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Attorneys for Receiver, R. Wayne Klein

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

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SECURITIES AND EXCHANGE  
COMMISSION,

and

COMMODITY FUTURES TRADING  
COMMISSION,

Plaintiffs,

v.

DAREN L. PALMER and TRIGON  
GROUP, INC.

Civ. No. 09-075-E-EJL (dks)

Civ. No. 09-076-E-EJL (dks)

The Honorable Edward J. Lodge

**MEMORANDUM IN SUPPORT OF  
RECEIVER'S MOTION FOR  
APPROVAL TO PAY THIRD  
INTERIM DISTRIBUTION**

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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 third interim distribution of Receivership funds to allowable claimants ("Claimants").

BACKGROUND

This case began on February 26, 2009 with companion lawsuits filed by the SEC and CFTC. (Dkt. No. 1) On the same day, the Court appointed the Receiver to take control of Trigon and the assets of Palmer. (Dkt. No. 8)

On January 21, 2010, the Court granted the Receiver's Motion for Approval of Proof of Claim Form. (Dkt. Nos 53, 54). The SEC filed a proposed Plan of Partial Distribution on June 9, 2010. (Dkt. No. 72) On December 6, 2010, the Court issued an order approving the Plan of Partial Distribution. (Dkt. No. 111) After a number of objections were filed, the Receiver reached a settlement agreement with objectors and other claimants. (Dkt. No. 126). On March 7, 2011, the Court approved the settlements with the objectors and the final distribution plan. (Dkt. No. 130).

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 the 24 Claimants as the only remaining beneficiaries of the 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. (Dkt. No. 145).

FUNDS IN THE RECEIVERSHIP ESTATE

Currently, the Receiver is holding approximately \$995,000.00 in the bank accounts of the Receivership Estate. The bank balances have been substantially increased with the settlement payments received from Citibank and American Express. 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. Accordingly, the Receiver believes that a second interim distribution of \$800,000.00 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:

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
Remaining allowable claim amount	\$7,691,300.40
Third interim distribution	\$800,000.00
Remaining allowable claim amount	\$6,891,300.40

An \$800,000.00 distribution represents 10.4% of the remaining allowable claim amount.

Additional distributions are anticipated in the future.

### LEGAL ANALYSIS

The Order Appointing Receiver (“Order”) (Dkt. No. 8) 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 (9<sup>th</sup> 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 (9<sup>th</sup> Cir. 1978); SEC v. American Capital Invs., Inc., 98 F.3d 1133, 1143 (9<sup>th</sup> Cir. 1996); SEC v. Black, 163 F.3d 188, 199 (3d Cir. 1998); SEC v. Elliott, 953 F.2d 1560, 1569-70 (11<sup>th</sup> 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 (9<sup>th</sup> 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. (Dkt. No. 130) This third 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).

CONCLUSION

A third interim distribution will aid the Claimants without impairing the Receiver's ability to continue carrying out his duties. An \$800,000.00 distribution to victims using the same methodology as the first and second interim distributions is fair and reasonable.

DATED this 27<sup>th</sup> day of July, 2012.

HAWLEY TROXELL ENNIS & HAWLEY LLP

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

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 27<sup>th</sup> day of July, 2012, I electronically filed the foregoing MEMORANDUM IN SUPPORT OF RECEIVER'S MOTION FOR APPROVAL TO PAY THIRD INTERIM DISTRIBUTION 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  
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15 West South Temple, Suite 1800  
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*Counsel for Plaintiff Commodity Futures Trading Commission*

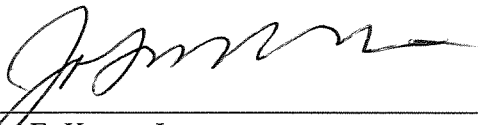
AND, I HEREBY CERTIFY that I have served the foregoing document to the following non-CM/ECF Registered Participants (list names and addresses):

Daren L. Palmer #13952-023  
FPC Duluth  
PO Box 1000  
Duluth, MN 55814  
*Defendant*

U.S. Mail, Postage Prepaid  
 Hand Delivered  
 Overnight Mail  
 E-mail  
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Alan Conilogue  
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John F. Kurtz, Jr.