

FILED DISTRICT COURT
Third Judicial District

AUG 16 2010

SALT LAKE COUNTY

By _____
Deputy Clerk

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RECEIVER FOR FFCF, ASCENDUS, SMITH HOLDINGS
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IN THE THIRD DISTRICT COURT, SALT LAKE COUNTY

STATE OF UTAH

A. DAVID BARNES, M.D., P.C.,

Plaintiff,

vs.

FFCF INVESTORS, LLC, et al.

Defendants.

**RECEIVER RESPONSE TO
OBJECTIONS ON RECOMMENDED
DISTRIBUTION PLAN**

Case No. 080922273

Judge: Denise P. Lindberg

FFCF INVESTORS, LLC,

Plaintiff,

vs.

RICHARD SMITH, et al.

Defendants.

R. Wayne Klein, the Court-Appointed Receiver of FFCF Investors, LLC, Ascendus Capital Management, LLC, and Smith Holdings, LLC (the "Receivership Entities") provides this response to objections on the distribution plan he recommended to the Court.

BACKGROUND, SUMMARY OF OBJECTIONS

In his Report and Recommendations on the Claims Process, filed June 21, 2010, the Receiver identified two distribution plans used most commonly in Ponzi scheme cases and recommended what he called the “Target Distribution Plan” over what he labeled the “Pro-Rata Distribution Plan.”¹

The Receiver is aware of two formal objections that have been filed with the Court opposing his recommendation. These were filed by claimants the Lighted Candle Society (“LCS”) and Annette Kay Donnell. Three other claimants have sent correspondence to the Receiver expressing their comments on the recommendation. Copies of this correspondence are attached as Exhibit A to this Response. The comments are:

- Earl Knight sent an e-mail on July 4, 2010 indicating support for the Target Distribution Plan. Mr. Knight acknowledges that he would receive a greater distribution under this plan, saying: “I don’t think it is fair for everyone to share in the distribution until each of us [has] received an equal portion of the money to be distributed.”
- Sharon Wilcox sent a letter delivered to the Receiver on July 21, 2010 recognizing that claimants “will favor the [plan] that will give them the most money.” She suggests consideration of implementing still another distribution plan – one that favors the “oldest ones who don’t have the time to recoup [their losses] before retirement.”

¹ As noted below, the labels selected by the Receiver to denominate these two distribution plans may have been misleading and led to some confusion among the objectors.

- Michael U. Bailey sent a letter to the Receiver dated July 19, 2010 supporting the Target Distribution Plan. He believes that those who have already received a partial distribution should not get the same recovery as those who have received little or nothing in distributions.
- The LCS filed an objection with the Court dated July 23, 2010. LCS argues that the Target Distribution Plan prejudices investors who made changes in their investment amounts as prudent business practices, before litigation ensued. LCS notes that adoption of the Target Distribution Plan would result in LCS receiving nothing, constituting an unfair prejudice. Objection of the Claimant, Lighted Candle Society, June 21, 2010 at 2.
- Annette Kay Donnell filed a formal objection dated July 28, 2010. Rather than just complain that the Target Distribution Plan results in a lower distribution amount to her than the Pro-Rata plan, Donnell's objection directly addressed the question whether the Target distribution plan satisfies the fairness goal of a distribution plan. Donnell cites numerous cases in which courts have opined that a pro-rata plan is an acceptable or, in many cases, preferred distribution method. In addition, Donnell cites (and provides a copy of) an SEC memorandum submitted in support of a request for a pro-rata distribution plan in the U.S. District Court for Utah.

RESPONSE TO OBJECTIONS

It is no surprise that each investor who submitted comments or objections favors the plan that will maximize the distribution payments to that investor. The letter from Sharon Wilcox

also highlights the fact that in addition to the two alternative plans identified to the Court by the Receiver, other plans could be recommended that focused on factors such as age, size of loss (on the theory that investors with smaller investments are more in need of distribution payments), or net worth (paying recoveries to investors based on their current net worth – directing payments to those with the smallest net worths).

Donnell’s objection points out instances in which courts have approved use of a “pro-rata” distribution plan. This highlights what may have been a confusing nomenclature by the Receiver in labeling one alternative a “pro-rata” plan and the other a “target” plan. In fact, the SEC considers both to be “pro-rata” plans. In *SEC v. Daren L. Palmer and Trigon Group, Inc.*, Memorandum in Support, June 9, 2010, Civ. No. 09-75-S-EJL, (D. Idaho 2009) (“hereinafter, SEC Memorandum”), the SEC recommended that the court approve a plan of partial distribution giving investors “their pro rata share” *Id.* at 2 (A copy of the SEC Memorandum is attached as Exhibit B).

The SEC “[p]lan proposes that [eligible] claimants will be paid in a manner to assure a pro rata recovery for claimants based on the principal amount invested with [the Ponzi scheme] minus any funds received from [the scheme].” *Id.* at 4. The SEC’s proposal takes into consideration “the percentage return on the verified investment received by each Claimant” and proposes that “distributions will be made after a determination of a benchmark percentage return level by the Receiver” *Id.* at 5.

The Receiver will make the first distributions to those aggrieved investors who have not yet received that benchmark percentage return on their original and

verified investment. Those Claimants who have already received in excess of the benchmark percentage return will receive distribution only after all other investors have recovered the same percentage. *Id.*

Thus, in the view of the SEC, both distribution alternatives proposed by the Receiver constitute “pro rata” plans. Accordingly, the cases cited by Donnell might indicate that the “target” plan, as described by the Receiver,² is still a pro rata plan that is similar to those approved by the court.³

Federal courts are granted broad discretion in approving distribution plans. In the federal system, a plan that provides for the orderly and efficient distribution of funds to investors will be upheld. *CFTC v. Topworth Int’l, Ltd.*, 205 F.3d 1107, 1115 (9th Cir. 1999). Utah Rule of Civil Procedure 66 similarly provides discretion to Utah judges in fashioning or approving distribution plans. In *Interlake Co. v. Von Hake*, 697 P.2d 238, 239-240 (Utah 1985), the Utah Supreme Court held that a trial court in possession of the *res* of a receivership estate has power to determine all questions concerning ownership and disposition of the property. Similarly, *Shaw v. Robinson*, 537 P.2d 487, 490 (Utah 1975) held that a receiver’s disposition of property of the estate should be confirmed by the court overseeing the receivership.

The argument made by the SEC in the *Palmer* case is that a pro-rata distribution plan utilizing a benchmark standard “provide[s] the most equitable form of relief to the investors. Investors who received a return of any funds from [the Ponzi scheme] will have those returns

² Perhaps it would have been better for the Receiver to have labeled it a “pro rata benchmark” plan.

³ The Receiver does not contest that many of the pro-rata plans approved by the courts do not have “benchmark” components to the plans.

credited against their investment.” SEC Memorandum at 8.

RECEIVER’S RECOMMENDATION

As the Receiver noted in his June 21, 2010 recommendation, he is not making a strong recommendation of one distribution plan over the other. Until now, the Receiver has been able to consider the investors’ interests as unified; his goal has been to maximize the net recovery of funds for investors. Now, the Receiver finds himself in the extremely uncomfortable position of making a recommendation that will favor one group of investors over the other. This is true regardless of which distribution plan is recommended. Nevertheless, the Receiver feel obliged to inform the Court of the primary alternatives, rather than simply acting as if there were only one real choice.

OBJECTIONS MAY BE RESOLVED THROUGH SUMMARY PROCEEDINGS

For the reasons described in the Receiver’s Response to Objections on Allowable Claim Amounts, the Receiver believes that all due process requirements necessary for the Court to select a distribution plan have been met. Accordingly, the Court can make its decision based on the filings that have been made regarding this matter.⁴ If the Court wishes to hear oral argument, the Receiver suggests scheduling oral argument for the same time as the next status conference on September 20, 2010. A proposed Notice of Hearing is attached to the Receiver’s Response to Objections on allowable Claim Amounts.

⁴ The Court’s June 28, 2010 Order Setting Deadlines does not permit any reply by the objectors. Accordingly, briefing on the selection of a distribution plan is complete. The Receiver is also submitting a Request to Submit, alerting the Court that no further briefing will occur.

CONCLUSION

For the reasons described above, the Receiver recommends that the Court:

1. Determine whether the most equitable distribution plan for investors is one that distributes the limited amount of funds recovered by the Receiver to all investors on a gross pro-rata basis according to their investment losses or one that distributes funds on a “benchmark” pro-rata basis *after* taking into account distributions received from the investment program. The Receiver recommends adoption of a benchmark pro-rata plan as recommended by the SEC in its Memorandum attached as Exhibit B.
2. Approve an initial distribution of funds to claimants based on the Allowable Claim Amounts approved by the Court and according to the distribution plan selected by the Court.

DATED this 16th day of August, 2010.



WAYNE KLEIN, Receiver

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of August, 2010, a true copy of the foregoing Receiver Response to Objections on Recommended Distribution Plan was mailed to the following parties and objectors. A letter was also sent to all non-objecting claimants, notifying them this response was filed and that copies will be available on the Receiver's website.

Jerome H. Mooney
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Salt Lake City, UT 84101
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Richard T. Smith
443 North 750 East
Orem, UT 84097

SuetWan Chan Bostrom Young
302 West 1310 North
Orem, UT 84057

James D. Gilson
Callister Nebeker & McCullough
10 East South Temple, Suite 900
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Counsel for Kathryn Rowley

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Parr Brown Gee & Loveless
185 South State Street, Suite 800
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Counsel for Annette Kay Donnell

Anthony W. Schofield
Kirton & McConkie
518 West 800 North, Suite 204
Orem, UT 84057
Counsel for T. Courtney Smith

Bruce L. Dibb
Jensen, Duffin & Dibb, LLP
311 south State Street, Suite 380
Salt Lake City, UT 84111
Counsel for Lighted Candle Society



Wayne Klein

From: Earl Knight [eknight1958@gmail.com]
Sent: Sunday, July 04, 2010 5:07 PM
To: Wayne Klein
Subject: MONEY DISTRIBUTION
Attachments: _Certification_.txt

I just wanted to let you know that Patty and I favor the second option on the distribution, the same one recommended by the SEC. That would be obvious as it would allow us to receive a larger portion of our money. However, I don't feel it is fair for everyone to share in the distribution until each of us have received an equal portion of the money to be distributed. When that happens, then everyone should receive an equal share of the remaining monies. Thank you.

Earl Knight

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7/21/10

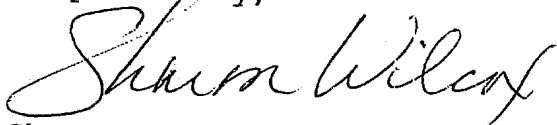
Wayne Klein
Receiver for FFCF,
Ascendus. Smith Holdings
299 South Main, Suite 1300
Salt Lake City, Utah 84111
July 15, 2010

Dear Mr Klein:

As always, the disappointment in the outcome of this whole thing is very upsetting. Will there ever be a satisfactory outcome of this whole mess? NO! To go from \$952,000 to a pay off of \$\$68,121.11 (best scenario) or \$37,063.64 is just not right. You talk about when you collect other monies that there will be more money coming. Once the distribution takes place that will be the end of it. There will be no other attempts to collect because it will be to much of an inconvenience.

Of course, those objections to either plan depending on if you have a lawyer or not, will favor the one that will give them the most money. Looks like to me that the pro-rata plan gives everyone some money, but then you will have those that won't get as much. Well then there comes the decision to maybe do it by age. The oldest ones who don't have the time to recoup before retirement. So here we are another argument. I'm sure everyone has their ideas. The Best settlement would be that this didn't happen in the first place. Why can't people be honest in all their dealings? Sounds like a good plan to me.

Respectfully,



Sharon and Dave Wilcox
11853 N Whispering Ridge Dr.
Tucson, Arizona 85737
520.744.2655

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July 19, 2010

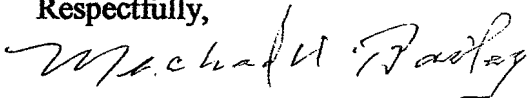
To: R. Wayne Klien
Receiver for FFCF, ASCENDUS, SMITH HOLDINGS
299 South Main, Suite 1300
Salt Lake City, UT 84111
wklein@kleinutah.com

From: Michael U. and Barbara Bailey
540 North 350 West
Richfield, UT 84701
Claim # 3007

Dear Mr. Klien

As per your document, **REPORT AND RECOMMENDATIONS ON CLAIMS PROCESS BY R. WAYNE KLEIN, RECEIVER**, Case No. 080922273, Judge Denise P. Lindberg, June 21, 2010, I submit the following: I would ask that you and the court to follow the recommendation submitted by you as to how the monies should be distributed to the claimants, that is to follow the "Target" Distribution Level: Payments Based on Amounts Already Recovered. I feel this is the only fair and equitable way that it could be done. I recognize that some of the claimants that have received a distribution will still have an outstanding amount that is more than I ever invested, however, I feel that sharing an equal percent across the board with the "Pro-Rata" Plan is not the way to go. Many of the claimants have received a partial distribution. The amount I invested (even though it seems small compared to some of the others) is substantial to me and not having any return makes that a great concern to me. I appreciate your efforts.

Respectfully,



Michael U. Bailey

Enclosed: A recommendation to the Third District Court,
Denise P. Lindberg,
Third District Court Judge

Would you please get it to her. Thanks.

RECEIVED
7/21/10

July 19, 2010

To: Judge Denise P. Lindberg
Third District Court
Salt Lake City, Utah


From: Michael U. and Barbara Bailey
540 North 350 West
Richfield, UT 84701
Claim # 3007

Reference: ORDER SETTING DEADLINES FOR FILING OBJECTIONS TO RECEIVER'S REPORT ON CLAIMS PROCESS AND RECOMMENDED DISTRIBUTION PLAN June 28, 2010, Third District Court

Dear Judge Lindberg

As per R. Wayne Klien's document, **REPORT AND RECOMMENDATIONS ON CLAIMS PROCESS BY R. WAYNE KLEIN, RECEIVER**, Case No. 080922273, Judge Denise P. Lindberg, June 21, 2010, I submit the following: I would ask that you, overseeing this case, to follow the recommendation submitted by Mr. Klien as to how the monies should be distributed to the claimants, that is to follow the "Target" Distribution Level: Payments Based on Amounts Already Recovered. I feel this is the only fair and equitable way that it could be done. I recognize that some of the claimants that have received a distribution will still have an outstanding amount that is more than I ever invested, however, I feel that sharing an equal percent across the board with the "Pro-Rata" Plan is not the way to go. Many of the claimants have received a partial distribution. The amount I invested (even though it seems small compared to some of the others) is substantial to me and not having any return makes that a great concern to me. I appreciate your efforts.

Respectfully,



Michael U. Bailey

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

SECURITIES AND EXCHANGE COMMISSION,

PLAINTIFF,

v.

DAREN L. PALMER and TRIGON GROUP, INC., a
Nevada Corporation,

DEFENDANTS.

**MEMORANDUM IN SUPPORT
OF MOTION FOR APPROVAL
OF PLAN OF PARTIAL
DISTRIBUTION**

Civil No. 09-75-S-EJL

Judge Edward J. Lodge

The Securities and Exchange Commission (the “Commission”) respectfully submits this Memorandum in Support of the Motion for Approval of Partial Distribution. On February 26, 2009, the Commission filed a Complaint seeking to enjoin Daren L. Palmer (“Palmer”) and Trigon Group, Inc. (“Trigon”) (collectively, the “Defendants”) from further violations of the federal securities laws, an *ex parte* Order to stay litigation, an *ex parte* Order freezing their assets, an *ex parte* Order to appoint a receiver, and a preliminary injunction. On February 26, 2009, this court granted the *ex parte* Orders and appointed Wayne Klein as Receiver (the “Receiver”) for Trigon (Docket #s 8 and 9). The Receiver was charged with marshalling Trigon’s assets. The Commission seeks to make a partial distribution of funds in the Receivership Estate to defrauded investors. The Commission proposes a Plan of Partial Distribution (the “Plan”), attached hereto as Exhibit “B”, that identifies the process by which the Receiver will distribute funds in the Receivership Estate. This Plan is subject to the approval of the Court.

All capitalized terms used in this Memorandum shall have the meaning attributed to them in the Plan. In the event of any discrepancy between the Plan and the description of the Plan herein, the terms of the Plan shall control.

PROPOSED PLAN OF PARTIAL DISTRIBUTION

The Commission believes that making a partial distribution of available funds is appropriate and in the best interest of the defrauded investors to assure their pro rata share is recovered as set out by the Plan. A investment analysis of the amounts invested by individual investors, the amounts returned by Palmer and/or Trigon to each, and their pro rata share of the distribution is attached hereto as Exhibit “A”. The investment analysis is based on the documents in the possession of the Receiver, or obtained by the Receiver, Claims Forms

submitted by investors, other documentation and evidence submitted by individual investors, and a thorough review of the financial records of Palmer and/or Trigon. The investment analysis, and the figures contained therein, is subject to modification upon receipt of additional information. The Receiver shall provide notice to any affected Claimant in the event of modification to the investment analysis.

The entirety of the properties and funds in the Receiver's control are not being distributed, because the Commission and the Receiver have determined that retaining a portion of the assets marshaled by the Receiver for expenses such as costs related to taxes, defending Palmer's and/or Trigon's assets, payment of Disputed Claims which later become Allowed Claims, and other expenses to be approved by this Court is appropriate.

SUMMARY OF SIGNIFICANT ELEMENTS OF THE PROPOSED PLAN OF PARTIAL DISTRIBUTION

A. Division of claims

The Plan divides claims against funds in the Receivership Estate as follows:

- (1) Class 1 shall consist of Administrative Expense Claims;
- (2) Class 2 shall consist of Tax Claims;
- (3) Class 3 shall consist of Investor Claims, but shall exclude Claims by Non-Participants as defined by Article II of the Plan;
- (4) Class 4 shall consist of Claims for amounts outstanding to non-investor creditors;
and,
- (5) Class 5 shall consist of Non-Participant Claims.

The ordinal placement of the classes are established to represent the priority by which they will receive payment.

B. People and entities excluded from plan

The Commission has determined that allowing certain individuals to participate in this partial distribution is neither fair nor equitable. All individuals and entities that will be excluded from any distribution under the Plan are enumerated in Article II of the Plan. This group includes individuals and entities that were substantially involved in the fraudulent investment scheme of Palmer (collectively, the “Insiders”). Insiders include, but are not limited to, Daren L. Palmer, his relatives, individuals who have materially participated in soliciting Palmer and/or Trigon investors with knowledge of its overall fraudulent activity, and investors whose accounts and/or funds invested with Palmer and/or Trigon are or were legally or substantially controlled by an Insider.

Individuals who have made other arrangements with their claims and individuals with other circumstances that make it appropriate to exclude them from the Plan will not be allowed to participate in the Plan.

C. Pro rata recovery

The Commission does not believe the Receiver will be able to recover and liquidate sufficient Palmer and/or Trigon assets to fully compensate all Class 3 claims. A substantial amount of investor funds were used by Palmer for personal purposes including credit card payments, the construction of a \$7 million mansion in Idaho Falls, the purchasing of recreational vehicles and the payment of a large personal salary. Therefore, the Commission’s Plan proposes that Class 3 claimants will be paid in a manner to assure a pro rata recovery for claimants based on the principal amount invested with Palmer and/or Trigon minus any funds received from Palmer and/or Trigon to date.

OPERATION OF THE PLAN

In anticipation of the Commission's filing of a Proposed Plan, the Receiver requested that the Court establish a deadline by which investors should submit claims (Docket #53). The Court established February 28, 2010 as the Claims deadline (Docket # 54).

The Commission knows of no claims that were timely submitted that are not included on the investment analysis. The investment analysis contains a determination of the verified investment for each investor, which is the basis for calculating the amount of each allowed investor claim. The investment analysis also includes the percentage return on the verified investment received by each Claimant from Palmer, Trigon or the Receiver to date. Any and all distributions will be made after a determination of a benchmark percentage return level by the Receiver in light of the available proceeds. The Receiver will make the first distributions to those aggrieved investors who have not yet received that benchmark percentage return on their original and verified investment. Those Claimants who have already received in excess of the benchmark percentage return will receive distribution only after all other investors have recovered the same percentage.

Notice of the Motion, together with the dissemination of the Plan, provides investors, known creditors and claimants with the opportunity to object to the Commission's determinations in the investment analysis or any other portion of the Commission's Plan by filing an opposition to the Motion with this Court. The Commission is sending the Motion, along with the Plan, to all investors, known creditors and claimants at their last known address. Investors, known creditors and claimants will have until August 9, 2010 to file an opposition to the Motion, the distribution set forth in the Plan, or any other objection to the Plan. Any objections shall be filed with this Court and served upon the Commission, the Defendants, the

Receiver and all investors, known creditors and claimants who received service of the Motion.

Responses to any objection to the Plan shall be filed with the Court and served on the Commission, the Defendants, the Receiver and all investors, known creditors and claimants upon whom the motion was served no later than September 8, 2010. Such responses should also be promptly filed with this Court.

If an investor does not object to the amounts set forth in the investment analysis by August 9, 2010 the corresponding investment analysis amounts for that particular investor shall be considered the final claim for the purposes of the Plan unless otherwise modified after notice to the affected Claimant.

ARGUMENT

I. THE COURT SHOULD APPROVE THE PLAN FOR PARTIAL DISTRIBUTION

A. The Court has authority to provide a remedy in equity.

Section 20(b) of the Securities Act [15 U.S.C. § 77(t)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)] empower the Court to grant injunctive relief where it appears that a person is engaged in or about to engage in violations of the federal securities laws. Federal courts have inherent equitable power to issue ancillary relief, including the imposition of a receivership. SEC v. Wencke, 622 F.2d 1363, 1369 (9th Cir. 1980). Where the Court is authorized by statute to provide the equitable remedy of an injunction, it also has “the authority to award ancillary equitable relief, including restitution.” CFTC v. Brockbank, 505 F. Supp. 2d 1169, 1175 (D. Utah 2007) (internal quotes removed). The goal of restitution is to restore the status quo and return to investors what is properly theirs. Id.

The Commission’s Plan seeks to restore to individual investors that of which they were defrauded. While it is highly unlikely that the investors will be fully compensated, the Plan seeks to

provide some relief by returning funds to the investors. As such, the Plan represents an appropriate use of the Court's power to provide ancillary relief.

B. The Court has authority to approve of the Plan's distribution of funds in the Receivership.

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.

Here, the Plan presented by the Commission provides a reasonable procedure for returning funds to defrauded investors. Hence, approving the Plan's distribution of funds to investors is within this Court's power.

C. A distribution resulting in a pro rata recovery of funds is equitable.

Generally, where funds available to compensate investors are limited, a pro rata distribution of funds from a receivership is an equitable remedy. Topworth, 205 F.3d at 1116; U.S. v. Real Property, 89 F.3d 551, 553 (9th Cir. 1996). For example, the Topworth Court approved a pro rata distribution of funds despite one investor's records indicating that he was entitled to a larger sum. 205 F.3d at 1116. Similarly, in Real Property, the Court noted that when many individuals are defrauded and insufficient funds are available to compensate them, it

would be inequitable to allow one party to use “tracing fictions” to claim a greater share of property out of commingled funds. 89 F.3d at 553.

In the case at bar, funds available for distribution are limited. A distribution resulting in a pro rata recovery of funds places participating investors’ claims on equal footing. Additionally, there is substantial uncertainty as to what future funds the Receiver will recover. A distribution resulting in a pro rata recovery for investors is most equitable in light of this uncertainty.

D. Limitations on claims in the Plan are an appropriate exercise of the Commission’s discretion.

In formulating plans to compensate victims of securities fraud, the Commission may impose limits on claims to maximize the return to defrauded investors. SEC v. Wang, 944 F.2d 80, 81-82, 88 (2d Cir. 1991); Certain Unknown Purchasers, 817 F.2d at 1115-16. In Wang, the court allowed the Commission’s plan to limit distribution of funds only to investors who had suffered “out-of-pocket” losses, not just losses on paper. 944 F.2d at 81-82. “This kind of line-drawing – which inevitably leaves out some potential claimants – is . . . appropriately left to the experience and expertise of the SEC in the first instance.” Id. at 88.

The Commission feels that the distinctions drawn in the Plan provide the most equitable form of relief to the investors. Investors who received a return of any funds from Palmer and/or Trigon will have those returns credited against their investment. Similarly, the Plan bars any claims for interest or returns that were promised as a part of the Trigon investment scheme.

The Commission has also determined that excluding parties determined to be Insiders from participating in the Plan is fair and equitable. Although some Insiders may have lost money by investing with Palmer and/or Trigon, their conduct leaves them with unclean hands. Allowing those who perpetrated or aided in the perpetration of this fraud to have equal footing with innocent investors would be unfair. By excluding these Insiders, there will be a greater

return to victims who had neither knowledge of nor participation in the fraudulent nature of the operation.

E. Allowing investors and third parties the opportunity to object to the Motion and the Plan provides sufficient due process.

Use of summary procedures is permissible for nonparty claims to property held by a receiver. Topworth, 205 F.3d at 1113. Due process requires notice and an opportunity to be heard. Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 313 (1950).

The response allowed is sufficient to provide investors, known creditors and claimants with the opportunity to dispute the Motion or any portion of the Plan. Service of the Motion and accompanying documents upon investors, known creditors and claimants at their last known address is reasonably calculated to provide notice to investors, known creditors and claimants. Investors, known creditors and claimants will be given reasonable notice and ample time to have their objection heard in a meaningful way by this Court. A full hearing is not required to provide due process to investors, known creditors and claimants claiming property. Elliott, 953 F.2d at 1571. Accordingly, since investors, known creditors and claimants will be provided with the opportunity to present evidence and be heard in a meaningful manner, they will be afforded due process.

CONCLUSION

Based on the forgoing, the Commission's Plan represents a fair and equitable plan of distribution. Therefore, the Commission respectfully requests this Court to approve the Motion for Approval of the Plan of Partial Distribution.

DATED this 9th day of June 2010.

/s/ Karen L. Martinez

Karen L. Martinez
Thomas M. Melton
Attorneys for the Plaintiff
Securities and Exchange Commission