

# FREQUENTLY ASKED QUESTIONS

## NATIONAL NOTE OF UTAH

Dear Investors:

At the suggestion of one of the investors, we have compiled this list of answers to *Frequently Asked Questions*. We hope this information will assist you in understanding the role of the receiver, what has happened, and what the next steps will be.

***What is a Receiver?*** A Receiver is an independent person who is appointed by the Court. The Receiver's roles are to i) take over control of the assets of the company in receivership, ii) secure and maintain the assets so they do not disappear or lose value, iii) sell the assets so the proceeds can be distributed to investors, iv) perform a forensic accounting to reconstruct the financial records of the company (to know where the money went), and v) report to the Court and the investors on the progress of the Receiver's work.

***Who does the Receiver work for?*** The Receiver is appointed by the Court and reports to the Court. The Receiver does not work for the SEC. The Receiver does not work for National Note or Wayne Palmer. Anyone wanting to force the Receiver to take or refrain from taking action must obtain an order from the Court.

***What are Mr. Klein's qualifications?*** Mr. Klein is an attorney who spent most of his career working for government agencies that regulate securities or for agencies bringing enforcement actions against violators. This has included "civil" enforcement actions, such as the SEC brought here, and some "criminal" enforcement actions. He has worked as a deputy attorney general for the Idaho Attorney General, an assistant attorney general in Utah, and chief of the Commercial Enforcement Division of the Utah Attorney General's Office. He has been the head of the Idaho Securities Bureau and the Utah Division of Securities. Since he left government employment in 2008, he has served as a court-appointed receiver in five cases in state and federal courts and is also serving as a bankruptcy trustee in a case in Idaho.

***Should I get an attorney?*** Investors are welcome to consult with their own attorneys if they wish. Some investors find it helpful to get legal advice from an attorney who will look out for your interests. However, you will be responsible for paying any fees charged by your attorney. In general, hiring an attorney will not increase the amount you will recover or result in you getting paid faster. One of the primary purposes in having a receiver appointed is to prevent investors from filing suit to seize assets that would go to only the investors who filed suit. In fact, the Court has ordered that all lawsuits against National Note be put on hold and that no new lawsuits can be filed. This is to give the Receiver time to recover assets and to ensure that the monies recovered are distributed to all investors, not just to investors who tried to move quickly. In short, the Receiver is supposed to act in the best interests of all the investors and will try to make sure all of them are treated equally.

At the same time, it is possible that an attorney could help you identify potential avenues of recovery that the Receiver will not be pursuing. If someone else solicited you to invest in National Note, that person might be liable to you. It is possible that others, such as retirement custodians, might share some responsibility for your losses. The Receiver does not expect to be pursuing claims such as this, where the claims would belong to individual investors.

***What has happened to date?*** The first priority is to identify and secure assets and records. The following has happened so far:

- The Receivership was created when the SEC filed suit against National Note and Mr. Palmer and asked the Court to appoint a Receiver. The Court issued orders that appointed a receiver, froze assets of the company, put on hold lawsuits that had been filed against the company, prevented creditors from seizing assets in the receivership, and gave authority to the Receiver to recover and maintain assets of the company.
- One of the orders issued by the Court froze the bank accounts of the defendants. The banks have paid to the Receiver the balances of funds in those accounts. These bank accounts held approximately \$42,000.00. The Receiver has opened new bank accounts under the control of the Receiver and deposited these funds into the new bank accounts.
- The Receiver took control of the offices of National Note. The locks were changed, an inventory was taken, the computers were seized, and notice was posted on the office door.
- The Receiver has been sending notices of the Receivership to tenants of properties owned by National Note, creditors who are owed monies, business partners, banks, and others who had dealings with National Note.
- The Receiver has begun collecting rents for properties where National Note has tenants or has been acting as property manager. In some cases, National Note was also operating the owners' association for some of these properties. The Receiver is keeping these operations going to minimize the impact on the tenants.
- The Receiver has restarted the operations of Old Glory Mint, as it appears that it can operate profitably. As such, the net revenues from that company can be used to cover losses of customers and investors and having an operating company will be more valuable than a company that has lost all its customers.

***What will happen at the Court hearing on August 24?*** The initial orders entered by the Court were intended to be temporary. The hearing on August 24, 2012 is intended to give Mr. Palmer an opportunity to challenge the SEC's allegations and ask the Court to return control of the companies back to him. The hearing will be at 9:30 in the courtroom of Judge Bruce Jenkins at the federal courthouse at 350 South Main in Salt Lake City. Anyone is welcome to observe the hearing, although you will not be allowed to speak at the hearing. It is possible that the hearing will be postponed or that Mr. Palmer will enter into an agreement with the SEC that would make the hearing unnecessary. The Receiver will try to put a notice on the website if the hearing is

postponed or canceled. You can also call the Court clerk at (801) 524-6687 the morning of the hearing.

***What are the next steps in the Receivership?*** We anticipate the next steps to be:

1. Identify properties owned by National Note, its affiliated companies, and Mr. Palmer.
2. Make sure we are collecting rents due on those properties.
3. Determine whether we need to obtain insurance for these properties.
4. Determine the estimated value of each of these properties.
5. Determine what mortgages or liens are on each property.
6. If the properties are worth less than the liens on the properties (meaning there is no equity in the properties) the Receiver will decide whether to recommend to the Court that he relinquish control of the properties to the lien holders.
7. Determine whether any of the 40 companies placed in the receivership do not belong in the receivership or whether there are other companies affiliated with National Note that should be in the receivership. For example, we have identified one company where National Note controlled the bank account, but the assets are owned by independent persons who are not affiliated with National Note. Another example is the owners' association for Expressway Business Park, where the Receiver intends to turn control of the association over to the owners of the properties.
8. Review the records at National Note to compile information about investors, creditors, debts owed, business relationships, monies owed to National Note, and compensation to Mr. Palmer and employees of National Note.
9. Reconstruct the financial records of National Note. This will involve reconstructing the bank records of National Note and the 40 companies controlled by National Note.
10. Sell the properties and other assets of the receivership. This will be done in an orderly manner, to maximize the value, rather than selling them at liquidation prices.
11. File lawsuits to recover monies that were paid to others improperly. This might include payments to credit card companies, business partners, family members, or charitable contributions.
12. Conduct a claims process. This will involve requiring each investor to show how much he or she invested with National Note and how much was received in interest payments or returns of investment. The Receiver will analyze these and, together with the SEC, recommend a plan for distributing the monies that have been recovered.

***What assets have been found?*** The Receiver has identified approximately 50 properties where National Note has an interest in the properties. Mr. Palmer has provided information to the

Receiver about many of the properties and has pledged to assist the Receiver in maximizing the value of these assets. As noted above, identifying assets is only the initial step. We also need to determine the value of the assets and any liens against the assets.

***Will all investors be treated the same?*** In general, all investors will be treated equally. I do not expect that any preference will be given to those who invested early or late. I expect investors will be treated equally whether they had large amounts invested or small amounts. One factor that may result in different results for investors is whether the investors had their interest payments sent to them on a regular basis or just accrued the interest. In most receivership cases, interest payments made to investors will reduce the amount of their claim. In some cases, the distribution plan directs payments first to those who have received no payments.

However, if there are valid security interests or liens on any of the properties, those lien holders will get priority – up to the amount of their liens. So, if a property sells for \$400,000.00, but a bank has a \$300,000.00 mortgage, the mortgage must be paid first. In this example, there would only be \$100,000.00 available to distribute to investors. If a property is worth \$400,000.00 and has a valid lien of \$450,000.00, we expect we would relinquish any claim to that property. We have found some instances in which investors in National Note demanded to be given liens on properties owned by National Note, as collateral for their investments. If these liens are valid, the proceeds from the sales of these properties will have to first pay off the liens, then go toward paying other investors. The Receiver intends to scrutinize liens carefully to determine whether the investors are entitled to priority payments when the property is sold.

***Will any investors have to give their monies back to the Receiver?*** It may be that certain investors will have to give some or all of their monies back to the Receiver. The law provides that any investors who got back more in payments than they gave to National Note will have to return the excess amounts they received. In other words, no one gets to keep more than the amount he or she put in. In addition, anyone who did not act in “good faith” can be required to return to National Note all the payments he or she received. This typically applies to insiders and other people who recognized the fraud and wanted to pull their monies out before the company ran out of money.

***Will criminal charges be filed?*** Many investors have inquired whether criminal charges are expected. The answer is that the Receiver does not know and has no authority relating to criminal charges. Likewise, the SEC does not have authority to bring criminal charges. If criminal charges are filed, it will be because a criminal investigation is conducted and a prosecutor decides to file charges. These are decisions to be made by state and federal prosecutors.

***How long will this take?*** We expect it will take three to five years to wind up this receivership. It may be faster depending on: i) the quality of records and bookkeeping at National Note, ii) the amount of assistance we receive from Mr. Palmer and other employees of National Note, and iii) our success in selling properties owned by National Note. It can also take longer if Mr. Palmer vigorously fights the SEC in its lawsuit, if the real estate market continues to show low demand, if other people strenuously fight lawsuits filed by the Receiver, and if some investors oppose actions taken by the Receiver or dispute the distribution plans that are proposed.

***How will the investors be kept informed?*** The Receiver is required to file quarterly status reports with the Court, in addition to filing motions seeking approval for significant actions to be taken by the Receiver. These quarterly status reports will be posted on the Receiver's website: <http://www.kleinutah.com/index.php/receiverships/national-note-of-utah-1c> We will try to have current information on the website, including notices of developments in the case. We ask the investors to check the website periodically to be advised of new actions, or flag the website to be automatically notified when there are new postings.

***Do I need to keep paying fees to my IRA custodian?*** We have heard from some investors that the custodians of their IRA or Roth IRA accounts expect the investors to keep paying custodial fees that are based on the full value of the investments, even though the investments have lost much of their value. At least one custodian has told investors that if they cease paying the high maintenance fees, the custodian will send a tax notice stating that there has been a taxable distribution. The Receiver encourages investors to consider alternatives to paying high custodial fees. This might include finding an alternative custodian or closing out the custodial account while awaiting a distribution. The Receiver expects to post a notice soon identifying alternatives.

***What is the Court's role in overseeing the Receiver?*** The Receiver acts at the direction of the Court. The Receiver makes routine decisions regarding operation of the receivership and investigating prior transactions, but must seek court approval for all major actions such as deciding when to begin filing lawsuits, approving settlements with persons owing money to the receivership, selling properties, releasing entities from the receivership estate, adding new entities to the receivership estate, and authorizing payment of fees to the Receiver.

***How is the Receiver paid?*** The Receiver will be paid an hourly rate, but his payment is subject to several conditions: i) the Receiver will be paid only from assets that are recovered. Neither the Court nor the SEC have any obligation to make payments to the Receiver, ii) the SEC will review all requests by the Receiver to be paid for his work and can object if it wants, and iii) the Court must approve all payments to the Receiver, including the fees for his work and reimbursement of his expenses. The Receiver can be paid only after the Court issues an order approving payment to the Receiver.

*Wayne Klein, Receiver: August 4, 2012*