mediation session was held on January 18, 2011. At that mediation, a settlement agreement was reached with the Objectors. The Receiver has subsequently entered into a settlement agreement with one other non-objecting claimant.

II. SETTLEMENT AGREEMENTS

A. Settlement with Objectors

Six groups of investors objected to the proposed distribution because the plan proposed by the SEC would have resulted in no monies being paid to them in the initial distribution. The six, Mark Rudd, Breck Barton, James Cameron, Darryl Harris, Gerald and David Taylor, and Dick Fitzek, all were represented by the same counsel, Breck Barton. As a group, the Objectors represent \$11,254,292.29 in allowable claim amounts. This constitutes 52.4651% of the total amount of allowable claims. The Objectors believed they should receive \$1,049,301.87 from the initial distribution, representing 52.4651% of the amount to be distributed by the Receiver, rather than receiving nothing – as contemplated by the distribution plan.

At a mediation session held January 18, 2011, the Receiver agreed to a settlement with the Objectors. Under the settlement, the Receiver will pay \$1 million to the Objectors and transfer to them the Hawaii timeshare interest owned by Daren and Michelle Palmer. In return, the Objectors will relinquish all claims to any portion of funds currently held by the Receiver and any funds recovered by the Receiver in the future. The SEC participated in the mediation and indicated support for the final agreement.

The Receiver believes this settlement agreement is in the best interests of the Receivership Estate and the non-objecting claimants for several reasons. First, the amount being paid to the Objectors is less than the amount they argued should be paid to them as part of the initial distribution. And, the Objectors are giving up all claims to be paid any portion of future amounts recovered by the Receiver.

Second, the agreed-upon amount is expected to be less than the amount that likely would have been paid to members of the Objectors by the time the Receivership is terminated. The Objectors receive a significant payment up front, but that is expected to be less than the amount they would have received as a group over time. In the process, the agreement allows future monies to be distributed among only the 24 remaining non-objecting claimants.

Third, this settlement makes it possible to make distribution payments to the other claimants now, rather than waiting for the resolution of the claims of Objectors. The Objectors have already delayed distribution for four months and indicated an intention to appeal any approval of a distribution plan that was based on a rising tide method. That appeal would have resulted in lengthy delays in distributing funds to defrauded investors who have already waited two years to receive some partial payment. This settlement prevents further delays and eliminates the need to continue incurring receiver fees contesting the claims of Objectors.

B. Settlement with Hal Wright

Hal Wright is a claimant who also would have received no payment from the initial distribution proposed by the SEC, but Wright did not file an objection to the initial distribution. The Receiver has reached an agreement with Wright through which the Receiver will pay Wright \$15,105.35 in settlement of claims he asserts and to preclude him from objecting to any future distributions. This settlement was entered into in an effort to promote equality of treatment, so Wright would not be disadvantaged for not having filed an objection. This settlement gives Wright the same relative payment on his allowable claim amount that is being paid to the Objectors. The settlement also ensures that Wright will not be able to object to future distributions by the Receiver. The SEC has indicated it supports this settlement agreement.

**III.
LEGAL ANALYSIS**

The Court's Order Appointing a Receiver and Staying Litigation in the SEC case (CV-09-75, Document No. 8, February 26, 2009) granted the Receiver powers necessary to gather assets and settle claims, including the authority to authorize payments of funds under his control and making "agreements as may be reasonable, necessary, and advisable in discharging his duties as Receiver." (p. 3 at ¶e). Similar language is found in the order appointing a Receiver in the CFTC action (CV-09-76, Document 5, February 26, 2009 at ¶IV.B.12).

The Receiver believes these settlement agreements are reasonable and necessary in carrying out his duties as Receiver and in advancing the work of the Receivership. Approval of these settlement agreements will represent a significant step forward in reducing the claims on Receivership assets and allowing distribution of monies currently held by the Receiver.

**IV.
APPROVAL BY THE COURT**

These settlement agreements are subject to approval by the Court, after giving notice to the remaining claimants. The Receiver is sending copies of this Motion and the Settlement Agreements to all remaining non-objecting claimants, notifying them of the proposed settlements and giving them an opportunity to file objections. If no objections are filed within ten days of this motion, the Receiver asks that the court approve the settlement agreements.

If the Court determines to approve the distribution plan proposed by the SEC, the Receiver asks that the Court also approve distribution of \$2 million to the remaining claimants, in the amounts shown in Exhibit A. A proposed order is attached for the convenience of the Court.


WHEREFORE, the Receiver Wayne Klein moves this Court to approve the two settlement agreements described herein, approve distribution of \$2 million to claimants, and enter the Order attached hereto as Exhibit B.

DATED THIS 4TH day of February, 2011.



R. WAYNE KLEIN, Receiver

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 4th day of February, 2011, I electronically filed the foregoing RECEIVER'S MOTION FOR APPROVAL OF SETTLEMENT AGREEMENTS WITH OBJECTORS AND OTHER CLAIMANT; MEMORANDUM IN SUPPORT with the Clerk of the Court using the CM/ECF system which sent a Notice of Electronic Filing to the following persons:

Karen L. Martinez / Thomas M. Melton
Tanya Beard
Securities and Exchange Commission
15 West South Temple, Suite 1800
Salt Lake City, UT 84101
martinezk@sec.gov / himesm@sec.gov
Counsel for Plaintiff Securities and Exchange Commission

Alison B. Wilson / John W. Dunfee
Division of Enforcement
Commodity Futures Trading Commission
1155 21st Street, N.W.
Washington, D.C. 20581
jdunfee@cftc.gov / awilson@cftc.gov
Counsel for Plaintiff Commodity Futures Trading Commission

Lee Radford / Julian E. Gabiola
Moffatt Thomas Barrett Rock & Fields, Chtd
420 Memorial Drive
P.O. Box 51505
Idaho Falls, ID 83405
klr@moffatt.com / jeg@moffatt.com
Counsel for Claimant Elaine Talbot

Breck Barton / Marcia Murdoch
Breck Barton & Associates, P.A.
70 N. Center, Suite 2
P.O. Box 100
Rexburg, ID 83440
Counsel for D. Taylor, J. Cameron, M. Rudd, B. Barton, G. Taylor, D. Fitzek, D. Harris

AND, I HEREBY CERTIFY that I have served the foregoing document to the following non-CM/ECF Registered Participants (list names and addresses):

Alan Conilogue
Deputy Attorney General
State of Idaho
PO Box 83720
Boise, ID 83720-0031
Local Counsel for Plaintiffs

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 E-mail
 Telecopy

Daren L. Palmer
949 N. 12th W.
Rexburg, ID 83440
208-716-3737

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 E-mail
 Telecopy



John F. Kurtz, Jr.

RECEIVERSHIP OF TRIGON GROUP, PALMER ASSETS**Allocation of Initial Distribution of \$2 Million**

| <i>Claim No.</i> | <i>Amount</i> |
|------------------|---------------------|
| 2001 | 131,046.42 |
| 2002 | 247,609.79 |
| 2003 | 648,033.31 |
| 2004 | 6,190.24 |
| 2006 | 49,521.96 |
| 2007 | 12,380.49 |
| 2008 | 13,742.34 |
| 2009 | 103,996.11 |
| 2012 | 24,760.98 |
| 2013 | 61,902.45 |
| 2016 | 39,617.57 |
| 2017 | 56,769.83 |
| 2022 | 61,902.45 |
| 2023 | 93,596.50 |
| 2024 | 123,804.89 |
| 2025 | 30,951.22 |
| 2026 | 8,666.34 |
| 2027 | 222,548.46 |
| 2028 | 2,723.71 |
| 2029 | 4,952.20 |
| 2030 | 11,703.61 |
| 2032B | 18,760.98 |
| 2033 | 15,532.78 |
| 2035 | 9,285.37 |
| Total | 2,000,000.00 |

Prepared 1/21/11 by WKlein

EXHIBIT A

UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO

| | | |
|---|---|---|
| SECURITIES AND EXCHANGE COMMISSION, |) | Case No.: CV 09-075-E-EJL |
| |) | |
| Plaintiff, |) | |
| |) | |
| and |) | |
| |) | Case No.: CV 09-076-E-EJL |
| COMMODITY FUTURES TRADING COMMISSION, |) | |
| |) | The Honorable Edward J. Lodge |
| Plaintiff, |) | |
| |) | |
| vs. |) | ORDER APPROVING SETTLEMENT AGREEMENTS WITH OBJECTORS AND NON-OBJECTING CLAIMANT |
| |) | |
| DAREN L. PALMER and TRIGON GROUP, INC., a Nevada Corporation, |) | |
| |) | |
| Defendants. |) | |
| |) | |

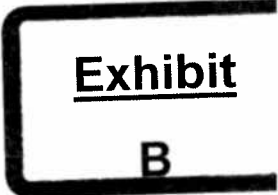
The matter before the Court is the Receiver’s Motion for Approval of Settlement Agreements with Objectors and Other Claimant [Docket No. ____] filed by R. Wayne Klein, the Court-Appointed Receiver of Trigon Group, Inc. and the assets of Daren L. Palmer. The Court has reviewed the Motion and the file and based thereon and for good cause shown,

IT IS HEREBY ORDERED that:

1. The Motion is APPROVED.
2. The Court approves the settlement agreement between the Receiver and the

Objectors. Accordingly, the Court directs the Receiver to pay \$1 million to the Objectors as part of the settlement and to facilitate the transfer of the Palmer timeshare in Hawaii to them.

ORDER APPROVING SETTLEMENT AGREEMENTS WITH OBJECTORS AND NON-OBJECTING CLAIMANT - 1



3. The Court approves the settlement agreement with Hal Wright and directs the Receiver to pay \$15,105.35 to Hal Wright pursuant to the settlement agreement.

4. The Court has separately approved the distribution plan proposed by the Securities and Exchange Commission and hereby directs the Receiver to pay \$2 million of the monies he has recovered to date to claimants in the amounts listed in Exhibit A of the Receiver's motion.

//end of text//

Submitted by:

/s/ John F. Kurtz, Jr.
John F. Kurtz, Jr., ISB No. 2396
HAWLEY TROXELL ENNIS & HAWLEY LLP
Attorneys for the Receiver R. Wayne Klein