

IN THE UNITED STATES DISTRICT COURT FOR THE  
MIDDLE DISTRICT OF PENNSYLVANIA

U.S. SECURITIES AND )  
EXCHANGE COMMISSION, )  
 )  
Plaintiff, )  
v. )  
 ) Case No. 1:09-cv-1330  
SEAN NATHAN HEALY, )  
 ) Judge Conner  
Defendant, )  
and )  
 )  
SHALESE HEALY and )  
SAND DOLLAR INVESTING PARTNERS, LLC, )  
 )  
Relief Defendants. )  
\_\_\_\_\_)  
U.S. COMMODITY AND FUTURES )  
TRADING COMMISSION, )  
 )  
Plaintiff, )  
v. )  
 ) Case No. 1:09-cv-1331  
SEAN NATHAN HEALY, )  
 ) Judge Conner  
Defendant, )  
and )  
 )  
SHALESE HEALY and )  
SAND DOLLAR INVESTING PARTNERS, LLC, )  
 )  
Relief Defendants. )  
\_\_\_\_\_)

**RECEIVER'S MOTION TO APPROVE  
CLAIMS PROCEDURE AND PLAN OF DISTRIBUTION**

The Court-appointed Receiver, Melanie E. Damian, Esq. (the “Receiver”) hereby seeks an order approving the Receiver’s proposed claims procedure, claims forms, and plan of distribution for assets recovered by the Estate (the “Claims Administration Process and Distribution Plan”). In support of this Motion, the Receiver respectfully states as follows:

**PROCEDURAL BACKGROUND**

This receivership case commenced on July 12, 2009, when the Securities and Exchange Commission (the “SEC”) and the Commodity Futures Trading Commission (the “CFTC”) filed complaints for violations of securities or commodities laws in connection with a fraudulent investment scheme perpetrated by Defendant Sean Healy (the “Healy Investment Scheme”).

On July 13, 2009, this Court appointed the Receiver in the *Temporary Restraining Order, Order Freezing Assets and Granting Other Relief, and Order to Show Cause* [Case No. 1330, D.E. 12] and the *Order Granting Plaintiff’s Ex Parte Emergency Motion for Statutory Restraining Order, Expedited Discovery, Preliminary Injunction, and Other Equitable Relief* [Case No. 1331, D.E. 14], (collectively, the “TROs”), as modified and extended by the Court’s July 20, 2009 *Stipulation and Order granting Preliminary Injunction, freezing Assets and other Relief* [Case No. 1330, D.E. 21] and *Consent Order of Preliminary Injunction and*

*for Other Equitable Relief Against Defendant Sean Nathan Healy* [Case no. 1331, D.E. 19], (collectively with the “TROs”, the “Preliminary Injunctions”).

This Court made the injunctive relief permanent in the *Judgment as to Defendant Sean Nathan Healy* [Case No. 1330, D.E. 89] and in the *Consent Order of Permanent Injunction, Disgorgement, Civil Monetary Penalty, and Equitable Relief Against Defendant Sean Nathan Healy and Relief Defendant Sand Dollar Investing Partners, LLC* [Case No. 1331, D.E. 96] entered on April 15, 2009 (collectively, the “Final Judgments”).

### **FACTUAL BACKGROUND**

The Receiver has fulfilled her duties under the Preliminary Injunctions by diligently working to marshal, safeguard and preserve assets of the Estate wheresoever located and has worked to liquidate such assets of the Estate, including the residence located at 2672 Riviera Manor, Weston, Florida (the “Riviera Manor Property” or the “Property”), at the highest possible price.

#### **The Assets**

The Receiver seized bank accounts in the name of Shalese Healy held at Northern Trust Bank and at Bank of America. The proceeds were transferred to the receivership account at Gibraltar Private Bank & Trust, which account currently holds \$3,490,738.83.

### **Counsel's Trust Accounts**

The Receiver also subpoenaed documents from all of the attorneys known to have been engaged by Sean and Shalese Healy. To the extent that these attorneys held moneys in trust for the Healys, the funds were demanded and returned. These attorneys include: i) Roy Oppenheim of Oppenheim & Pilesky, P.A.; ii) Richard Bales, Esq. of Bales & Sommer, P.A.; iii) Alan Ross, Esq. of Robbins, Tunkey, Ross et. al.; iv) Issac Mitrani, Esq. of Mitrani, Rynor, Adamsky & Toland, P.A.; v) Jeffrey Cox, Esq. of Sallah & Cox, LLC; and vi) William Costopoulos, Esq. of Costopoulos, Foster & Fields. With regards to Mr. Ross, the Receiver was able to obtain the return to the Estate of \$175,000 of investor funds held in Mr. Ross' trust account for the benefit of Mr. Healy. Mr. Cox returned to the Receiver \$5,000 which he held in trust for Mr. Healy. Mr. Costopoulos returned \$7,500. All of the other attorneys set forth above have provided sufficient documents and information that have allowed the Receiver to conclude that these entities do not have recoverable Estate assets.

### **Riviera Manor Property**

The Receiver also took possession of the Riviera Manor Property. The Property was extensively marketed through the Receiver's broker, Marina Realty, Inc. After five months on the market, the Receiver received a cash offer of \$2.46 million on the Property, which this Court approved and then authorized the sale.

After repairing some damage found in the home inspection process, the Receiver successfully closed the cash sale of the Riviera Manor Property resulting in net sale proceeds of \$2,318,169.80 for the Estate.

### **Luxury Vehicles**

The Receiver seized several luxury automobiles, including a 2008 silver and pink Lamborghini Gallardo Convertible, a 2007 red Ferrari F430 Spyder, a 2007 Black Bentley GT Convertible, a 2007 Black Lincoln Town Car Stretch Limousine, a yellow 2006 Lamborghini Murcielago Convertible, a 1991 black Porsche 911 Turbo, a 2009 Chevrolet Suburban. The Receiver aggressively marketed these automobiles and then sold them at a private auction to pre-qualified buyers. The Receiver also seized various automobile related items of property, including tires and wheels, and a Hummer style golf cart, which were sold separately. The Estate realized more than \$735,000 from the sale of the luxury automobiles and related property.

### **Jewelry and Watches**

The Receiver took possession of nineteen (19) items of jewelry of substantial value: nine (9) watches; three (3) necklaces; two (2) bracelets; two (2) rings; two (2) pairs of earrings; and one (1) earring without its match. The Receiver has had the items appraised by a certified appraiser and a watch and jewelry expert. To further ascertain the jewelry and watches' liquidation value to

the Estate, the Receiver has approached various jewelers, watch dealers and retail customers, and Sotheby's and Christie's auction houses to determine the potential market prices.

The Receiver determined that the most profitable and cost effective method for selling the jewelry and watches was through private auctions for certain items, ebay auctions for other items, and private sales to qualified buyers for the more rare or unique items. For the auctions and private sales, the Receiver set the reserve prices based on Christie's estimated sale prices and recommended reserve prices and the appraisals obtained by the Receiver.

Thus far, the Receiver has sold the three most valuable watches at a private auction for a total of \$49,500 – more than twice the wholesale value, more than \$21,000 above the appraised values, and more than \$2,000 above the Christie's estimated (used) retail values. The Receiver also sold to a private purchaser one pairs of earrings, the diamond stud earring, and a designer yellow diamond ring for a total of \$104,500, which is more than the Christie's estimated sale and reserve prices for these items. Further, the Receiver sold a designer pink diamond ring for \$82,000, which is \$7,000 more than the appraisal and above the reserve price recommended by Christie's. Finally, the Receiver sold a luxury brand watch through an ebay auction for \$12,200, which is more than three times the appraised value, more than \$4,000 above Christie's recommended reserve price and above

the ceiling of Christie's estimated sale price range. Thus far, jewelry and watch sales have produced \$248,200 in proceeds for the Estate. The Receiver estimates that the remaining valuable items of jewelry and watches will sell for approximately \$150,000.

### **Gold, Silver and Coins**

The Receiver also seized various collectors' gold, silver and platinum coins, coin sets, a silver bar and other bullion. The Receiver has begun selling the coins on ebay obtaining as much as 50% more than the higher of the two appraisals obtained for each item. Thus far, the sale of coins has produced more than \$71,000 in proceeds for the Estate.

### **Household Items and Sports and Music Memorabilia**

The Receiver has identified several household items of value and sports and music memorabilia that were on display in the Riviera Manor Property. Those items have been removed from the Property and will be sold by private auction or through ebay. The Receiver has already sold four life-size action figures to the purchaser of the Riviera Manor Property for \$10,000.

### **Recovery Actions**

The Receiver has brought suit to recover fraudulent transfers from the Healys to various third parties. First, the Receiver sued Weston Hills Country Club to recover membership dues paid by Sean Healy resulting in a settlement in

favor of the Receiver for \$20,000. The Receiver also sued Karen Goelz, Sean Healy's mother for a transfer she received from her son. The Receiver settled such action for \$52,500.

The Receiver filed an insurance claim for jewelry that the Healys failed to turn over and which they have claimed, through counsel, was lost or missing. The missing jewelry is insured for approximately \$190,000, and the Receiver is using her best efforts to obtain payment of her claim from the insurer.

Due to the efforts detailed herein of the Receiver and her professionals, the Estate has recovered, marketed and liquidated a large part of the assets purchased by Healy with investor funds. The Receiver will continue such efforts and believes based on the schedule set forth below that the Estate will be fully liquidated in time to make full distribution of Estate assets in one distribution as set forth below.

**PROPOSED CLAIMS ADMINISTRATION PROCESS  
AND PLAN OF DISTRIBUTION**

During the course of this receivership case, the Estate has recovered, gross of court-approved fees and costs and administrative expenses, assets in excess of \$4,350,000. While the Receiver expects that there will be additional fees and costs expended in connection with this consolidated matter, net assets available for distribution to approved claimants likely will exceed \$3,500,000. The assets available for distribution, net of Court-approved fees and costs and administrative expenses, shall be referred to as the "Healy Fraud Fund."

### **Proposed Definition of “Allowed Claim” and Basis for Distribution**

The Receiver and her counsel, after consulting with the respective counsel for the SEC and CFTC and counsel for various investors, have determined that the most equitable approach to distributing the Healy Fraud Fund is through a *pro rata* “rising tide” distribution (explained below) to each investor with an allowed claim (defined below) equal to that investor’s proportionate share of the principal losses associated with the Healy Investment Scheme, subject to the following limitation. Investors with allowed claims who, prior to any distribution from the Healy Fraud Fund, have received transfers from Defendant and/or Relief Defendants, will not receive any *pro rata* distribution from the Healy Fraud Fund *unless and until* (i) all other investors with allowed claims (who have not received transfers of an equivalent percentage of their respective investments) have received distributions from the Healy Fraud Fund in amounts (as a percentage of investment) equal to the amounts (as a percentage of investment) already received by those investors from Defendant and/or Relief Defendants, *and* (ii) there are sufficient funds in the Healy Fraud Fund to make further distributions to investors.

An investor’s claim will be allowed (an “Allowed Claim”), such that the investor will be *entitled* to receive a distribution from the Healy Fraud Fund based

on his or her loss of principal, subject to the foregoing limitation,<sup>1</sup> if an investor sufficiently demonstrates to the satisfaction of the Receiver through documentation and/or sworn statements, among other things, (i) that such investor made transfers *directly* to Defendant and/or Relief Defendants in connection with the Healy Investment Scheme, (ii) that such individual investor is not identified as part of the collective claim to be submitted by Alfred L. Madeira as more fully described herein; (iii) that such investor was not an affiliate, family member or insider of the Healy Investment Scheme and did not knowingly assist Defendant or Relief Defendants to effectuate, perpetuate or promote such Scheme or have knowledge of its fraudulent nature at the time of the investment, AND (iv) that the total amount that such investor transferred to Defendant and/or Relief Defendants exceeds the total amount that Defendant and/or Relief Defendants transferred back to such investor. Other factors may be considered by the Receiver in determining whether a claim is an Allowed Claim.<sup>2</sup> If an investor cannot prove all four of the

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<sup>1</sup> As explained in further detail herein, the fact that an investor is determined to have an Allowed Claim and is *entitled* to receive a distribution does not necessarily mean that such investor will actually receive a distribution if such investor already received transfers from Defendant and/or Relief Defendants (and, only to the extent funds are available).

<sup>2</sup> Notwithstanding these factors for determining whether a claim should be allowed, the Receiver will analyze each claim individually and the circumstances surrounding each investor's investment and relationship with Defendant and Relief Defendants and reserves the right to object to and seek to disallow any claim.

foregoing factors, that investor's claim will be disallowed and such investor will receive no distribution.<sup>3</sup> If an investor makes the requisite showing regarding its claim and the Receiver determines that such claim is an Allowed Claim, the Receiver will calculate the amount of such Allowed Claim by subtracting the total amount of all transfers that each investor received from Defendant and/or Relief Defendants from the total amount of transfers that such investor made to Defendant and/or Relief Defendant in connection with the Healy Investment Scheme, irrespective of the success or failure of the particular investment (if any). Investors with Allowed Claims will only be entitled to receive a *pro rata* distribution based on the *principal* amount of their investment; the Receiver will not include within her calculation for distributions any interest or profit that was promised to such investors.

For example, an investor who demonstrates that he or she invested a total of \$100,000 in the Healy Investment Scheme and received back from Defendant and/or Relief Defendants a total of \$25,000 in purported returns on such investment would, subject to the Receiver's final determination, have an Allowed Claim of \$75,000. This investor with an Allowed Claim, however, will not receive

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<sup>3</sup> To the extent an investor received transfers from Defendant and/or Relief Defendants in excess of such investor's total investment such that the investor profited from the Healy Investment Scheme, the Receiver reserves the right to assert (or continue to prosecute) a claim against such investor for the return of the profit received and any other appropriate relief.

any *pro rata* distribution from the Healy Fraud Fund *unless and until* (i) each of the other investors with Allowed Claims has received back (from Defendant, Relief Defendants, and/or the Healy Relief Fund) 25% of the amount such investor invested AND (ii) there are sufficient funds in the Healy Fraud Fund to make a further *pro rata* distribution to all investors with Allowed Claims. If the Healy Fraud Fund does not contain sufficient funds to make a distribution that ensures that all investors with an Allowed Claim receive at least 25% of the amount they invested, this investor with a \$75,000 Allowed Claim will receive no distribution. If, however, after making a *pro rata* distribution to investors with Allowed Claims who did not receive any transfers from Defendant or the Relief Defendants, there are sufficient funds to make an additional *pro rata* distribution to all investors with an Allowed Claim, then the investor with a \$75,000 Allowed Claim will receive a *pro rata* distribution up to \$75,000, depending on the *pro rata* percentage (defined below) set by the Receiver based on the total amount of all Allowed Claims and the total amount in the Healy Fraud Fund.

### **Proposed Eligible Claimants**

The Receiver proposes that only those investors for whom there exists documentation of a *direct* investment in the Healy Investment Scheme (and not through another person or entity) should be eligible to file a claim in this receivership. All such investors as determined by the Receiver's forensic

accountant will receive the Claims Package (as defined below) including an approved form of Notice, Claim Form and a calculation of estimated claim. The Receiver will use her best efforts to notify each such investor by sending a claims package by first class mail or Federal Express to the last known address and also posting the claim form on the websites of the Receivership ([www.healyreceivership.com](http://www.healyreceivership.com)) and her counsel ([www.dvllp.com](http://www.dvllp.com)).

The Receiver proposes to treat all persons who provided funds to Defendant and/or Relief Defendants through Alfred L. Madeira and/or his attorney, Thomas J. Ahrens, Esq. (“Ahrens”), including (i) those persons who sent money directly to Defendant and/or Relief Defendants with the understanding that Madeira was obligated to repay such money; (ii) those persons who filed a proof of claim, and/or were listed as a creditor in the Debtor’s Schedules of Assets and Liabilities, in the bankruptcy case of Alfred L. Madeira pending in the District Court for the Middle District of Pennsylvania (Case No. 09-BK-02819-MDF) for losses in connection with the Healy Investment Scheme; and (iii) the individual claim of Alfred L. Madeira for funds he personally provided to Defendant and/or Relief Defendants, collectively as one investor (representing at least 90% of the entire investment in the Healy Investment Scheme), with any distribution from the Healy Fraud Fund on the collective claim being paid into the Madeira bankruptcy estate for distribution pursuant to the claims administration process in the bankruptcy

proceeding. Attached hereto as **Exhibit A** is a list of people whom the Receiver proposes to treat as one claimant in this claims process, which include (i) people who filed a proof of claim in the Madeira bankruptcy case for their losses in connection with the Healy Investment Scheme, (ii) people who were listed as creditors in the Debtor's Schedules of Assets and Liabilities in the Madeira bankruptcy case for losses in connection with the Healy Investment Scheme, and (iii) the individual claim of Alfred L. Madeira for funds he personally provided to Defendant and/or Relief Defendants. Such treatment is prudent because of the indirect nature of how most of the funds were delivered to Defendant and Relief Defendants and the absence of or incomplete documentation for the transfers to and from such third parties. Indeed, the vast majority of these third party funds were collected by Madeira and/or his attorney (Ahrens), commingled, and then forwarded in lump sums to the Defendant and Relief Defendants, making the funds difficult to trace from each third party to Defendant or Relief Defendant. Also, all of these third parties whom the Receiver proposes to treat as one investor filed claims in the Madeira bankruptcy case based on the amount of funds each one transferred to Madeira in connection with the Healy Investment Scheme and/or the amount of funds Madeira was under the obligation to repay in connection with the Healy Investment Scheme.

Further, in the bankruptcy claims administration process, the allowance and amounts of their claims will be determined. There is no need for the Receiver to duplicate efforts, expend significant resources, and risk reaching inconsistent determinations. Finally, the Receiver understands that such third parties have agreed to file a joint claim with Madeira, through the Committee of Unsecured Creditors, and waive their rights to file individual claims in the Receivership. All such third parties, including those who indirectly provided funds through Madeira and/or Ahrens, and those who filed a proof of claim and/or were listed as creditors in the Debtor's Schedules of Assets and Liabilities in the Madeira bankruptcy case, will be served with this Motion and shall have the opportunity to object to this proposed process. If this Motion is granted, however, those persons who filed a proof of claim and/or were listed as creditors in the Debtor's Schedules of Assets and Liabilities in the Madeira bankruptcy case will not receive the claims documentation (described below) and will not be eligible to file a proof of claim in this receivership.

### **Proposed Claims Documentation**

Based on the definition of Allowed Claim, the Receiver proposes to effectuate a claims administration and distribution process as follows. The Receiver will deliver to all known direct investors, and indirect investors who have not filed a proof of claim in the Madeira bankruptcy case, two claim forms: (i) a

Court-Ordered Legal Notice (the proposed form of which is attached hereto as **Exhibit B**); and (ii) a Proof of Claim and Release form (the proposed form of which is attached hereto as **Exhibit C**). The documents attached as Exhibits A and B shall be referred to collectively as the “Claims Package”.

The Court-Ordered Legal Notice will apprise the potential claimants of how the Healy Fraud Fund was created, who is eligible to receive a recovery from the Fund, and the process by which potential claimants can make a claim to the Fund’s assets. *See* Exhibit B. The Proof of Claim and Release will solicit, among other information: (a) details regarding the claimant’s identity and contact information; (b) details regarding the amount, timing and transfer of the claimant’s investment in the Healy Investment Scheme; and (c) details regarding the amount, timing and transfer of any monies received by the claimant from Defendant and/or Relief Defendants. *See* Exhibit C. The Proof of Claim and Release also will require the claimant to, *inter alia*, certify the accuracy of the information provided and certify that each of the three factors of an Allowed Claim are satisfied. *Id.*

To the extent possible, the Receiver will provide, along with the Claims Package, the Receiver’s estimate of the claimant’s Allowed Claim, and will give the claimant the option of certifying his or her acceptance of the Receiver’s calculations. If the potential claimant does not certify acceptance, such claimant must submit his/her own claim amount with supporting documentation.

### **Proposed Sequence and Timing of Claims Process**

The Receiver proposes that the claims process proceed in accordance with the following schedule:

- a. Distribution Plan Approval: The date upon which this Court grants this Motion and approves the Receiver's proposed Distribution Plan shall be referred to herein as the "Plan Approval Date";
- b. Receiver's Mailing of Claims Package: The Receiver would send the Claims Package to known investors in the Healy Investment Scheme via first class mail within ten (10) days after the Plan Approval Date;
- c. Claims Bar Date: Investors would then have until forty (40) days after the Plan Approval Date (the "Claims Bar Date") to return the completed Proof of Claim and Release to the Receiver. Any completed Proof of Claim and Release not postmarked by the Claims Bar Date would be barred, and claims postmarked after the Claims Bar Date will not be allowed except for good cause shown;
- d. Receiver's Initial Determination of Allowed Claims: The Receiver will have until sixty (60) days after the Claims Bar Date ("Receiver's Initial Determination Date") to approve or reject, in whole or in part, all claims received. In the event that the Receiver were to reject any claim, in whole or in part, the Receiver would apprise the claimant, via first class

- mail, of the rejection of the claim, the basis for that rejection, and the process for appealing such rejection.
- e. Claimant's Request for Reconsideration of Initial Determination: Any claimant whose claim is rejected by the Receiver, in whole or in part, may request that the Receiver reconsider that denial by sending the Receiver a letter seeking a reconsideration, which must be postmarked within twenty (20) days after the Receiver's Initial Determination Date and which must state the basis of the claim and the claimant's response to the Receiver's notice of rejection.
  - f. Receiver's Final Determination: The Receiver has until thirty (30) days after the Receiver's Initial Determination Date (which is ten (10) days after the deadline to request for reconsideration of initial determination) (the "Receiver's Final Determination Date") to reconsider any request by any claimant whose claim was initially rejected by the Receiver and to apprise the claimant, via first class mail, of the reconsideration or rejection of the claim.
  - g. Claimant's Appeal of Receiver's Final Determination: Any claimant whose claim was finally rejected by the Receiver may appeal the Receiver's rejection of the claim to the Court by filing with the Court an Appeal of the Receiver's Final Determination, which must be postmarked

- twenty (20) days after the Receiver's Final Determination Date, (the "Appeal Deadline") and which must state the basis of the claim and the claimant's response to the Receiver's Final Determination.
- h. Receiver's Response to Appeals: The Receiver's Response to all appeals filed with this Court shall be due within fifteen (15) days after the Appeal Deadline. Following the time for the Receiver's response, the Court may make a final determination or may set the matter for hearing. A final determination by the Court is final for all purposes. There shall be no further appeal of such proceedings.
- i. Receiver's Motion to Approve Final Distribution: The Receiver shall file her motion to approve the final distribution, which motion would apprise the Court of the status of approved and rejected claims, the status of pending appeals, if any, the Receiver's expectation regarding administrative fees and costs, and proposed final distribution calculations and methodology, by no later than 135 days after the Plan Approval Date.

The foregoing schedule is reflected in the following summary time table:

Day 0	Plan Approval Date
Day 10	Notice/Proof of Claim forms sent out
Day 40	Claims Bar Date
Day 60	Receiver's Initial Determination Date

- Day 80 Investor Deadline for Appealing to Receiver
- Day 90 Receiver's Final Determination Date
- Day 110 Investor Deadline for Appealing to the Court
- Day 125 Receiver Response to Appeals Deadline
- Day 135 Receiver Files Motion to Approve Final Distribution

**Proposed Distribution to Investors with Allowed Claims**

The Receiver or her counsel will review all Proofs of Claim and Releases received from investors as of the Claims Bar Date and determine the total amount of Allowed Claims. The Receiver then will determine what percentage of the total Allowed Claims is represented by the total assets available for distribution (the “*Pro Rata* Percentage”), after setting aside sufficient funds to cover all administrative and other necessary expenses of the Estate. For example, if there were \$10 million in Allowed Claims, and \$1 million in assets available for distribution, then the *Pro Rata* Percentage would be 10% (*i.e.*, \$1 million divided by \$10 million).

To continue with the example set forth *supra* pages 11-12, the investor with an Allowed Claim of \$75,000, would receive as a distribution from the Healy Fraud Fund up to \$7,500 based on a *Pro Rata* Percentage of 10%, but only if all other investors have recovered back (from Defendant, Relief Defendants and/or the Healy Fraud Fund) 25% of the amount they invested (the percentage that this

investor had already received before the receivership commenced) and there are sufficient funds in the Healy Fraud Fund to make a further *pro rata* distribution, to all investors with Allowed Claims. See Note 1, *supra*, and accompanying text.

### **LEGAL ARGUMENT**

The Receiver believes that the foregoing proposed Claims Administration Process and Plan of Distribution will provide a fair, equitable, and efficient method for distributing the proceeds of the Healy Fraud Fund to defrauded investors. Generally, the District Court has broad powers and wide discretion to grant relief in an equity receivership, including in approval and implementation of a claims process and plan of distribution. See *SEC v. Infinity Group Co.*, 226 Fed. Appx. 217, 218 (3d Cir. 2007) (“District Courts have wide equitable discretion in fashioning distribution plans in receivership proceedings, and we review the District Court's order only for abuse of that discretion.”) (citations omitted). In *Infinity Group*, the Third Circuit affirmed the District Court’s approval and implementation of a plan of distribution which provided for a *pro rata* distribution of receivership proceeds to all innocent victims of the defendant’s Ponzi Scheme. See *id.* at 218-19.

The Receiver submits that this Court should exercise its discretion to approve the proposed Claims Administration Process and Plan of Distribution as detailed herein.

**CERTIFICATION**

Undersigned counsel hereby certifies that he has conferred with counsel for the SEC and for the CFTC, and they consent to the relief sought herein. Further, undersigned counsel certifies that he has conferred with counsel for the Creditors' Committee in the Madeira bankruptcy case and counsel has indicated that his clients consent to the relief sought herein.

**CONCLUSION**

WHEREFORE, for the foregoing reasons, the Receiver respectfully requests that this Court enter an order, similar in the form to the proposed order attached hereto as **Exhibit D**: (1) approving the Claims Administration Process and Distribution Plan proposed herein; (2) authorizing the Receiver to mail a Claims Package (in the form proposed herein) to all Eligible Claimants (as defined herein); and (3) granting such other relief as this Court deems just and appropriate.

Dated: November 5, 2010.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing have been served via CM/ECF, U.S. Mail, and/or facsimile to the addressees on the attached Service List, this 5<sup>th</sup> day of November 2010.

s/Kenneth Dante Murena  
Kenneth Dante Murena, P.A.

## SERVICE LIST

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