#### UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF FLORIDA TAMPA DIVISION

### COMMODITY FUTURES TRADING COMMISSION,

#### Plaintiff,

v.

Case No. 8:19-CV-886-T-VMC-33SPF

OASIS INTERNATIONAL GROUP, LIMITED; OASIS MANAGEMENT, LLC; SATELLITE HOLDINGS COMPANY; MICHAEL J. DACORTA; JOSEPH S. ANILE, II; RAYMOND P. MONTIE, III; FRANCISCO "FRANK" L. DURAN; and JOHN J. HAAS,

Defendants;

and

FUNDADMINISTRATION, INC.; BOWLING GREEN CAPITAL MANAGEMENT LLC; LAGOON INVESTMENTS, INC.; ROAR OF THE LION FITNESS, LLC; 444 GULF OF MEXICO DRIVE, LLC; 4064 FOUNDERS CLUB DRIVE, LLC; 6922 LACANTERA CIRCLE, LLC; 13318 LOST KEY PLACE, LLC; and 40AKS LLC,

Relief Defendants.

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#### MOTION TO APPROVE THE RECEIVER'S ENGAGEMENT OF SALLAH ASTARITA <u>& COX, LLC TO PROSECUTE POTENTIAL CLAIMS AGAINST ATC BROKERS</u>

Burton W. Wiand, the Court-appointed receiver over the assets of the

above-captioned defendants and relief defendants (the "Receiver" and the

"Receivership" or "Receivership Estate") pursuant to the Court's order

dated July 11, 2019 (Doc. 177) (the "Consolidated Order"), moves the Court

for "reappointment" and also to approve his engagement of Sallah Astarita & Cox, LLC (the "Sallah Firm") as contingency counsel for the purpose of further investigating and pursuing claims against ATC Brokers Ltd. and related individuals and entities (generally, "ATC"). The Receiver believes that (1) continuing to investigate and pursue such claims on a contingency fee basis would be in the best interests of the Receivership; (2) the Sallah Firm would be effective counsel because, among other reasons, its attorneys have experience asserting claims against entities like ATC; and (3) the Sallah Firm's contingency fee arrangement (attached as Exhibit 1) is fair and reasonable. This relief is procedurally and substantively similar – if not identical – to the Court's prior approval of the Receiver's engagement of the Sallah Firm to pursue claims against Fundadministration, Inc. ("FAI"), which resulted in a pre-suit settlement of almost \$4 million.

The Receiver also seeks "reappointment" so that he may file the documents required by 28 U.S.C. § 754 in the United States District Court for the Central District of California and in any other appropriate locations.<sup>1</sup>

<sup>&</sup>lt;sup>1</sup> David Manoukian ("**Manoukian**") is a "co-founder" of ATC. According to information he posted on LinkedIn, "ATC Brokers is an NFA registered brokerage firm that serve[s] the US Forex industry from its headquarters in Los Angeles. ATC Brokers Ltd is an FCA-registered brokerage firm that serves the global Forex industry from its headquarters in London and operations in the US." Manoukian purports to work from Glendale, California. A copy of the LinkedIn page is attached as **Exhibit 2**. The Receiver believes Manoukian controlled all relevant ATC entities and conducted and directed their operations with respect to Oasis from his California office. He was also the primary person at ATC with whom Oasis employees and insiders communicated regarding operational and other issues.

Reappointment is an administrative matter that will allow the Receiver to pursue claims for the benefit of the Receivership Estate. Reappointment is common in federal equity receiverships, and as explained below, the Court has already resolved similar issues both in this enforcement action and in related "clawback" litigation. *See, e.g.*, Doc. 177 at p. 3 ¶ 3 (The Consolidated Order "shall also constitute the appointment or re-appointment of the Receiver for purposes of 28 U.S.C. § 754."); *see also infra* fn. 4; *S.E.C. v. Nadel et al.*, Case No. 8:09-cv-0087-T-33CPT (M.D. Fla.) (Docs. 139, 140, 315, 316, 492, 493, 934, 935, 983, 984).<sup>2</sup>

#### **BACKGROUND**

The Commodity Futures Trading Commission ("**CFTC**") filed this action (the "**CFTC Action**") on April 15, 2019. That same day, at the request of the CFTC, the Court appointed the Receiver and directed him, in relevant part, to "[t]ake exclusive custody, control, and possession of the Receivership Estate," which includes "all the funds, properties, premises, accounts, income, now or hereafter due or owing to the Receivership Defendants, and other assets directly or indirectly owned, beneficially or otherwise, by the Receivership Defendants." Doc. 7 at p. 14 ¶ 32 & p. 15 ¶ 30.b.

<sup>&</sup>lt;sup>2</sup> These docket citations identify both the Receiver's motions and the orders granting those motions. Copies of the orders are attached as **Exhibit 3**. At the Court's request, the Receiver will provide a Word version of a proposed order customized for this action.

On July 11, 2019, the Court entered the Consolidated Order. The Court found that entry of the Consolidated Order was necessary and appropriate for the purposes of marshaling and preserving all assets, including in relevant part, assets that "were fraudulently transferred by the [CFTC] Defendants and/or [CFTC] Relief Defendants." Doc. 177 at 2. The Court also expressly authorized the Receiver "to sue for and collect, recover, receive and take into possession all Receivership Property" (id. ¶ 8.B.) and "[t]o bring such legal actions based on law or equity in any state, federal, or foreign court as the Receiver deems necessary or appropriate in discharging his duties as Receiver" (*id.* ¶ 8.I.). Similarly, the Court authorized, empowered, and directed the Receiver to "prosecute" actions "of any kind as may in his discretion, and in consultation with the CFTC's counsel, be advisable or proper to recover and/or conserve Receivership Property." Id. ¶ 43. To that end, the Consolidated Order broadly authorizes the Receiver to retain professionals "in his discretion." Id. ¶ 8.F. As the Court has previously explained in nearly identical circumstances:

The order expressly reserves to the Receiver discretion as to whether retention of such experts or legal counsel is necessary to discharging his duties. The Court agrees with the Receiver that, at this juncture, the sole question before the Court is whether the Receiver's proposals constitute an abuse of his delegated discretion. See Bendall v. Lancer Mgmt. Grp., LLC, 523 F. App'x 554, 557 (11th Cir. 2013) ("[A]ny action by a trial court in supervising an equity receivership is committed to [his] sound discretion and will not be disturbed unless there is a clear showing of abuse."); S.E.C. v. N. Am. Clearing, Inc., No. 6:08-cv-829-Orl-35KRS, 2015 WL 13389926, at \*3 (M.D. Fla. Jan. 12, 2015) (describing receiver as an officer of the court).

Doc. 261 at 5-6 (emphasis added; approving the Receiver's engagement of the Sallah Firm to pursue contingency claims against FAI).

This action is stayed to protect an ongoing criminal investigation into certain defendants' conduct by the Department of Justice through the United States Attorney's Office for the Middle District of Florida, but the stay does not apply to the Receiver's activities under the Consolidated Order. Defendant Joseph S. Anile, II has pled guilty and been sentenced to 10 years in prison. Defendant Michael J. DaCorta has been indicted on charges of participating in a conspiracy to commit wire and mail fraud. He is scheduled to stand trial in October 2021.

#### <u>The Receiver's Prior Engagement of the Sallah Firm to Further</u> <u>Investigate and Pursue Potential Claims</u>

On March 5, 2020, the Receiver filed a motion seeking the Court's approval of his engagement of the Sallah Firm to further investigate and pursue potential claims against FAI on a contingency fee basis. Doc. 238. Shortly thereafter, the Receiver filed a similar motion seeking the Court's approval of his engagement of a litigation consultant to assist the Receiver and the Sallah Firm. Doc. 253. FAI opposed both motions, but the Court determined that substantive arguments about the Receiver's claims "put the cart before the horse." Doc. 261 at 6. "[T]he sole question before the Court [was] whether the Receiver's proposals constitute[d] an abuse of his delegated discretion." *Id.* at 5-6. On April 7, 2020, the Court granted the Receiver's motions because it determined that the Receiver's exercise of his discretion was "reasonable." *Id.* The parties were ultimately able to settle their dispute without the need for additional litigation. On February 8, 2021, the Receiver filed a motion to approve the settlement. Doc. 368. On February 9, 2021, the Court referred the Receiver's motion to U.S. Magistrate Judge Sean P. Flynn for disposition (Doc. 369), and on February 25, 2021, the Magistrate Judge granted the motion and approved the settlement (Doc. 376).

#### <u>The Receiver's Proposed Engagement of the Sallah Firm to Further</u> <u>Investigate and Pursue Potential Claims Against ATC</u>

Through this motion, the Receiver seeks the Court's approval of his second engagement of the Sallah Firm under similar (if not identical) procedural, factual, and legal circumstances – *i.e.*, to further investigate and pursue potential claims against ATC on a contingency fee basis. As explained in Exhibit 1, the Sallah Firm has substantial experience with litigation related to securities and commodities fraud, which now includes the multi-million-dollar, pre-suit resolution of the Receiver's claims against FAI. Jim Sallah, a principal of the firm, served as Senior Counsel in the SEC's Division of Enforcement before he entered private practice in 2004. See Ex. A to Ex. 1. He has served as a court-appointed receiver in numerous actions and as counsel to receivers in additional matters. *Id.* Most relevant here, Mr. Sallah has

experience asserting claims against aiders and abettors of Ponzi schemes. The Receiver believes Mr. Sallah and the Sallah Firm are an excellent choice of counsel to represent the interests of the Receivership with respect to ATC.

The Receiver has already collected more than \$18 million in litigation income and seized and/or forfeited assets. To protect those funds and to ensure the largest possible recovery for the Receivership's creditors, including defrauded investors, the Receiver has negotiated a contingency fee arrangement with the Sallah Firm. As explained in Exhibit 1, the applicable fee ranges from 10% for a pre-suit resolution (like FAI) to 15% for a pre-answer resolution to 25% for a post-answer resolution and, finally, to 33% for a settlement within forty days of trial or a successful verdict thereafter.

The Receiver believes this sliding scale is appropriate because it will afford the Receivership Estate a greater proportional recovery in the event of an early settlement while also compensating the Sallah Firm fairly as the litigation increases in length and complexity. The arrangement caps the contingency fee at 20% for any amounts recovered above \$10,000,000 and 10% for any amounts recovered above \$20,000,000. The Sallah Firm will advance costs subject to reimbursement from any recovery except for costs associated with experts retained by the Receiver – for example, the Receiver's forensic accountants, KapilaMukamal, LLP. As with any contingency fee arrangement, the Sallah Firm is only entitled to payment if it procures a successful resolution of the Receiver's potential claims. The Receiver believes this arrangement is fair and reasonable, given the value and complexity of those claims and the risks inherent in litigation. It will protect the funds already in the Receivership while allowing the Receiver to attempt to marshal additional funds through litigation, as directed and authorized by the Consolidated Order. Perhaps most importantly, the Court has already approved this exact arrangement in connection with the Receiver's claims against FAI.

#### The Receiver's Preliminary Investigation of ATC

As noted above, the Receiver is not required to pre-litigate his potential claims, but he nevertheless submits the information discussed below to assure the Court that the relief requested in this motion does not constitute an abuse of the Receiver's delegated discretion.

- ATC accepted approximately \$20 million raised from defrauded investors but never transferred any of that money back to Oasis during the scheme.
- The Receiver believes defendant DaCorta (and possibly others) lost almost all that money through unsuccessful foreign exchange or "forex" trading.
- The Receiver believes ATC knew about DaCorta's unsuccessful trading for multiple reasons, including (1) its role in facilitating the trading, (2) the issuance of numerous margin calls and other adverse indicators, and (3) frequent communications between ATC personnel and Oasis insiders, including between Manoukian and DaCorta.
- Oasis insiders concealed activities from investors by making "adjustments" at the end of each day. These adjustments offset actual trading losses and caused the scheme to appear profitable.

- Oasis insiders initially made the adjustments manually, but as the scheme grew and no later than July 2018, they asked ATC and Spotex LLC ("**Spotex**") to automate the process. Specifically, the insiders told Manoukian, ATC, and Spotex: "We need to do this programmatically. We would like for you to expose this capability programmatically via the web service." A copy of this email is attached as **Exhibit 4**.
- Shortly thereafter, Manoukian wrote Spotex: "The goal is to be able to do the adjustment into the client account automatically via FIX or via an upload." This same document appears to confirm that investors were "unable to see" the adjustments through the website they used to access and monitor their accounts. A copy of this email is attached as **Exhibit 5**.
- For these and other services, ATC charged Oasis approximately \$5 million in fees.

While the Receiver is not required to disclose his entire investigation in

this motion (and he has not done so), the foregoing is sufficient to demonstrate

that the relief requested does not constitute an abuse of discretion.<sup>3</sup>

#### The Receiver's Initial § 754 Filings and the Need for Reappointment

As the Court has recognized in a related case, 28 U.S.C.  $\S$  754 & 1692

allow the Receiver to obtain personal jurisdiction over defendants located in

other districts and authorize nationwide service of process.<sup>4</sup> In July 2019, the

<sup>&</sup>lt;sup>3</sup> Defendant DaCorta opposes this motion in part because he characterizes the Receiver's potential claims as a "fishing expedition," but despite being provided with a copy of this motion and its exhibits for purposes of Local Rule 3.01(g), he ignores the substance of the Receiver's investigation. *See* Ex. 6. DaCorta's objection is without merit because this motion is consistent with the Receiver's mandate to investigate and prosecute claims, as established by the Court in the Consolidated Order.

<sup>&</sup>lt;sup>4</sup> On April 14, 2020, the Receiver initiated clawback litigation against almost 100 defendants who received "false profits" and who declined a settlement proposal from the Receiver. *See Burton W. Wiand, as Receiver for Oasis International Group, Ltd., et al., v. Chris and Shelley Arduini, et al.*, Case No. 8:20-cv-862-T-33TGW (M.D. Fla.). A number of those defendants

Receiver filed the Consolidated Order in 21 federal district courts where potential defendants and/or assets of the Receivership Estate were believed to be located. These filings were made within 10 days of entry of the Consolidated Order, as required by 28 U.S.C. § 754. The Receiver deemed the filing of the Consolidated Order in each of the 94 federal district courts an inefficient use of the Estate's resources. Because most investors, including those who received "false profits," are located in the eastern and particularly the northeastern United States, the Receiver has not yet filed the pertinent paperwork in the District Court for the Central District of California -i.e., where Manoukian resides and where ATC maintains, at minimum, its domestic operations. In addition to the approval of the engagement of the Sallah Firm to further investigate and prosecute possible claims, the Receiver seeks an order reappointing him so that he may file the appropriate documents in the Central District of California and any other relevant districts. As explained below, this method of resetting the 10-day window under 28 U.S.C. § 754 is common and well-established in receivership actions.

moved to quash the summonses served on them or otherwise moved to dismiss the complaint for lack of jurisdiction. *See Arduini* Docs. 234, 235, 236, 237, 238, 239, 240, 241, 242, 258, 260, 261, 335, 340. The Court denied those motions. *See Arduini* Doc. 344.

#### **MEMORANDUM OF LAW**

#### I. The Receiver Has Broad Discretion To Request, And The Court Has Broad Discretion To Approve, The Engagement Of Professionals To Assist In The Recovery of Assets

The Court's power to supervise this equity Receivership and to determine the appropriate actions to be taken in the administration of the Receivership is extremely broad. S.E.C. v. Elliott, 953 F.2d 1560, 1566 (11th Cir. 1992); S.E.C. v. Hardy, 803 F.2d 1034, 1038 (9th Cir. 1986). The Court's wide discretion derives from the inherent powers of an equity court to fashion relief. Elliott, 953 F.2d at 1566; S.E.C. v. Safety Finance Service, Inc., 674 F.2d 368, 372 (5th Cir. 1982). A court imposing a receivership assumes custody and control of all assets and property of the receivership, and it has broad equitable authority to issue all orders necessary for the proper administration of the receivership estate. See S.E.C. v. Credit Bancorp Ltd., 290 F.3d 80, 82-83 (2d Cir. 2002); S.E.C. v. Wencke, 622 F.2d 1363, 1370 (9th Cir. 1980). The court may enter such orders as may be appropriate and necessary for a receiver to fulfill his duty to preserve and maintain the property and funds within the receivership estate. See, e.g., Official Comm. Of Unsecured Creditors of Worldcom, Inc. v. S.E.C., 467 F.3d 73, 81 (2d Cir. 2006). Any action taken by a district court in the exercise of its discretion is subject to great deference by appellate courts. See United States v. Branch Coal, 390 F.2d 7, 10 (3d Cir. Such discretion is especially important considering that one of the 1969).

purposes of a receiver's appointment is to provide a method of gathering, preserving, and ultimately liquidating assets to return funds to creditors. *See S.E.C. v. Safety Fin. Serv., Inc.*, 674 F.2d 368, 372 (5th Cir. 1982) (court overseeing equity receivership enjoys "wide discretionary power" related to its "concern for orderly administration") (citations omitted).

As noted above, the Consolidated Order authorizes, empowers, and directs the Receiver to "investigate the manner in which the financial and business affairs of the Receivership Defendants were conducted...." Doc. 177 ¶ 44. It also authorizes the Receiver "[t]o bring such legal actions based on law or equity in any state, federal, or foreign court as the Receiver deems necessary or appropriate in discharging his duties as Receiver." Id ¶ 8.I; see also ¶ 8.J (authorizing the Receiver to "pursue ... all suits, actions, claims, and demands, which may now be pending or which may be brought by ... the Receivership Estates."). To facilitate that mandate, the Court authorized the Receiver "[t]o engage and employ persons in his discretion to assist him in carrying out his duties and responsibilities hereunder, including, but not limited to, securities traders, registered representatives, accountants, attorneys, financial or business advisors, liquidating agents, real estate agents, forensic experts, brokers, traders or auctioneers." Id. ¶ 8.F (emphasis added). The Receiver's exercise of those delegated powers is subject to abuse of discretion review, and the Court need not "put the cart before the horse" by requiring the Receiver to pre-litigate his potential claims. *See* Doc. 261.

The Receiver believes that ATC and Manoukian could have significant liability to the Receivership. As discussed above, ATC and Manoukian appear to have personally participated in activities that afforded Oasis insiders the ability to conceal losses from investors. If litigation is ultimately required, the Receiver expects it to involve zealous advocacy as well as complex legal and factual issues. Indeed, Manoukian and ATC have repeatedly denied any liability or knowledge of the scheme, but as explained above, FAI also described the Receiver's claims as "unfounded and frivolous" before agreeing to settle them for almost \$4 million. The use of contingency counsel under such circumstances is common and appropriate to safeguard existing assets.<sup>5</sup>

Based on (1) the Court's wide discretion, (2) the Receiver's independent investigation into the matters discussed herein, (3) the skill and competency of the Sallah Firm to further investigate and prosecute those matters, and (4) the

<sup>&</sup>lt;sup>5</sup> Defendant DaCorta opposes this motion in part because he claims any resultant litigation would be profitable for the Receiver but wasteful for the Receivership Estate. *See* Ex. 6. DaCorta's objection is without merit because the Receiver will not be paid any portion of any contingency fee. The proposed arrangement only applies to the Sallah Firm, and its attorneys will only be paid if they procure a successful resolution of the Receiver's potential claims. The sliding scale and "large recovery" discounts explained above and in Exhibit 1 further ensure the fairness of the arrangement to the Receivership Estate. For example, the Sallah Firm only received a 10% contingency fee (as opposed to a maximum of 33%) with respect to FAI because it was able to settle the Receiver's claims pre-suit. Put simply, DaCorta's objection is without merit because the proposed engagement will conserve and potentially increase – not waste – Receivership resources.

reasonableness of the Sallah Firm's contingency fee arrangement, the Receiver requests that the Court approve the Receiver's engagement of the Sallah Firm to further investigate and pursue potential claims against ATC, Manoukian, and related parties under the terms of the agreement attached as Exhibit 1.

### II. The Court Should Reappoint The Receiver For Purposes Of 28 U.S.C. § 754

The Receiver seeks reappointment so that he may file the documents required by 28 U.S.C. § 754 in the United States District Court for the Central District of California. Reappointment will allow the Receiver to obtain jurisdiction over certain potential defendants should litigation prove necessary, but importantly, this motion does not ask the Court to resolve any substantive jurisdictional issues. If the Court grants the motion, the Receiver will file the requisite documents, which generally requires (1) the completion of a civil cover sheet for a "miscellaneous action;" (2) the payment of a small filing fee; and (3) submission of the foregoing along with a copy of the CFTC's complaint and the order of reappointment to the Clerk of the Court for the Central District of California. In other words, the requested relief is purely administrative. If plenary litigation is ultimately necessary and if the pertinent defendants wish to raise jurisdictional defenses, they will have the opportunity to do so at the appropriate time after commencement of the action through the mechanisms provided by the Federal Rules of Civil Procedure.

#### A. 28 U.S.C. § 754 Empowers the Court, through the Receiver, to Obtain Jurisdiction over Defendants outside this District

For the Court<sup>6</sup> to obtain jurisdiction over property and defendants

outside the Middle District of Florida, the Receiver must comply with 28 U.S.C.

#### § 754, which states:

A receiver appointed in any civil action or proceeding involving property, real, personal or mixed, situated in different districts shall, upon giving bond as required by the court, be vested with complete jurisdiction and control of all such property with the right to take possession thereof.

He shall have capacity to sue in any district without ancillary appointment . . .

Such receiver shall, within ten days after the entry of his order of appointment, file copies of the complaint and such order of appointment in the district court for each district in which property is located. The failure to file such copies in any district shall divest the receiver of jurisdiction and control over all such property in that district.

Section 754 extends "the territorial jurisdiction of the appointing court . . . to any district of the United States where property believed to be that of the receivership estate is found, provided that the proper documents have been filed in each such district as required by § 754." *S.E.C. v. Bilzerian,* 378 F.3d 1100, 1104 (D.C. Cir. 2004) (quoting *Haile v. Henderson Nat'l Bank,* 657 F.2d 816, 823 (6th Cir. 1981)). Section 754 is not limited to tangible property;

<sup>&</sup>lt;sup>6</sup> The Receiver uses the term "Court" in this instance to refer broadly to the United States District Court for the Middle District of Florida. If litigation is necessary, the Receiver's claims will not be filed in this enforcement action. Instead, the Receiver will likely file a plenary action, which would be assigned to a district judge under governing procedures.

rather, it expressly includes personal property, which in turn includes intangible property like rights or causes of action. See Doc. 177 at 2 (stating the Consolidated Order is necessary "for the purposes of marshalling and preserving ... personal, intangible" property); id.  $\P$  6 ("The Receiver shall assume and control the operation of the Receivership Defendants and shall pursue and preserve all of their claims."); *id.*  $\P$  8.A (directing the Receiver to identify "claims, rights, and other assets"); id. ¶ 8.J (directing the Receiver to "pursue ... claims"); id. ¶ 31.C (prohibiting defendants from "releasing claims"). Thus, pursuant to 28 U.S.C. § 754, to provide this Court with jurisdiction over defendants or property – tangible or intangible – outside this district, the Receiver must file a copy of the complaint in this case and the order appointing or reappointing the Receiver in the districts in which the defendants or property is located within 10 days from the date of the pertinent order. Bilzerian, 378 F.3d at 1103; see also Arduini Doc. 344.

#### B. Reappointment of the Receiver Resets the 10-Day Clock to Assert Jurisdiction over Potential Defendants and Property outside this District

"Courts having addressed this issue unanimously suggest that an order of reappointment will renew the ten-day filing deadline mandated by section 754." *Terry v. June*, 2003 WL 21738299, at \*3 (W.D. Va. July 21, 2003). As explained in *Terry*, courts across the country have approved a Receiver's reappointment to obtain jurisdiction over property and defendants in other

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districts. See, e.g., Bilzerian, 378 F.3d at 1105 (citing S.E.C. v. Vision Communications, Inc., 74 F.3d 287, 291 (D.C. Cir. 1996)) ("On remand, the court may reappoint the receiver and start the ten-day clock ticking once again."); S.E.C. v. Aquacell Batteries, Inc., 2008 WL 2915064, at \*3 & n.4 (M.D. Fla. July 24, 2008) (citing Warfield v. Arpe, 2007 WL 549467, at \*12 (N.D. Tex. Feb. 22, 2007)) ("A district court may reappoint a federal equity receiver in a securities fraud case in order to 'reset' the 10-day clock under § 754.")); S.E.C. v. Heartland Group, Inc., 2003 WL 21000363, at \*5 (N.D. Ill. May 2, 2003) ("[T]he court can easily correct [the Receiver's] failure to file such a claim by merely reappointing the Receiver and thereby starting the 10-day time period under § 754 ticking once more ....").

The *Terry* case also explains the reasons underlying this rule, which is intended to conserve receivership resources:

[p]ermitting a receiver to reassume jurisdiction in this manner is consistent with the role and purpose of a federal receivership. Were this not the rule, a receiver would be forced to file the required documentation in all ninety-four federal districts to protect jurisdiction over any potential, but presently unknown, receivership assets – a result that would produce a needless waste of time and lead to dissipation of assets otherwise returnable to defrauded investors.

2003 WL 21738299 at \*3 (citing Heartland Group, 2003 WL 21000363 at \*5; S.E.C. v. Infinity Group Company, 27 F. Supp. 2d 559, 563 (E.D. Pa. 1998)); accord Court-Appointed Receiver of Lancer Mgmt. Grp. LLC v. Lauer, 2008 WL 906274, at \*3 (S.D. Fla. Mar. 31, 2008). Indeed, the Consolidated Order previously entered by this Court stated that it "shall also constitute the appointment or re-appointment of the Receiver for purposes of 28 U.S.C. § 754." Doc. 177 at 3 ¶ 3; see also Ex. 3 (Nadel orders) & Arduini Doc. 344.<sup>7</sup>

#### **CONCLUSION**

Federal law supports the reappointment of the Receiver to reset the 10day period specified by 28 U.S.C. § 754. This Court also has broad discretion to approve the Receiver's engagement of contingency counsel. Granting this motion will permit the Receiver to further investigate and pursue potential claims on behalf of the Receivership Estate against ATC, David Manoukian, and other affiliated individuals or entities.

WHEREFORE, the Receiver respectfully requests that this Court enter an order (i) reappointing him as Receiver over all the Receivership Entities in the CFTC Action so that he may timely file the papers required by 28 U.S.C. § 754 in the Central District of California and any other appropriate jurisdiction, (ii) approving the engagement of the Sallah Firm, and (iii) granting such other relief as the Court deems appropriate.

<sup>&</sup>lt;sup>7</sup> Defendant DaCorta opposes this motion in part because certain *Arduini* defendants are attempting to appeal the Court's denial of their motions to quash service of process, but that appeal does not affect the other defendants in the *Arduini* action or this enforcement action much less the Receiver's potential claims against ATC. DaCorta also has no standing to assert jurisdictional or other legal defenses on behalf of ATC, and his apparent desire to shield ATC from litigation that could benefit the Receivership Estate is, at minimum, perplexing. No other defendant opposes this motion.

#### LOCAL RULE 3.01(g) CERTIFICATION

Counsel for the Receiver has conferred with counsel for the CFTC and is authorized to represent to the Court that the CFTC has no objection to the requested relief. The United States, as an intervening party, takes no position on this motion. Defendants Montie, Haas, Anile, and Duran do not oppose the requested relief, and FAI is no longer a party to this action.

Defendant DaCorta opposes the motion. Although not required by Local Rule 3.01(g), the undersigned has attached a copy of DaCorta's objection as **Exhibit 6** to expedite the Court's consideration of this matter.

#### **CERTIFICATE OF SERVICE**

#### I HEREBY CERTIFY that on March 31, 2021, I electronically filed the

foregoing with the Clerk of the Court by using the CM/ECF system.

Gerard Marrone Law Office of Gerard Marrone, P.C. 66-85 73<sup>rd</sup> Place, 2<sup>nd</sup> Floor Middle Village, NY 11379 <u>gmarronelaw@gmail.com</u> Counsel for Defendant Joseph S. Anile, II

Michael DaCorta 11557 Via Lucerna Cir Windemere, FL 34786 <u>mdacorta64@yahoo.com</u>

#### /s/ Jared J. Perez

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Counsel for Burton W. Wiand, Receiver

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# **EXHIBIT 1**



- LLC

3010 North Military Trail, Suite 210 | Boca Raton, Florida 33431 Phone: (561) 989-9080 | Fax: (561) 989-9020 | www.sallahlaw.com

ATTORNEYS AT LAW Florida | New York | New Jersey

March 25, 2021

#### Via Electronic Mail

Burton Wiand, Receiver 114 Turner St. Clearwater, FL 33756

#### RE: Commodity Futures Trading Commission v. Oasis International Group, Lmt., et al. (M.D. Fla. Case 8:19-cv-00886-VMC-SPF)

Dear Burt:

I want you to thank you for considering Sallah Astarita & Cox, LLC in connection with the potential claims that you, as Court-Appointed Receiver in the above-referenced matter, may have against ATC Brokers Ltd. ("ATC"), its principals, and/or its affiliates.

#### **Background**

As you know, since leaving the Securities and Exchange Commission ("SEC"), I have served as a Receiver in actions brought by the SEC and the State of Florida Office of Attorney General ("AG"), as well as in private actions brought by class and individual plaintiffs in federal and state courts. I have also served as counsel for court-appointed Receivers in cases brought by the SEC, Commodity Futures Trading Commission ("CFTC"), Federal Trade Commission ("FTC"), and the Puerto Rico Insurance Commissioner.

I believe that my Firm's experience also suits us well to represent you, as Receiver, in any action against ATC. For example, we were previously retained by you, and the Court approved us, as special litigation counsel in the underlying Oasis proceeding to evaluate potential claims against the Oasis fund administrator, Fundadministration Inc. We recently settled pre-suit that matter in the total amount of \$3,950,000 for the benefit of the Receivership Estate. The same team consisting of myself, Mr. Rengstl, and Mr. Katz will assist on this new ATC matter. For your reference, I have attached copies of my resume, Mr. Rengstl's, and Mr. Katz's, as Exhibits "A," "B" and "C," respectively.

Burton Wiand, Esq. March 25, 2021 Page 2 of 2

#### Proposed Engagement Terms

As discussed, we would be willing to handle this ATC matter on the same contingency fee basis that we handled, and the Court approved, the prior Fundadministration matter, provided that the Estate would be willing to pay for the costs associated with the representation. The schedule we would propose is as follows:

- Prior to filing a complaint 10% of any settlement;
- After filing the complaint, but before an answer is filed 15% of any settlement;
- Following the filing of an answer, but before forty days preceding the commencement of a trial 25% of any recovery or settlement; and,
- Within forty days of trial or thereafter 33% of any recovery.

We agree if the settlement or recovery amount in this matter is greater than \$10,000,000.00, that for any portion above \$10,000,000.00, but less than \$20,000,000.00, our fee would be limited to 20%. Further, any fee arising from that portion of a settlement or recovery amount greater than \$20,000,000.00 would be limited to 10%.

#### **Conclusion**

We would welcome the opportunity to represent you, as Receiver, in connection with a potential action against ATC. Once you have had a chance to consider the terms we have proposed, we would be happy answer any question that you may have or discuss any details regarding my Firm's potential engagement.

Sincerely ames D. Sallah

cc: Jared Perez, Esq.

Case 8:19-cv-00886-VMC-SPF Document 385-1 Filed 03/31/21 Page 4 of 14 PageID 5999

# EXHIBIT A



#### **RESUME OF JAMES D. SALLAH, ESQ.**

SALLAH ASTARITA & COX, LLC 3010 N MILITARY TRAIL, SUITE 210 BOCA RATON, FLORIDA 33431

PHONE: (561) 989-9080 FACSIMILE: (561) 989-9020 E-MAIL: jds@sallahlaw.com WEBSITE: www.sallahlaw.com

#### **PRACTICE AREAS**

Mr. Sallah is an AV Preeminent® rated attorney who concentrates his practice on securities and commodity futures regulation and enforcement matters, receiverships and receivership litigation, broker-dealer compliance and defense, whistleblower claims, and business litigation.

#### **PROFESSIONAL EXPERIENCE**

Since leaving the Securities and Exchange Commission in 2004, Mr. Sallah has represented national and regional brokerage firms, as well as publicly-traded companies and individuals, in a variety of matters, including investigations, administrative proceedings, and litigation involving the SEC, FINRA and state securities regulators. Mr. Sallah has also handled white collar criminal matters and represented individuals in U.S. congressional sub-committee hearings.

Mr. Sallah's reputation as a securities lawyer is well recognized among his peers. He has been selected as a *Florida Super Lawyer* in the area of Securities Litigation each year since 2011 and has been included among *Florida Trend's Legal Elite*. Moreover, Mr. Sallah has also been recognized in the *South Florida Legal Guide* each year since 2008 in the field of Securities Litigation and Arbitration. In 2009 the *Daily Business Review* selected Mr. Sallah has also testified as an expert witness on securities matters in United States Bankruptcy Court, FINRA Arbitrations, Florida state Court, and before international tribunals. Since 2012 he has served as an adjunct professor at the University of Miami School of Law, where he teaches a class in SEC enforcement and litigation.

Before entering private practice, Mr. Sallah was a Senior Counsel in the SEC's Division of Enforcement in Miami, Florida. During his tenure at the SEC, Mr. Sallah handled investigations and litigation in both federal court and administrative forums, including cases involving fraudulent securities offerings, Ponzi schemes, market manipulations, municipal bonds, research analyst conflicts, public company disclosure and periodic reports, and broker-dealer and investment adviser regulation.

Prior to joining the SEC, Mr. Sallah was Assistant Corporate Counsel for Raymond James Financial, Inc., the largest brokerage institution in the Southeastern United States. While at Raymond James, he represented its broker-dealer subsidiaries and their associated persons in a variety of matters, including litigation and arbitration.

#### EXPERIENCE WITH COURT-APPOINTED RECEIVERSHIPS AND PROCEEDINGS

Mr. Sallah has extensive experience in matters involving court-appointed receiverships and proceedings, including serving as the following:

- Counsel to Receiver <u>Jeffrey C. Schneider in Securities & Exchange Commission v. Natural</u> <u>Diamonds Investment Group Inc., et al.,</u> (Case No. 9:19-CV-80633-Rosenberg)
- Court-appointed Receiver in <u>Goerz, David V. Stocket Inc.</u> (15<sup>th</sup> Judicial Circuit of Florida Civil Division Case No. 50-2018-CA-011965-MB)
- Counsel to Receiver in <u>Federal Trade Commission v. Student Debt Doctor, LLC, et al.</u>, (Case No. 17-CV-61973-Dimitrouleas/Snow)
- Court-appointed Receiver in <u>Brandon Leidel, et al. v. Project Investors, Inc., *et al.*, (S.D. Fla. Case No. 16-CV-80060-MARRA) in connection with a class-action involving cryptocurrency.</u>
- Court-appointed Receiver in <u>State of Florida, et al. v. Abeo Investments, LLC, *et al.*, (18<sup>th</sup> Judicial Circuit of Florida Case No. 2013-CA-001773-16-K) in connection with \$11 million dollar Ponzi scheme.</u>
- Court-appointed Receiver in <u>SEC v. JCS Enterprises, Inc., *et al*</u>, (S.D. Fla. Case No. 14-CV-80468-DLM) in connection with \$80 million dollar Ponzi scheme.
- Court-appointed Corporate Monitor in <u>Amin v. OM Global Investment Fund LLC, et al.</u> (Case No. 13-18620 CA 13) in connection with a hedge fund fraud in Miami-Dade County Circuit Court.
- Court-appointed Receiver in <u>Katz v. MRT Holdings, *et al.*</u> (S.D. Fla., Case No. 07-CV-61438-JIC) in connection with multi-million dollar Ponzi scheme.
- Counsel to Receiver in <u>SEC v. Natural Diamonds Investment Co., et al.</u> (S.D. Fla. Case No. 9:19-CV-80633- Rosenberg).
- Counsel to Receiver appointed by Puerto Rico Insurance Commissioner to prosecute case against international investment bank in <u>Newport Bonding and Surety Co., Inc. v. UBS</u> <u>Financial Services, Inc.</u> (FINRA Case No. 17-01317).
- Special Counsel to the Receiver in <u>SEC v. Aubrey Lee Price, et al</u>., Case No. 1:12-cv-2296-TCB (N.D. Ga.) and <u>Melanie E. Damian, Esq., as Court-Appointed Receiver for PFG, LLC, et al. v. Convergex Execution Solutions, LLC, et al</u>., FINRA Case No. 16-00669.
- Special Counsel to the Receiver in <u>CFTC v. LaSalle International Clearing Corp., et al.</u> (S.D. Fla. Case No. 09-80765-Civ-Dimitrouleas/Snow)
- Special Counsel to the Receiver in <u>SEC v. KS Advisors, Inc., *et al.*</u> (M.D. Fla. Case No. 2:04-CV-1005-FtM-29DNF) to investigate and prosecute claims brokerage firm in connection with multi-million dollar hedge fund fraud
- Independent Consultant <u>In the Matter of vFinance Investments, Inc</u>. (SEC Rel. No. 51530

   April 12, 2005) to review, revise, and test supervisory procedures in connection with broker-dealer's market making/trading activities

#### **PROFESSIONAL AWARDS AND ACTIVITIES**

- AV Preeminent® rated (the highest peer ranking) by *Martindale-Hubbell*
- Adjunct Professor, University of Miami School of Law, SEC Enforcement Seminar
- SEC Chairman's Award for Excellence in 2002
- SEC Southeast Regional Office's 2001 nominee for the Ellen Ross Award (honors an Enforcement attorney who demonstrates exemplary commitment, enthusiasm, and performance)
- Florida Bar Grievance Committee 2015 2017 term
- Vice-Chair, Financial Services Committee, Florida Bar, 1999 2000
- Executive Committee, Business Law Section, Florida Bar, 1999 2000
- Member of the National Association of Federal Equity Receivers
- Arbitrator for FINRA and National Futures Association
- Association of Securities and Exchange Commission Alumni

#### **EDUCATION**

Mr. Sallah received his Bachelor's degree (*Summa Cum Laude*) and Master's degree from Ohio University and his Juris Doctor degree (*Cum Laude*) from the University of Miami School of Law. During law school, Mr. Sallah was a member of the *University of Miami Law Review*.

#### BAR MEMBERSHIPS AND JURISDICTIONS ADMITTED TO PRACTICE

Mr. Sallah is a member of the Florida and Colorado Bar Associations. He is admitted to practice in the state courts of both, as well as the U.S. District Court for the Southern, Middle and Northern Districts of Florida, and the Eastern District of Michigan.

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## EXHIBIT B

Contact Us Now: 1-888-SEC-ATTY

### SALLAH ASTARITA & COX, LLC ATTORNEYS AT LAW



#### Patrick J. Rengstl, Esq.

Of Counsel

pjr@sallahlaw.com Download VCard

Phone: (305) 904-8980 Fax: (305) 668-0003

7695 SW 104th St, #210 Miami, Florida 33156

#### PRACTICE AREAS

Patrick J. Rengstl, P.A. is Of Counsel at the firm. During the last 15 years, Patrick's practice has included a broad commercial practice throughout Florida, including high-stakes complex commercial litigation, insurance-related litigation (including coverage issues and defense of insureds), real estate litigation and appellate advocacy.

#### PROFESSIONAL EXPERIENCE

Patrick also has extensive experience representing court-appointed receivers and corporate monitors in state and federal courts in Florida, typically in cases filed by the United States Securities and Exchange Commission ("SEC"), the Commodity Futures Trading Commission ("CFTC") and the Federal Trade Commission ("FTC"). Patrick has represented and continues to represent James D. Sallah of the firm in his capacity as receiver or corporate monitor in several of Mr. Sallah's court appointments over the years.

As a result, Patrick has significant experience in fraud-related and fraudulent transfer cases; has first-chaired the administration of many SEC, FTC and CFTC receivership estates, including claims and distribution procedures; has litigated countless ancillary receivership cases and summary proceedings; and has helped secure the recovery of tens of millions of dollars for the benefit of investors and consumers around the world. Below are Patrick's significant receivership representations:

- OM Global Lead counsel to Mr. Sallah in his capacity as the Corporate Monitor of OM Global Investment Fund LLC and OM Global LP in Miami-Dade Circuit Court. The action involved an alleged \$20-million fraud scheme, a related SEC case and ultimately a criminal prosecution and plea agreement for the protagonist of the admitted scheme.
- Cryptsy Lead counsel to Mr. Sallah in his capacity as the Receiver of Project Investors, Inc. d/b/a Cryptsty in the United States District Court for the Southern District of Florida. The action involved an alleged multi-million dollar misappropriation of Bitcoins and hundreds of other types of cryptocurrencies.
- JCS Enterprises Special counsel to Mr. Sallah in his capacity as the Receiver of JCS Enterprises, Inc. and its related entities in the United States District Court for the Southern District of Florida. The action involved an alleged \$81-million fraud scheme.
- *eCareer Holdings, Inc.* Special counsel to the Receiver of eCareer Holdings, Inc. and its related entities in the United States District Court for the Southern District of Florida. The action involved an alleged \$11-million fraud scheme.
- *Trade-LLC* Lead counsel to the Receiver of Trade-LLC and its related entities in the United States District Court for the Southern District of Florida. The action involved an alleged \$28-million fraud scheme.
- *Pension Fund of America, LC* Counsel to the Receiver of Pension Fund of America, LC in the United States District Court for the Southern District of Florida. The action involved an alleged multi-million dollar fraud scheme.
- American Precious Metals, LLC Counsel to the Receiver of American Precious Metals, LLC in the United States District Court for the Southern District of Florida. The action involved an alleged \$37-million precious metals boiler room.
- *Timeshare Mega Media and Marketing Group, Inc.* Counsel to the Receiver of Timeshare Mega Media and Marketing Group, Inc. in the United States District Court for the Southern District of Florida. The action involved an alleged timeshare boiler room.
- *The Dolce Group Worldwide, LLC* Counsel to the Receiver of The Dolce Group Worldwide, LLC in the United States District Court for the Southern District of Florida. The action involved an alleged \$4-million boiler room.
- *Nationwide Connections, Inc.* Counsel to the Receiver of Nationwide Connections, Inc. in the United States District Court for the Southern District of Florida. The action involved an alleged boiler room.

Besides his federal court receivership work, Patrick has extensive receivership experience in state court matters involving alleged fraud and waste to commercial buildings, residential properties, ongoing businesses and family estates.

#### EDUCATION AND PROFESSIONAL AWARDS

Patrick, a Miami native, attended college at the University of Miami, graduated with a 3.98 GPA, and was elected to Phi Beta Kappa (of which he was named Vice President and received at graduation one of the highest honors, the Phi Beta Kappa Scholarship and Service Award). Patrick attended law school at the Florida State University College of Law and graduated *cum laude* in 2002. During law school, Patrick was an Associate Editor and Writing & Research Editor of the *Florida State University Law Review*, as well as a member of the Moot Court Team. Patrick has been listed several times as a "Rising Star" in *Super Lawyers* (2010-2011, 2016-2017 Editions) and as a "Top Up & Comer" (2012, 2014-2016 Editions) and "Top Lawyer" (2017 Edition) in the *South Florida Legal Guide*. Patrick is licensed to practice in the State of Florida and all Florida federal courts, including the Eleventh Circuit. Orlando, Florida Securities Litigation Lawyer :: Patrick J. Rengstl, Esq. :... Case 8:19-cv-00886-VMC-SPF Document 385-1 Filed 03/31/21 Page 11 of 14 PageID 6006

https://www.sallahcox.com/patrick-j-rengstl-esq.html

#### **Practice Areas**

Securities Regulation & Enforcement | White-Collar Criminal Defense | Securities Arbitration & Litigation |

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With offices in Florida, New Jersey, and New York City, we serve clients nationwide including, but not limited to, those in the following localities: Atlanta, Baltimore, Boston, Chicago, Dallas-Fort Worth, Denver, Detroit, Florida, Houston, Los Angeles, Miami, New Jersey, New York City, Philadelphia, Phoenix, San Bernardino-Riverside, San Diego, San Francisco, Seattle, St. Louis, Tampa-St. Petersburg, and Washington, D.C.

Orlando, Florida Securities Litigation Lawyer :: Patrick J. Rengstl, Esq. :: Boca Raton, Florida White Collar Criminal **Defense Attorney** 

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# EXHIBIT C



**RESUME OF JOSHUA A. KATZ, ESQ.** 

SALLAH ASTARITA & COX, LLC 3010 N. MILITARY TRAIL, STE. 210 BOCA RATON, FLORIDA 33431

PHONE: (561) 989-9080 FACSIMILE: (561) 989-9020 E-MAIL: jak@sallahlaw.com WEBSITE: www.sallahlaw.com

#### **PRACTICE AREAS**

Mr. Katz practices in the areas of Securities Arbitration and Litigation, Complex Commercial litigation, Securities Regulation and Enforcement, Receivership Litigation, and Broker-Dealer Compliance and Defense.

#### **PROFESSIONAL EXPERIENCE**

Since 2004, Mr. Katz has focused his practice in the area of broker-dealer arbitration before FINRA, or the Financial Industry Regulatory Authority. Mr. Katz has extensive experience representing public investors, brokers and broker-dealers in arbitration and disciplinary proceedings involving a wide range of issues.

Some of Mr. Katz's recent successes include:

- Represented Miami doctor in an insider trading case brought by the SEC in federal court. After a two-week jury trial, the doctor was found not liable *SEC v. De La Maza, et al.*, Case No. 09-21977 (S.D. Fla.).
- Successfully argued dismissal of shareholder suit in federal court alleging insider trading *Kamin, et al. v. Acord, et al.*, Case No. 09-22829-Civ-Jordan (S.D. Fla.)
- Represented nominee for Commissioner of Financial Regulation for the State of Florida in FINRA Enforcement Hearing *Dept. of Enforcement v. Carreno*, No. 2006005546007. All claims against Respondent were dismissed, with prejudice.
- Represented multiple claimants/plaintiffs in multi-week FINRA arbitration hearing resulting in \$7.5 million dollar award against the broker *Paula Casper, et al. v. Gary Gross*, FINRA Case No. 07-00624.

Mr. Katz has also served in following roles:

- Counsel to the Receiver in *Federal Trade Commission v. Student Debt Doctor LLC, et al.*, Case No. 0:17-cv-61937-WPD (S.D. Fla.).
- Counsel to the Receiver in *SEC v. Aubrey Lee Price, et al.*, Case No. 1:12-cv-02296-TCB (N.D. Ga.) to investigate and prosecute claims against brokerage firm in connection with multi-million dollar hedge fund fraud.
- Counsel to the Receiver in *SEC v. JCS Enterprises, Inc., et al.*, Case No. 14-CV-80468-DLM (S.D. Fla.) to investigate and prosecute claims against defendants in underlying SEC case and against profiteers in clawback actions against over 100 persons.

Mr. Katz's reputation as a securities lawyer is recognized among his peers. He was selected as a Florida Super Lawyer Rising Star in 2011, 2012, 2013 and 2014. Mr. Katz is also AV Preeminent rated (the highest peer ranking) by *Martindale-Hubbell*.

Prior to joining Sallah Astarita & Cox, LLC, Mr. Katz was an associate for the law firm of Klein & Sallah, LLC. Mr. Katz began developing his securities law experience before graduating from law school. During the summers of 2002 and 2013 and the spring of 2004, he worked for the United States Securities and Exchange Commission as a Certified Legal Intern.

#### **EDUCATION**

Mr. Katz received his law degree (Cum Laude) from the University of Miami School of Law in 2004. While at the University of Miami, he served as a staff editor for the Inter-American Law Review and was elected as a Senator on the Student Bar Association. Before law school, Mr. Katz was a Ph.D. candidate in modern French and German history at American University in Washington, D.C., where he was also a Hurst Scholar and Teaching Fellow. Mr. Katz attended the College of William and Mary and received his Bachelor's and Master's degrees from Virginia Commonwealth University, where he became a member of Phi Kappa Phi Honor Society.

#### BAR MEMBERSHIPS AND JURISDICTIONS ADMITTED TO PRACTICE

Mr. Katz became a member of the Florida Bar in 2004 and is admitted to practice in the state courts of Florida, the U.S. District Courts for the Southern and Middle Districts of Florida and the Eleventh Circuit Court of Appeals.

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### **EXHIBIT 2**

#### 10/18/20 Gase 8:19-cv-00886-VMC-SPF Devenmentar 325- Boun File of 03 Kok Exts | Linague 2 of 6 PageID 6011

Dave Manoukian     Image: Co-Founder   ATC BROKERS   Gendale, California · 500+ connections   Join to Connect		Join now	Sign in
Co-Founder   ATC BROKERS Glendale, California · 500+ connections	Dave Manoukian		
	<b>Co-Founder   ATC BROKERS</b> Glendale, California · 500+ connections		

### Experience

#### Co-Founder

#### ATC BROKERS

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ATC Brokers is an NFA registered brokerage firm that server the US Forex industry from its headquarters in Los Angeles.

ATC Brokers Ltd is an FCA-registered brokerage firm that serves the global Forex industry from its headquarters in London and operations in the US.

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**Michele Gardini** Principal at Currency Exchange Solutions



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# Others named Dave Manoukian



**David Manoukian** 

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Co-Founder at ATC BROKERS

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# **EXHIBIT 3**

#### UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF FLORIDA TAMPA DIVISION

CASE NO.: 8:09-cv-87-T-26TBM

# SECURITIES AND EXCHANGE COMMISSION,

#### Plaintiff,

v.

ARTHUR NADEL, SCOOP CAPITAL, LLC, SCOOP MANAGEMENT, INC.

Defendants,

SCOOP REAL ESTATE, L.P., VALHALLA INVESTMENT PARTNERS, L.P., VALHALLA MANAGEMENT, INC., VICTORY IRA FUND, LTD, VICTORY FUND, LTD, VIKING IRA FUND, LLC, VIKING FUND, LLC, AND VIKING MANAGEMENT

**Relief Defendants.** 

/

#### **ORDER REAPPOINTING RECEIVER**

WHEREAS, Plaintiff Securities and Exchange Commission ("Commission") filed an emergency motion for the appointment of a Receiver over Defendants Scoop Capital LLC and Scoop Management Inc. ("Defendants"), and Relief Defendants Scoop Real Estate L.P., Valhalla Investment Partners L.P., Valhalla Management Inc., Victory IRA Fund LTD, Victory Fund LTD, Viking IRA Fund LLC, Viking Fund LLC and Viking Management ("Relief Defendants"), with full and exclusive power, duty and authority to: administer and manage the business affairs, funds, assets, choses in action and any other property of the Defendants and Relief Defendants; marshal and safeguard all of the assets of the Defendants and Relief Defendants; and take whatever actions are necessary for the protection of the investors; and

WHEREAS, the Commission has made a sufficient and proper showing in support of the relief requested by evidence demonstrating a *prima facie* case of violations of the federal securities laws by the Defendants; and

WHEREAS, the Commission submitted the credentials of Burton W. Wiand to be appointed as Receiver of all of the assets, properties, books and records, and other items of the Defendants and Relief Defendants, including any properties, assets and other items held in the names of the Defendants and Relief Defendants, and the Commission has advised the Court that Burton W. Wiand was prepared to assume this responsibility if so ordered by the Court; and

WHEREAS, Burton W. Wiand was appointed Receiver over the Defendants and Relief Defendants; and

WHEREAS, upon sufficient and proper showing by Burton W. Wiand and, for the protection of the investors and the Receivership Estate, the Court expanded the Receivership to include Venice Jet Center, LLC; Tradewind, LLC; Laurel Mountain Preserve, LLC; Laurel Preserve, LLC; the Marguerite J. Nadel Revocable Trust UAD 8/2/07; the Laurel Mountain Preserve Homeowners Association, Inc.; The Guy-Nadel Foundation, Inc.; Lime Avenue Enterprises, LLC; and A Victorian Garden Florist, LLC,

NOW, THEREFORE, IT IS ORDERED AND ADJUDGED that Burton W. Wiand is hereby reappointed the Receiver over the Defendants and Relief Defendants and Venice Jet Center, LLC; Tradewind, LLC; Laurel Mountain Preserve, LLC; Laurel Preserve, LLC; the Marguerite J. Nadel Revocable Trust UAD 8/2/07; the Laurel Mountain Preserve Homeowners Association, Inc.; The Guy-Nadel Foundation, Inc.; Lime Avenue Enterprises, LLC; and A Victorian Garden Florist,

#### 

LLC (collectively "Receivership Entities"), their subsidiaries, successors and assigns, and is hereby authorized, empowered, and directed to:

1. Take immediate possession of all property, assets and estates of every kind of the Receivership Entities, whatsoever and wheresoever located belonging to or in the possession of the Receivership Entities, including but not limited to all offices maintained by the Receivership Entities, rights of action, books, papers, data processing records, evidences of debt, bank accounts, savings accounts, certificates of deposit, stocks, bonds, debentures and other securities, mortgages, furniture, fixtures, office supplies and equipment, and all real property of the Receivership Entities wherever situated, and to administer such assets as is required in order to comply with the directions contained in this Order, and to hold all other assets pending further order of this Court;

2. Investigate the manner in which the affairs of the Receivership Entities were conducted and institute such actions and legal proceedings, for the benefit and on behalf of the Receivership Entities and their investors and other creditors as the Receiver deems necessary against those individuals, corporations, partnerships, associations and/or unincorporated organizations, which the Receiver may claim have wrongfully, illegally or otherwise improperly misappropriated or transferred monies or other proceeds directly or indirectly traceable from investors in the Receivership Entities, including against their officers, directors, employees, affiliates, subsidiaries, or any persons acting in concert or participation with them, or against any transfers of money or other proceeds directly or indirectly traceable from investors in the Receivership Entities; provided such actions may include, but not be limited to, seeking imposition of constructive trusts, disgorgement of profits, recovery and/or avoidance of fraudulent transfers under Florida Statute § 726.101, et. seq. or otherwise, rescission and restitution, the collection of debts, and such orders from this Court as may be necessary to enforce this Order;

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3. Present to this Court a report reflecting the existence and value of the assets of the Receivership Entities and of the extent of liabilities, both those claimed to exist by others and those the Receiver believes to be legal obligations of the Receivership Entities;

4. Appoint one or more special agents, employ legal counsel, actuaries, accountants, clerks, consultants and assistants as the Receiver deems necessary and to fix and pay their reasonable compensation and reasonable expenses, as well as all reasonable expenses of taking possession of the assets and business of the Receivership Entities, and exercising the power granted by this Order, subject to approval by this Court at the time the Receiver accounts to the Court for such expenditures and compensation;

5. Engage persons in the Receiver's discretion to assist the Receiver in carrying out the Receiver's duties and responsibilities, including, but not limited to, the United States Marshal's Service or a private security firm;

6. Defend, compromise or settle legal actions, including the instant proceeding, in which the Receivership Entities or the Receiver is a party, commenced either prior to or subsequent to this Order, with authorization of this Court; except, however, in actions where the Receivership Entities are a nominal party, where the action does not effect a claim against or adversely affect the assets of the Receivership Entities, the Receiver may file appropriate pleadings in the Receiver's discretion. The Receiver may waive any attorney-client or other privilege held by the Receivership Entities;

7. Assume control of, and be named as authorized signatory for, all accounts at any bank, brokerage firm or financial institution which has possession, custody or control of any assets or funds, wherever situated, of the Receivership Entities and, upon order of this Court, of any of their subsidiaries or affiliates, provided that the Receiver deems it necessary;

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8. Make or authorize such payments and disbursements from the funds and assets taken into control, or thereafter received by the Receiver, and incur, or authorize the incurrence of, such expenses and make, or authorize the making of, such agreements as may be reasonable, necessary, and advisable in discharging the Receiver's duties;

9. Have access to and review all mail of the Receivership Entities (except for mail that appears on its face to be purely personal or attorney-client privileged) received at any office or address of the Receivership Entities.

**IT IS FURTHER ORDERED AND ADJUDGED** that, in connection with the reappointment of the Receiver provided for above:

10. The Receivership Entities and all of their directors, officers, agents, employees, attorneys, attorneys-in-fact, shareholders, and other persons who are in custody, possession, or control of any assets, books, records, or other property of the Receivership Entities shall deliver forthwith upon demand such property, monies, books and records to the Receiver, and shall forthwith grant to the Receiver authorization to be a signatory as to all accounts at banks, brokerage firms or financial institutions which have possession, custody or control of any assets or funds in the name of or for the benefit of the Receivership Entities;

11. All banks, brokerage firms, financial institutions, and other business entities which have possession, custody or control of any assets, funds or accounts in the name of, or for the benefit of, the Receivership Entities shall cooperate expeditiously in the granting of control and authorization as a necessary signatory as to said assets and accounts to the Receiver;

12. Unless authorized by the Receiver, the Receivership Entities and their principals shall take no action, nor purport to take any action, in the name of or on behalf of the Receivership Entities;

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13. The Receivership Entities, and their respective officers, agents, employees, attorneys, and attorneys-in-fact, shall cooperate with and assist the Receiver. The Receivership Entities and their principals, respective officers, agents, employees, attorneys, and attorneys-in-fact shall take no action, directly or indirectly, to hinder, obstruct, or otherwise interfere with the Receiver in the conduct of the Receiver's duties or to interfere in any manner, directly or indirectly, with the custody, possession, management, or control by the Receiver of the funds, assets, premises, and choses in action described above;

14. The Receiver, and any counsel whom the Receiver may select, are entitled to reasonable compensation from the assets now held by or in the possession or control of or which may be received by the Receivership Entities; said amount or amounts of compensation shall be commensurate with their duties and obligations under the circumstances, subject to approval of the Court;

15. Without prior permission from this Court, during the period of this receivership all persons, including creditors, banks, investors, or others, with actual notice of this Order, are enjoined from filing a petition for relief under the United States Bankruptcy Code or from in any way disturbing the assets or proceeds of the receivership or from prosecuting any actions or proceedings which involve the Receiver or which affect the property of the Receivership Entities;

16. The Receiver is fully authorized to proceed with any filing the Receiver may deem appropriate under the Bankruptcy Code as to the Receivership Entities;

17. Title to all property, real or personal, all contracts, rights of action and all books and records of the Receivership Entities and their principals, wherever located within or without this state, is vested by operation of law in the Receiver;

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18. Upon request by the Receiver, any company providing telephone services to the Receivership Entities shall provide a reference of calls from any number presently assigned to any of the Receivership Entities to any such number designated by the Receiver or perform any other changes necessary to the conduct of the receivership;

19. Any entity furnishing water, electric, telephone, sewage, garbage or trash removal services to the Receivership Entities shall maintain such service and transfer any such accounts to the Receiver unless instructed to the contrary by the Receiver;

20. The United States Postal Service is directed to provide any information requested by the Receiver regarding the Receivership Entities, and to handle future deliveries of the mail of the Receivership Entities as directed by the Receiver;

21. No bank, savings and loan association, other financial institution, or any other person or entity shall exercise any form of set-off, alleged set-off, lien, or any form of self-help whatsoever, or refuse to transfer any funds or assets to the Receiver's control without the permission of this Court;

22. No bond shall be required in connection with the appointment of the Receiver. Except for an act of gross negligence or greater, the Receiver shall not be liable for any loss or damage incurred by the Receivership Entities or by the Receiver's officers, agents or employees, or any other person, by reason of any act performed or omitted to be performed by the Receiver in connection with the discharge of the Receiver's duties and responsibilities;

23. In the event that the Receiver discovers that funds of persons who have invested in the Receivership Entities have been transferred to other persons or entities, the Receiver shall apply to this Court for an Order giving the Receiver possession of such funds and, if the Receiver deems it advisable, extending this receivership over any person or entity holding such investor funds; and

24. This Court shall retain jurisdiction of this matter for all purposes.

**DONE AND ORDERED** in Chambers at Tampa, Florida, on June 3, 2009.

<u>s/ Richard A. Lazzara</u> RICHARD A. LAZZARA UNITED STATES DISTRICT JUDGE

#### **COPIES FURNISHED TO:**

Counsel of Record Arthur G. Nadel, Register No. 50690-018 MCC New York Metropolitan Correctional Center 150 Park Row New York, NY 10007

#### UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF FLORIDA TAMPA DIVISION

CASE NO.: 8:09-cv-87-T-26TBM

# SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v. ARTHUR NADEL, SCOOP CAPITAL, LLC, SCOOP MANAGEMENT, INC.

Defendants,

SCOOP REAL ESTATE, L.P., VALHALLA INVESTMENT PARTNERS, L.P., VALHALLA MANAGEMENT, INC., VICTORY IRA FUND, LTD, VICTORY FUND, LTD, VIKING IRA FUND, LLC, VIKING FUND, LLC, AND VIKING MANAGEMENT

Relief Defendants.

#### ORDER REAPPOINTING RECEIVER

WHEREAS, Plaintiff Securities and Exchange Commission ("Commission") filed an emergency motion for the appointment of a Receiver over Defendants Scoop Capital LLC and Scoop Management Inc. ("Defendants"), and Relief Defendants Scoop Real Estate L.P., Valhalla Investment Partners L.P., Valhalla Management Inc., Victory IRA Fund LTD, Victory Fund LTD, Viking IRA Fund LLC, Viking Fund LLC and Viking Management ("Relief Defendants"). with full and exclusive power, duty and authority to: administer and manage the business affairs, funds, assets, choses in action and any other property of the Defendants and Relief Defendants; marshal and safeguard all of the assets of the Defendants and Relief Defendants; and take whatever actions are necessary for the protection of the investors; and

WHEREAS, the Commission has made a sufficient and proper showing in support of the relief requested by evidence demonstrating a *prima facie* case of violations of the federal securities laws by the Defendants; and

WHEREAS, the Commission submitted the credentials of Burton W. Wiand to be appointed as Receiver of all of the assets, properties, books and records, and other items of the Defendants and Relief Defendants, including any properties, assets and other items held in the names of the Defendants and Relief Defendants, and the Commission has advised the Court that Burton W. Wiand was prepared to assume this responsibility if so ordered by the Court; and

WHEREAS, Burton W. Wiand was appointed Receiver over the Defendants and Relief Defendants; and

WHEREAS, upon sufficient and proper showing by Burton W. Wiand and, for the protection of the investors and the Receivership Estate, the Court expanded the Receivership to include Venice Jet Center, LLC; Tradewind, LLC; Laurel Mountain Preserve, LLC; Laurel Preserve, LLC; the Marguerite J. Nadel Revocable Trust UAD 8/2/07; the Laurel Mountain Preserve Homeowners Association, Inc.; The Guy-Nadel Foundation. Inc.; Lime Avenue Enterprises, LLC; A Victorian Garden Florist, LLC; Viking Oil & Gas, LLC, and Home Front Homes, LLC; and

NOW, THEREFORE, IT IS ORDERED AND ADJUDGED that Burton W. Wiand is hereby reappointed the Receiver over the Defendants and Relief Defendants and Venice Jet Center, LLC; Tradewind, LLC; Laurel Mountain Preserve, LLC; Laurel Preserve, LLC; the Marguerite J. Nadel Revocable Trust UAD 8/2/07; the Laurel Mountain Preserve Homeowners Association, Inc.; The Guy-Nadel Foundation, Inc.; Lime Avenue Enterprises, LLC; A Victorian Garden Florist, LLC; Viking Oil & Gas, LLC, and Home Front Homes. LLC (collectively "Receivership Entities"), their subsidiaries, successors and assigns, and is hereby authorized, empowered, and directed to:

1. Take immediate possession of all property, assets and estates of every kind of the Receivership Entities, whatsoever and wheresoever located belonging to or in the possession of the Receivership Entities, including but not limited to all offices maintained by the Receivership Entities, rights of action, books, papers, data processing records, evidences of debt, bank accounts, savings accounts, certificates of deposit, stocks, bonds, debentures and other securities, mortgages, furniture, fixtures, office supplies and equipment, and all real property of the Receivership Entities wherever situated, and to administer such assets as is required in order to comply with the directions contained in this Order, and to hold all other assets pending further order of this Court;

2. Investigate the manner in which the affairs of the Receivership Entities were conducted and institute such actions and legal proceedings, for the benefit and on behalf of the Receivership Entities and their investors and other creditors as the Receiver deems necessary against those individuals, corporations, partnerships, associations and/or unincorporated organizations. which the Receiver may claim have wrongfully, illegally or otherwise improperly misappropriated or transferred monies or other proceeds directly or indirectly traceable from investors in the Receivership Entities, including against their officers, directors, employees, affiliates, subsidiaries, or any persons acting in concert or participation with them, or against any transfers of money or other proceeds directly or indirectly traceable from investors in the

Receivership Entities; provided such actions may include, but not be limited to, seeking imposition of constructive trusts, disgorgement of profits, recovery and/or avoidance of fraudulent transfers under Florida Statute § 726.101, et. seq. or otherwise, rescission and restitution, the collection of debts. and such orders from this Court as may be necessary to enforce this Order;

3. Present to this Court a report reflecting the existence and value of the assets of the Receivership Entities and of the extent of liabilities, both those claimed to exist by others and those the Receiver believes to be legal obligations of the Receivership Entities;

4. Appoint one or more special agents, employ legal counsel, actuaries, accountants, clerks. consultants and assistants as the Receiver deems necessary and to fix and pay their reasonable compensation and reasonable expenses, as well as all reasonable expenses of taking possession of the assets and business of the Receivership Entities, and exercising the power granted by this Order, subject to approval by this Court at the time the Receiver accounts to the Court for such expenditures and compensation;

5. Engage persons in the Receiver's discretion to assist the Receiver in carrying out the Receiver's duties and responsibilities, including, but not limited to, the United States Marshal's Service or a private security firm;

6. Defend, compromise or settle legal actions, including the instant proceeding, in which the Receivership Entities or the Receiver is a party, commenced either prior to or subsequent to this Order, with authorization of this Court; except, however, in actions where the Receivership Entities are a nominal party, where the action does not effect a claim against or adversely affect the assets of the Receivership Entities, the Receiver may file appropriate pleadings in the Receiver's discretion. The Receiver may waive any attorney-client or other privilege held by the Receivership Entities;

7. Assume control of, and be named as authorized signatory for, all accounts at any bank, brokerage firm or financial institution which has possession, custody or control of any assets or funds, wherever situated, of the Receivership Entities and, upon order of this Court, of any of their subsidiaries or affiliates, provided that the Receiver deems it necessary;

8. Make or authorize such payments and disbursements from the funds and assets taken into control, or thereafter received by the Receiver, and incur, or authorize the incurrence of, such expenses and make, or authorize the making of, such agreements as may be reasonable, necessary, and advisable in discharging the Receiver's duties;

9. Have access to and review all mail of the Receivership Entities (except for mail that appears on its face to be purely personal or attorney-client privileged) received at any office or address of the Receivership Entities.

IT IS FURTHER ORDERED AND ADJUDGED that, in connection with the reappointment of the Receiver provided for above:

10. The Receivership Entities and all of their directors, officers, agents, employees, attorneys, attorneys-in-fact, shareholders, and other persons who are in custody, possession, or control of any assets, books, records, or other property of the Receivership Entities shall deliver forthwith upon demand such property, monies, books and records to the Receiver, and shall forthwith grant to the Receiver authorization to be a signatory as to all accounts at banks, brokerage firms or financial institutions which have possession, custody or control of any assets or funds in the name of or for the benefit of the Receivership Entities;

11. All banks, brokerage firms, financial institutions, and other business entities which have possession, custody or control of any assets, funds or accounts in the name of. or for the

benefit of, the Receivership Entities shall cooperate expeditiously in the granting of control and authorization as a necessary signatory as to said assets and accounts to the Receiver;

12. Unless authorized by the Receiver, the Receivership Entities and their principals shall take no action, nor purport to take any action, in the name of or on behalf of the Receivership Entities;

13. The Receivership Entities, and their respective officers, agents. employees, attorneys, and attorneys-in-fact, shall cooperate with and assist the Receiver. The Receivership Entities and their principals, respective officers, agents, employees, attorneys, and attorneys-in-fact shall take no action, directly or indirectly, to hinder, obstruct, or otherwise interfere with the Receiver in the conduct of the Receiver's duties or to interfere in any manner, directly or indirectly, with the custody, possession, management, or control by the Receiver of the funds, assets, premises, and choses in action described above;

14. The Receiver, and any counsel whom the Receiver may select, are entitled to reasonable compensation from the assets now held by or in the possession or control of or which may be received by the Receivership Entities; said amount or amounts of compensation shall be commensurate with their duties and obligations under the circumstances, subject to approval of the Court;

15. Without prior permission from this Court, during the period of this receivership all persons, including creditors, banks, investors, or others, with actual notice of this Order, are enjoined from filing a petition for relief under the United States Bankruptcy Code or from in any way disturbing the assets or proceeds of the receivership or from prosecuting any actions or proceedings which involve the Receiver or which affect the property of the Receivership Entities;

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16. The Receiver is fully authorized to proceed with any filing the Receiver may deem appropriate under the Bankruptcy Code as to the Receivership Entities;

17. Title to all property, real or personal, all contracts, rights of action and all books and records of the Receivership Entities and their principals, wherever located within or without this state, is vested by operation of law in the Receiver;

18. Upon request by the Receiver, any company providing telephone services to the Receivership Entities shall provide a reference of calls from any number presently assigned to any of the Receivership Entities to any such number designated by the Receiver or perform any other changes necessary to the conduct of the receivership;

19. Any entity furnishing water, electric, telephone, sewage, garbage or trash removal services to the Receivership Entities shall maintain such service and transfer any such accounts to the Receiver unless instructed to the contrary by the Receiver;

20. The United States Postal Service is directed to provide any information requested by the Receiver regarding the Receivership Entities, and to handle future deliveries of the mail of the Receivership Entities as directed by the Receiver;

21. No bank, savings and loan association, other financial institution, or any other person or entity shall exercise any form of set-off, alleged set-off, lien, or any form of self-help whatsoever, or refuse to transfer any funds or assets to the Receiver's control without the permission of this Court;

22. No bond shall be required in connection with the appointment of the Receiver. Except for an act of gross negligence of greater, the Receiver shall not be liable for any loss or damage incurred by the Receivership Enities or by the Receiver's officers, agents or employees,

or any other person, by reason of any act performed or omitted to be performed by the Receiver in connection with the discharge of the Receiver's duties and responsibilities;

23. In the event that the Receiver discovers that funds of persons who have invested in the Receivership Entities have been transferred to other persons or entities, the Receiver shall apply to this Court for an Order giving the Receiver possession of such funds and, if the Receiver deems it advisable, extending this receivership over any person or entity holding such investor funds; and

24. This Court shall retain jurisdiction of this matter for all purposes.

**DONE AND ORDERED** in Chambers at Tampa, Florida, on this <u>inday of</u> day of <u>juncon</u>, 2010.

RICHARD A. LAZZARA UNITED STATES DISTRICT JUDGE

#### **COPIES FURNISHED TO:**

Counsel of Record by CM/ECF

Arthur G. Nadel, Register No. 50690-018 MCC New York Metropolitan Correctional Center 150 Park Row New York, NY 10007

#### UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF FLORIDA TAMPA DIVISION

CASE NO.: 8:09-cv-87-T-26TBM

# SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v. ARTHUR NADEL, SCOOP CAPITAL, LLC, SCOOP MANAGEMENT, INC.

Defendants,

SCOOP REAL ESTATE, L.P., VALHALLA INVESTMENT PARTNERS, L.P., VALHALLA MANAGEMENT, INC., VICTORY IRA FUND, LTD, VICTORY FUND, LTD, VIKING IRA FUND, LLC, VIKING FUND, LLC, AND VIKING MANAGEMENT

**Relief Defendants.** 

ORDER REAPPOINTING RECEIVER

WHEREAS, Plaintiff Securities and Exchange Commission ("Commission") filed an emergency motion for the appointment of a Receiver over Defendants Scoop Capital LLC and Scoop Management Inc. ("Defendants"), and Relief Defendants Scoop Real Estate L.P., Valhalla Investment Partners L.P., Valhalla Management Inc., Victory IRA Fund LTD, Victory Fund LTD, Viking IRA Fund LLC, Viking Fund LLC and Viking Management ("Relief Defendants"), with full and exclusive power, duty and authority to: administer and manage the business affairs, funds, assets, choses in action and any other property of the Defendants and Relief Defendants; marshal and safeguard all of the assets of the Defendants and Relief Defendants; and take whatever actions are necessary for the protection of the investors; and

WHEREAS, the Commission has made a sufficient and proper showing in support of the relief requested by evidence demonstrating a *prima facie* case of violations of the federal securities laws by the Defendants; and

WHEREAS, the Commission submitted the credentials of Burton W. Wiand to be appointed as Receiver of all of the assets, properties, books and records, and other items of the Defendants and Relief Defendants, including any properties, assets and other items held in the names of the Defendants and Relief Defendants, and the Commission has advised the Court that Burton W. Wiand was prepared to assume this responsibility if so ordered by the Court; and

WHEREAS, Burton W. Wiand was appointed Receiver over the Defendants and Relief Defendants; and

WHEREAS, upon sufficient and proper showing by Burton W. Wiand and, for the protection of the investors and the Receivership Estate, the Court expanded the Receivership to include Venice Jet Center, LLC; Tradewind, LLC; Laurel Mountain Preserve, LLC; Laurel Preserve, LLC; the Marguerite J. Nadel Revocable Trust UAD 8/2/07; the Laurel Mountain Preserve Homeowners Association, Inc.; The Guy-Nadel Foundation, Inc.; Lime Avenue Enterprises, LLC; A Victorian Garden Florist, LLC; Viking Oil & Gas, LLC; Home Front Homes, LLC; and Traders Investment Club; and

NOW, THEREFORE, IT IS ORDERED AND ADJUDGED that Burton W. Wiand is hereby reappointed the Receiver over the Defendants and Relief Defendants and Venice Jet Center, LLC; Tradewind, LLC; Laurel Mountain Preserve, LLC; Laurel Preserve, LLC; the Marguerite J. Nadel Revocable Trust UAD 8/2/07; the Laurel Mountain Preserve Homeowners Association, Inc.; The Guy-Nadel Foundation, Inc.; Lime Avenue Enterprises, LLC; A Victorian Garden Florist, LLC; Viking Oil & Gas, LLC; Home Front Homes, LLC; and Traders Investment Club (collectively "Receivership Entities"), their subsidiaries, successors and assigns, and is hereby authorized, empowered, and directed to:

1. Take immediate possession of all property, assets and estates of every kind of the Receivership Entities, whatsoever and wheresoever located belonging to or in the possession of the Receivership Entities, including but not limited to all offices maintained by the Receivership Entities, rights of action, books, papers, data processing records, evidences of debt, bank accounts, savings accounts, certificates of deposit, stocks, bonds, debentures and other securities, mortgages, furniture, fixtures, office supplies and equipment, and all real property of the Receivership Entities wherever situated, and to administer such assets as is required in order to comply with the directions contained in this Order, and to hold all other assets pending further order of this Court;

2. Investigate the manner in which the affairs of the Receivership Entities were conducted and institute such actions and legal proceedings, for the benefit and on behalf of the Receivership Entities and their investors and other creditors as the Receiver deems necessary against those individuals, corporations, partnerships, associations and/or unincorporated organizations, which the Receiver may claim have wrongfully, illegally or otherwise improperly misappropriated or transferred monies or other proceeds directly or indirectly traceable from investors in the Receivership Entities, including against their officers, directors, employees, affiliates, subsidiaries, or any persons acting in concert or participation with them, or against any transfers of money or other proceeds directly or indirectly traceable from investors in the

Receivership Entities; provided such actions may include, but not be limited to, seeking imposition of constructive trusts, disgorgement of profits, recovery and/or avoidance of fraudulent transfers under Florida Statute § 726.101, et. seq. or otherwise, rescission and restitution, the collection of debts, and such orders from this Court as may be necessary to enforce this Order;

3. Present to this Court a report reflecting the existence and value of the assets of the Receivership Entities and of the extent of liabilities, both those claimed to exist by others and those the Receiver believes to be legal obligations of the Receivership Entities;

4. Appoint one or more special agents, employ legal counsel, actuaries, accountants, clerks, consultants and assistants as the Receiver deems necessary and to fix and pay their reasonable compensation and reasonable expenses, as well as all reasonable expenses of taking possession of the assets and business of the Receivership Entities, and exercising the power granted by this Order, subject to approval by this Court at the time the Receiver accounts to the Court for such expenditures and compensation;

5. Engage persons in the Receiver's discretion to assist the Receiver in carrying out the Receiver's duties and responsibilities, including, but not limited to, the United States Marshal's Service or a private security firm;

6. Defend, compromise or settle legal actions, including the instant proceeding, in which the Receivership Entities or the Receiver is a party, commenced either prior to or subsequent to this Order, with authorization of this Court; except, however, in actions where the Receivership Entities are a nominal party, where the action does not effect a claim against or adversely affect the assets of the Receivership Entities, the Receiver may file appropriate pleadings in the Receiver's discretion. The Receiver may waive any attorney-client or other privilege held by the Receivership Entities;

7. Assume control of, and be named as authorized signatory for, all accounts at any bank, brokerage firm or financial institution which has possession, custody or control of any assets or funds, wherever situated, of the Receivership Entities and, upon order of this Court, of any of their subsidiaries or affiliates, provided that the Receiver deems it necessary;

8. Make or authorize such payments and disbursements from the funds and assets taken into control, or thereafter received by the Receiver, and incur, or authorize the incurrence of, such expenses and make, or authorize the making of, such agreements as may be reasonable, necessary, and advisable in discharging the Receiver's duties;

9. Have access to and review all mail of the Receivership Entities (except for mail that appears on its face to be purely personal or attorney-client privileged) received at any office or address of the Receivership Entities.

IT IS FURTHER ORDERED AND ADJUDGED that, in connection with the reappointment of the Receiver provided for above:

10. The Receivership Entities and all of their directors, officers, agents, employees, attorneys, attorneys-in-fact, shareholders, and other persons who are in custody, possession, or control of any assets, books, records, or other property of the Receivership Entities shall deliver forthwith upon demand such property, monies, books and records to the Receiver, and shall forthwith grant to the Receiver authorization to be a signatory as to all accounts at banks, brokerage firms or financial institutions which have possession, custody or control of any assets or funds in the name of or for the benefit of the Receivership Entities;

11. All banks, brokerage firms, financial institutions, and other business entities which have possession, custody or control of any assets, funds or accounts in the name of, or for the

benefit of, the Receivership Entities shall cooperate expeditiously in the granting of control and authorization as a necessary signatory as to said assets and accounts to the Receiver;

12. Unless authorized by the Receiver, the Receivership Entities and their principals shall take no action, nor purport to take any action, in the name of or on behalf of the Receivership Entities;

13. The Receivership Entities, and their respective officers, agents, employees, attorneys, and attorneys-in-fact, shall cooperate with and assist the Receiver. The Receivership Entities and their principals, respective officers, agents, employees, attorneys, and attorneys-in-fact shall take no action, directly or indirectly, to hinder, obstruct, or otherwise interfere with the Receiver in the conduct of the Receiver's duties or to interfere in any manner, directly or indirectly, with the custody, possession, management, or control by the Receiver of the funds, assets, premises, and choses in action described above;

14. The Receiver, and any counsel whom the Receiver may select, are entitled to reasonable compensation from the assets now held by or in the possession or control of or which may be received by the Receivership Entities; said amount or amounts of compensation shall be commensurate with their duties and obligations under the circumstances, subject to approval of the Court;

15. Without prior permission from this Court, during the period of this receivership all persons, including creditors, banks, investors, or others, with actual notice of this Order, are enjoined from filing a petition for relief under the United States Bankruptcy Code or from in any way disturbing the assets or proceeds of the receivership or from prosecuting any actions or proceedings which involve the Receiver or which affect the property of the Receivership Entities;

16. The Receiver is fully authorized to proceed with any filing the Receiver may deem appropriate under the Bankruptcy Code as to the Receivership Entities;

17. Title to all property, real or personal, all contracts, rights of action and all books and records of the Receivership Entities and their principals, wherever located within or without this state, is vested by operation of law in the Receiver;

18. Upon request by the Receiver, any company providing telephone services to the Receivership Entities shall provide a reference of calls from any number presently assigned to any of the Receivership Entities to any such number designated by the Receiver or perform any other changes necessary to the conduct of the receivership;

19. Any entity furnishing water, electric, telephone, sewage, garbage or trash removal services to the Receivership Entities shall maintain such service and transfer any such accounts to the Receiver unless instructed to the contrary by the Receiver;

20. The United States Postal Service is directed to provide any information requested by the Receiver regarding the Receivership Entities, and to handle future deliveries of the mail of the Receivership Entities as directed by the Receiver;

21. No bank, savings and loan association, other financial institution, or any other person or entity shall exercise any form of set-off, alleged set-off, lien, or any form of self-help whatsoever, or refuse to transfer any funds or assets to the Receiver's control without the permission of this Court;

22. No bond shall be required in connection with the appointment of the Receiver. Except for an act of gross negligence or greater, the Receiver shall not be liable for any loss or damage incurred by the Receivership Entities or by the Receiver's officers, agents or employees,

or any other person, by reason of any act performed or omitted to be performed by the Receiver in connection with the discharge of the Receiver's duties and responsibilities;

23. In the event that the Receiver discovers that funds of persons who have invested in the Receivership Entities have been transferred to other persons or entities, the Receiver shall apply to this Court for an Order giving the Receiver possession of such funds and, if the Receiver deems it advisable, extending this receivership over any person or entity holding such investor funds; and

This Court shall retain jurisdiction of this matter for all purposes. 24.

DONE AND ORDERED in Chambers at Tampa, Florida, on this 23day of Supt., 2010.

**RICHARD UNITED STATES DISTRICT JUDGE** 

Counsel of Record by CM/ECF

**COPIES FURNISHED TO:** 

Arthur G. Nadel, Register No. 50690-018 MCC New York Metropolitan Correctional Center 150 Park Row New York, NY 10007

#### UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF FLORIDA TAMPA DIVISION

# SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ARTHUR NADEL, SCOOP CAPITAL, LLC, SCOOP MANAGEMENT, INC.

CASE NO.: 8:09-cv-0087-T-26TBM

Defendants,

SCOOP REAL ESTATE, L.P., VALHALLA INVESTMENT PARTNERS, L.P., VALHALLA MANAGEMENT, INC., VICTORY IRA FUND, LTD, VICTORY FUND, LTD, VIKING IRA FUND, LLC, VIKING FUND, LLC, AND VIKING MANAGEMENT

Relief Defendants.

### **ORDER REAPPOINTING RECEIVER**

WHEREAS, Plaintiff Securities and Exchange Commission ("Commission") filed an emergency motion for the appointment of a Receiver over Defendants Scoop Capital LLC and Scoop Management Inc. ("Defendants"), and Relief Defendants Scoop Real Estate L.P., Valhalla Investment Partners L.P., Valhalla Management Inc., Victory IRA Fund LTD, Victory Fund LTD, Viking IRA Fund LLC, Viking Fund LLC and Viking Management ("Relief Defendants"), with full and exclusive power, duty and authority to: administer and manage the business affairs, funds, assets, choses in action and any other property of the Defendants and Relief Defendants; marshal and safeguard all of the assets of the Defendants and Relief Defendants; and take whatever actions are necessary for the protection of the investors; and

WHEREAS, the Commission has made a sufficient and proper showing in support of the relief requested by evidence demonstrating a *prima facie* case of violations of the federal securities laws by the Defendants; and

WHEREAS, the Commission submitted the credentials of Burton W. Wiand to be appointed as Receiver of all of the assets, properties, books and records, and other items of the Defendants and Relief Defendants, including any properties, assets and other items held in the names of the Defendants and Relief Defendants, and the Commission has advised the Court that Burton W. Wiand was prepared to assume this responsibility if so ordered by the Court; and

WHEREAS, Burton W. Wiand was appointed Receiver over the Defendants and Relief Defendants; and

WHEREAS, upon sufficient and proper showing by Burton W. Wiand and, for the protection of the investors and the Receivership Estate, the Court expanded the Receivership to include Venice Jet Center, LLC; Tradewind, LLC; Laurel Mountain Preserve, LLC; Laurel Preserve, LLC; the Marguerite J. Nadel Revocable Trust UAD 8/2/07; the Laurel Mountain Preserve Homeowners Association, Inc.; The Guy-Nadel Foundation, Inc.; Lime Avenue Enterprises, LLC; A Victorian Garden Florist, LLC; Viking Oil & Gas, LLC, Home Front

Homes, LLC; Traders Investment Club; Respiro Inc.; and Summer Place Development Corporation.

NOW, THEREFORE, IT IS ORDERED AND ADJUDGED that Burton W. Wiand is hereby reappointed the Receiver over the Defendants and Relief Defendants and Venice Jet Center, LLC; Tradewind, LLC; Laurel Mountain Preserve, LLC; Laurel Preserve, LLC; the Marguerite J. Nadel Revocable Trust UAD 8/2/07; the Laurel Mountain Preserve Homeowners Association, Inc.; The Guy-Nadel Foundation, Inc.; Lime Avenue Enterprises, LLC; A Victorian Garden Florist, LLC; Viking Oil & Gas, LLC, Home Front Homes, LLC; Traders Investment Club; Respiro Inc.; and Summer Place Development Corporation (collectively "Receivership Entities"), their subsidiaries, successors and assigns, and is hereby authorized, empowered, and directed to:

1. Take immediate possession of all property, assets and estates of every kind of the Receivership Entities, whatsoever and wheresoever located belonging to or in the possession of the Receivership Entities, including but not limited to all offices maintained by the Receivership Entities, rights of action, books, papers, data processing records, evidences of debt, bank accounts, savings accounts, certificates of deposit, stocks, bonds, debentures and other securities, mortgages, furniture, fixtures, office supplies and equipment, and all real property of the Receivership Entities wherever situated, and to administer such assets as is required in order to comply with the directions contained in this Order, and to hold all other assets pending further order of this Court;

2. Investigate the manner in which the affairs of the Receivership Entities were conducted and institute such actions and legal proceedings, for the benefit and on behalf of the Receivership Entities and their investors and other creditors as the Receiver deems necessary against those individuals, corporations, partnerships, associations and/or unincorporated organizations, which the Receiver may claim have wrongfully, illegally or otherwise improperly misappropriated or transferred monies or other proceeds directly or indirectly traceable from investors in the Receivership Entities, including against their officers, directors, employees, affiliates, subsidiaries, or any persons acting in concert or participation with them, or against any transfers of money or other proceeds directly or indirectly traceable from investors in the Receivership Entities; provided such actions may include, but not be limited to, seeking imposition of constructive trusts, disgorgement of profits, recovery and/or avoidance of fraudulent transfers under Florida Statute § 726.101, et. seq. or otherwise, rescission and restitution, the collection of debts, and such orders from this Court as may be necessary to enforce this Order;

3. Present to this Court a report reflecting the existence and value of the assets of the Receivership Entities and of the extent of liabilities, both those claimed to exist by others and those the Receiver believes to be legal obligations of the Receivership Entities;

4. Appoint one or more special agents, employ legal counsel, actuaries, accountants, clerks, consultants and assistants as the Receiver deems necessary and to fix and pay their reasonable compensation and reasonable expenses, as well as all reasonable expenses of taking possession of the assets and business of the Receivership Entities, and exercising the

power granted by this Order, subject to approval by this Court at the time the Receiver accounts to the Court for such expenditures and compensation;

5. Engage persons in the Receiver's discretion to assist the Receiver in carrying out the Receiver's duties and responsibilities, including, but not limited to, the United States Marshal's Service or a private security firm;

6. Defend, compromise or settle legal actions, including the instant proceeding, in which the Receivership Entities or the Receiver is a party, commenced either prior to or subsequent to this Order, with authorization of this Court; except, however, in actions where the Receivership Entities are a nominal party, where the action does not effect a claim against or adversely affect the assets of the Receivership Entities, the Receiver may file appropriate pleadings in the Receiver's discretion. The Receiver may waive any attorney-client or other privilege held by the Receivership Entities;

7. Assume control of, and be named as authorized signatory for, all accounts at any bank, brokerage firm or financial institution which has possession, custody or control of any assets or funds, wherever situated, of the Receivership Entities and, upon order of this Court, of any of their subsidiaries or affiliates, provided that the Receiver deems it necessary;

8. Make or authorize such payments and disbursements from the funds and assets taken into control, or thereafter received by the Receiver, and incur, or authorize the incurrence of, such expenses and make, or authorize the making of, such agreements as may be reasonable, necessary, and advisable in discharging the Receiver's duties;

9. Have access to and review all mail of the Receivership Entities (except for mail that appears on its face to be purely personal or attorney-client privileged) received at any office or address of the Receivership Entities.

IT IS FURTHER ORDERED AND ADJUDGED that, in connection with the reappointment of the Receiver provided for above:

10. The Receivership Entities and all of their directors, officers, agents, employees, attorneys, attorneys-in-fact, shareholders, and other persons who are in custody, possession, or control of any assets, books, records, or other property of the Receivership Entities shall deliver forthwith upon demand such property, monies, books and records to the Receiver, and shall forthwith grant to the Receiver authorization to be a signatory as to all accounts at banks, brokerage firms or financial institutions which have possession, custody or control of any assets or funds in the name of or for the benefit of the Receivership Entities;

11. All banks, brokerage firms, financial institutions, and other business entities which have possession, custody or control of any assets, funds or accounts in the name of, or for the benefit of, the Receivership Entities shall cooperate expeditiously in the granting of control and authorization as a necessary signatory as to said assets and accounts to the Receiver;

12. Unless authorized by the Receiver, the Receivership Entities and their principals shall take no action, nor purport to take any action, in the name of or on behalf of the Receivership Entities;

13. The Receivership Entities, and their respective officers, agents, employees, attorneys, and attorneys-in-fact, shall cooperate with and assist the Receiver. The

Receivership Entities and their principals, respective officers, agents, employees, attorneys, and attorneys-in-fact shall take no action, directly or indirectly, to hinder, obstruct, or otherwise interfere with the Receiver in the conduct of the Receiver's duties or to interfere in any manner, directly or indirectly, with the custody, possession, management, or control by the Receiver of the funds, assets, premises, and choses in action described above;

14. The Receiver, and any counsel whom the Receiver may select, are entitled to reasonable compensation from the assets now held by or in the possession or control of or which may be received by the Receivership Entities; said amount or amounts of compensation shall be commensurate with their duties and obligations under the circumstances, subject to approval of the Court;

15. Without prior permission from this Court, during the period of this receivership all persons, including creditors, banks, investors, or others, with actual notice of this Order, are enjoined from filing a petition for relief under the United States Bankruptcy Code or from in any way disturbing the assets or proceeds of the receivership or from prosecuting any actions or proceedings which involve the Receiver or which affect the property of the Receivership Entities;

16. The Receiver is fully authorized to proceed with any filing the Receiver may deem appropriate under the Bankruptcy Code as to the Receivership Entities;

17. Title to all property, real or personal, all contracts, rights of action and all books and records of the Receivership Entities and their principals, wherever located within or without this state, is vested by operation of law in the Receiver;

18. Upon request by the Receiver, any company providing telephone services to the Receivership Entities shall provide a reference of calls from any number presently assigned to any of the Receivership Entities to any such number designated by the Receiver or perform any other changes necessary to the conduct of the receivership;

19. Any entity furnishing water, electric, telephone, sewage, garbage or trash removal services to the Receivership Entities shall maintain such service and transfer any such accounts to the Receiver unless instructed to the contrary by the Receiver;

20. The United States Postal Service is directed to provide any information requested by the Receiver regarding the Receivership Entities, and to handle future deliveries of the mail of the Receivership Entities as directed by the Receiver;

21. No bank, savings and loan association, other financial institution, or any other person or entity shall exercise any form of set-off, alleged set-off, lien, or any form of self-help whatsoever, or refuse to transfer any funds or assets to the Receiver's control without the permission of this Court;

22. No bond shall be required in connection with the appointment of the Receiver. Except for an act of gross negligence or greater, the Receiver shall not be liable for any loss or damage incurred by the Receivership Entities or by the Receiver's officers, agents or employees, or any other person, by reason of any act performed or omitted to be performed by the Receiver in connection with the discharge of the Receiver's duties and responsibilities;

23. In the event that the Receiver discovers that funds of persons who have invested in the Receivership Entities have been transferred to other persons or entities, the Receiver shall apply to this Court for an Order giving the Receiver possession of such funds and, if the

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Receiver deems it advisable, extending this receivership over any person or entity holding such

investor funds; and

24. This Court shall retain jurisdiction of this matter for all purposes.

**DONE AND ORDERED** in Chambers at Tampa, Florida, on this 29th day of October, 2012.

s/Richard A. Lazzara RICHARD A. LAZZARA UNITED STATES DISTRICT JUDGE

## **COPIES FURNISHED TO:**

Counsel of Record by CM/ECF

## UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF FLORIDA TAMPA DIVISION

## SECURITIES AND EXCHANGE COMMISSION,

ARTHUR NADEL,

v.

SCOOP CAPITAL, LLC, SCOOP MANAGEMENT, INC.

### CASE NO.: 8:09-cv-0087-T-26TBM

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Defendants,

Plaintiff,

SCOOP REAL ESTATE, L.P., VALHALLA INVESTMENT PARTNERS, L.P., VALHALLA MANAGEMENT, INC., VICTORY IRA FUND, LTD, VICTORY FUND, LTD, VIKING IRA FUND, LLC, VIKING FUND, LLC, AND VIKING MANAGEMENT

Relief Defendants.

## ORDER REAPPOINTING RECEIVER

WHEREAS, Plaintiff Securities and Exchange Commission ("Commission") filed an emergency motion for the appointment of a Receiver over Defendants Scoop Capital LLC and Scoop Management Inc. ("Defendants"), and Relief Defendants Scoop Real Estate L.P., Valhalla Investment Partners L.P., Valhalla Management Inc., Victory IRA Fund LTD, Victory Fund LTD, Viking IRA Fund LLC, Viking Fund LLC and Viking Management ("Relief Defendants"), with full and exclusive power, duty and authority to: administer and manage the business affairs, funds, assets, choses in action and any other property of the Defendants and Relief Defendants; marshal and safeguard all of the assets of the Defendants and Relief Defendants; and take whatever actions are necessary for the protection of the investors; and Z

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WHEREAS, the Commission has made a sufficient and proper showing in support of the relief requested by evidence demonstrating a *prima facie* case of violations of the federal securities laws by the Defendants; and

WHEREAS, the Commission submitted the credentials of Burton W. Wiand to be appointed as Receiver of all of the assets, properties, books and records, and other items of the Defendants and Relief Defendants, including any properties, assets and other items held in the names of the Defendants and Relief Defendants, and the Commission has advised the Court that Burton W. Wiand was prepared to assume this responsibility if so ordered by the Court; and

WHEREAS, Burton W. Wiand was appointed Receiver over the Defendants and Relief Defendants; and

WHEREAS, upon sufficient and proper showing by Burton W. Wiand and, for the protection of the investors and the Receivership Estate, the Court expanded the Receivership to include Venice Jet Center, LLC; Tradewind, LLC; Laurel Mountain Preserve, LLC; Laurel Preserve, LLC; the Marguerite J. Nadel Revocable Trust UAD 8/2/07; the Laurel Mountain Preserve Homeowners Association, Inc.; The Guy-Nadel Foundation, Inc.; Lime Avenue Enterprises, LLC; A Victorian Garden Florist, LLC; Viking Oil & Gas, LLC, Home Front

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Homes, LLC; Traders Investment Club; Respiro Inc.; and Summer Place Development Corporation.

NOW, THEREFORE, IT IS ORDERED AND ADJUDGED that Burton W. Wiand is hereby reappointed the Receiver over the Defendants and Relief Defendants and Venice Jet Center, LLC; Tradewind, LLC; Laurel Mountain Preserve, LLC; Laurel Preserve, LLC; the Marguerite J. Nadel Revocable Trust UAD 8/2/07; the Laurel Mountain Preserve Homeowners Association, Inc.; The Guy-Nadel Foundation, Inc.; Lime Avenue Enterprises, LLC; A Victorian Garden Florist, LLC; Viking Oil & Gas, LLC, Home Front Homes, LLC; Traders Investment Club; Respiro Inc.; and Summer Place Development Corporation (collectively "Receivership Entities"), their subsidiaries, successors and assigns, and is hereby authorized, empowered, and directed to:

1. Take immediate possession of all property, assets and estates of every kind of the Receivership Entities, whatsoever and wheresoever located belonging to or in the possession of the Receivership Entities, including but not limited to all offices maintained by the Receivership Entities, rights of action, books, papers, data processing records, evidences of debt, bank accounts, savings accounts, certificates of deposit, stocks, bonds, debentures and other securities, mortgages, furniture, fixtures, office supplies and equipment, and all real property of the Receivership Entities wherever situated, and to administer such assets as is required in order to comply with the directions contained in this Order, and to hold all other assets pending further order of this Court; 2. Investigate the manner in which the affairs of the Receivership Entities were conducted and institute such actions and legal proceedings, for the benefit and on behalf of the Receivership Entities and their investors and other creditors as the Receiver deems necessary against those individuals, corporations, partnerships, associations and/or unincorporated organizations, which the Receiver may claim have wrongfully, illegally or otherwise improperly misappropriated or transferred monies or other proceeds directly or indirectly traceable from investors in the Receivership Entities, including against their officers, directors, employees, affiliates, subsidiaries, or any persons acting in concert or participation with them, or against any transfers of money or other proceeds directly or indirectly traceable from investors in the Receivership Entities; provided such actions may include, but not be limited to, seeking imposition of constructive trusts, disgorgement of profits, recovery and/or avoidance of fraudulent transfers under Florida Statute § 726.101, *et. seq.* or otherwise, rescission and restitution, the collection of debts, and such orders from this Court as may be necessary to enforce this Order;

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3. Present to this Court a report reflecting the existence and value of the assets of the Receivership Entities and of the extent of liabilities, both those claimed to exist by others and those the Receiver believes to be legal obligations of the Receivership Entities;

4. Appoint one or more special agents, employ legal counsel, actuaries, accountants, clerks, consultants and assistants as the Receiver deems necessary and to fix and pay their reasonable compensation and reasonable expenses, as well as all reasonable expenses of taking possession of the assets and business of the Receivership Entities, and exercising the

power granted by this Order, subject to approval by this Court at the time the Receiver accounts to the Court for such expenditures and compensation;

5. Engage persons in the Receiver's discretion to assist the Receiver in carrying out the Receiver's duties and responsibilities, including, but not limited to, the United States Marshal's Service or a private security firm;

6. Defend, compromise or settle legal actions, including the instant proceeding, in which the Receivership Entities or the Receiver is a party, commenced either prior to or subsequent to this Order, with authorization of this Court; except, however, in actions where the Receivership Entities are a nominal party, where the action does not effect a claim against or adversely affect the assets of the Receivership Entities, the Receiver may file appropriate pleadings in the Receiver's discretion. The Receiver may waive any attorney-client or other privilege held by the Receivership Entities;

7. Assume control of, and be named as authorized signatory for, all accounts at any bank, brokerage firm or financial institution which has possession, custody or control of any assets or funds, wherever situated, of the Receivership Entities and, upon order of this Court, of any of their subsidiaries or affiliates, provided that the Receiver deems it necessary;

8. Make or authorize such payments and disbursements from the funds and assets taken into control, or thereafter received by the Receiver, and incur, or authorize the incurrence of, such expenses and make, or authorize the making of, such agreements as may be reasonable, necessary, and advisable in discharging the Receiver's duties;

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9. Have access to and review all mail of the Receivership Entities (except for mail that appears on its face to be purely personal or attorney-client privileged) received at any office or address of the Receivership Entities.

IT IS FURTHER ORDERED AND ADJUDGED that, in connection with the reappointment of the Receiver provided for above:

10. The Receivership Entities and all of their directors, officers, agents, employees, attorneys, attorneys-in-fact, shareholders, and other persons who are in custody, possession, or control of any assets, books, records, or other property of the Receivership Entities shall deliver forthwith upon demand such property, monies, books and records to the Receiver, and shall forthwith grant to the Receiver authorization to be a signatory as to all accounts at banks, brokerage firms or financial institutions which have possession, custody or control of any assets or funds in the name of or for the benefit of the Receivership Entities;

11. All banks, brokerage firms, financial institutions, and other business entities which have possession, custody or control of any assets, funds or accounts in the name of, or for the benefit of, the Receivership Entities shall cooperate expeditiously in the granting of control and authorization as a necessary signatory as to said assets and accounts to the Receiver;

12. Unless authorized by the Receiver, the Receivership Entities and their principals shall take no action, nor purport to take any action, in the name of or on behalf of the Receivership Entities;

13. The Receivership Entities, and their respective officers, agents, employees, attorneys, and attorneys-in-fact, shall cooperate with and assist the Receiver. The

Receivership Entities and their principals, respective officers, agents, employees, attorneys, and attorneys-in-fact shall take no action, directly or indirectly, to hinder, obstruct, or otherwise interfere with the Receiver in the conduct of the Receiver's duties or to interfere in any manner, directly or indirectly, with the custody, possession, management, or control by the Receiver of the funds, assets, premises, and choses in action described above;

14. The Receiver, and any counsel whom the Receiver may select, are entitled to reasonable compensation from the assets now held by or in the possession or control of or which may be received by the Receivership Entities; said amount or amounts of compensation shall be commensurate with their duties and obligations under the circumstances, subject to approval of the Court;

15. Without prior permission from this Court, during the period of this receivership all persons, including creditors, banks, investors, or others, with actual notice of this Order, are enjoined from filing a petition for relief under the United States Bankruptcy Code or from in any way disturbing the assets or proceeds of the receivership or from prosecuting any actions or proceedings which involve the Receiver or which affect the property of the Receivership Entities;

16. The Receiver is fully authorized to proceed with any filing the Receiver may deem appropriate under the Bankruptcy Code as to the Receivership Entities;

17. Title to all property, real or personal, all contracts, rights of action and all books and records of the Receivership Entities and their principals, wherever located within or without this state, is vested by operation of law in the Receiver;

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18. Upon request by the Receiver, any company providing telephone services to the Receivership Entities shall provide a reference of calls from any number presently assigned to any of the Receivership Entities to any such number designated by the Receiver or perform any other changes necessary to the conduct of the receivership;

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19. Any entity furnishing water, electric, telephone, sewage, garbage or trash removal services to the Receivership Entities shall maintain such service and transfer any such accounts to the Receiver unless instructed to the contrary by the Receiver;

20. The United States Postal Service is directed to provide any information requested by the Receiver regarding the Receivership Entities, and to handle future deliveries of the mail of the Receivership Entities as directed by the Receiver;

21. No bank, savings and loan association, other financial institution, or any other person or entity shall exercise any form of set-off, alleged set-off, lien, or any form of self-help whatsoever, or refuse to transfer any funds or assets to the Receiver's control without the permission of this Court;

22. No bond shall be required in connection with the appointment of the Receiver. Except for an act of gross negligence or greater, the Receiver shall not be liable for any loss or damage incurred by the Receivership Entities or by the Receiver's officers, agents or employees, or any other person, by reason of any act performed or omitted to be performed by the Receiver in connection with the discharge of the Receiver's duties and responsibilities;

23. In the event that the Receiver discovers that funds of persons who have invested in the Receivership Entities have been transferred to other persons or entities, the Receiver shall apply to this Court for an Order giving the Receiver possession of such funds and, if the Receiver deems it advisable, extending this receivership over any person or entity holding such

investor funds; and

24. This Court shall retain jurisdiction of this matter for all purposes.

**DONE AND ORDERED** in Chambers at Tampa, Florida, on this 2013.

RICHARD A. LAZZARA

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RICHARD A. LAZZARA UNITED STATES DISTRICT JUDGE

## **COPIES FURNISHED TO:**

Counsel of Record by CM/ECF

Case 8:19-cv-00886-VMC-SPF Document 385-4 Filed 03/31/21 Page 1 of 2 PageID 6059

## **EXHIBIT 4**

## 5/7/2019 Case 8:19-cv-00886-VMC-SPF Document 385/a4/bo Mailed=03/31/21 Page 2 of 2 PageID 6060

RE:

From: Dave Manoukian (Dave@atcbrokers.com)

To: jpaniagua@oasisig.com; priya@spotex.com; ragrawal@spotex.com

Cc: jpania@yahoo.com

Date: Friday, July 6, 2018, 5:25 PM EDT

Joe,

Please tell us more about the adjustments?

-Why are you doing adjustments? (give us an explanation) -What are the adjustment's based on? -Do you have sample? or formula?

Dave

----Original Message-----From: Joseph M Paniagua [mailto:jpaniagua@oasisig.com] Sent: Friday, July 06, 2018 1:57 PM To: Priya A: Ritesh Agrawal Cc: Dave Manoukian; John C. Paniagua Subject: Re:

Hello Ritesh and Priya,

Hope all is well.

Currently, I manually make the following action after the last day of trading for every month:

1) Adjustment in client account

2) Spread deposit into client account.

We need to do this programmatically.

We would like for you to expose this capability programmatically via the web service.

Please let us how long your efforts will take to complete this request.

Have a great weekend!

Best regards,

Joe

Sent from my iPhone

Case 8:19-cv-00886-VMC-SPF Document 385-5 Filed 03/31/21 Page 1 of 3 PageID 6061

## **EXHIBIT 5**

## 5/7/2019 Case 8:19-cv-00886-VMC-SPF Docvance Intai 88-504:50 as 5 il end 0:36 addunt Page 2 of 3 PageID 6062

FW: Oasis - FIX - Client Account

From: Joseph Paniagua (jpaniagua@oasisig.com)

To: jpania@yahoo.com

Date: Monday, July 16, 2018, 9:28 AM EDT

fyi

#### Joseph Paniagua

Cell: 516-578-0623 Email: jpaniagua@oasisig.com

#### www.oasisig.com

From: Priya A <priya@spotex.com> Sent: Monday, July 16, 2018 5:52 AM To: Dave Manoukian <Dave@atcbrokers.com> Cc: Joseph Paniagua <jpaniagua@oasisig.com>; Support Desk <support@spotex.com> Subject: Re: Oasis - FIX - Client Account

Hi Dave,

There is a report available in our web service called Margin Upload Request. Using this method, the adjustments can be uploaded for required accounts into our back-office.

This Report is available only with master login. Please let us know if you need more details.

Thank you.

Priya

On Fri, Jul 13, 2018 at 4:10 PM, Dave Manoukian <<u>Dave@atcbrokers.com</u>> wrote:

Hi Priya,

Based on what we discussed last time on Oasis.

They are able to see the spread from the IB account from the API and they are able to move it to the client account as a deposit. (currently doing it manually)

But the Adjustment section they are unable to see it from the API.

The goal is to be able to do the adjustment into the client account automatically via FIX or via an upload.

Please advise

## Dave Manoukian

President

## ATC BROKERS

Email:

dave@atcbrokers.com

UK Main: UK Fax: Web: 44 (0) 20 3318 1399 44 (0) 28 7122 0244 atcbrokers.co.uk

### 5/7/2019 Case 8:19-cv-00886-VMC-SPF Docvance Intai 88-504-50 as Filed 0:36-6014-22 dunt Page 3 of 3 PageID 6063



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### SPOTEX

#### Priya A.

111 Town Square PI, Ste. 408 Jersey City NJ 07310 201.426.6933 (O) || 959.549.0075 (M) || priya@spotex (Skype)

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Case 8:19-cv-00886-VMC-SPF Document 385-6 Filed 03/31/21 Page 1 of 3 PageID 6064

# **EXHIBIT 6**

From:	mdacorta64@yahoo.com
Sent:	Sunday, March 28, 2021 5:52 PM
То:	Andrea Whitby
Cc:	Jared Perez; Larry Dougherty; adam_allen@fd.org; Mark L. Horwitz; fduran7@gmail.com
Subject:	Re: Oasis - LR 3.01(g) - Motion to Approve the Receiver's Engagement of Sallah Astarita & Cox, LLC
	to Prosecute Potential Claims Against ATC Brokers

I oppose the motion to retain Sallah Astarita & Cox LLP.

## Please provide the court my entire email.

I oppose on two grounds:

1) There is currently a case pending at in the Appellate Court that relates to the authority of the receiver to engage in such activities prior to any actual evidence being presented to any court which proves any of the allegations made against Oasis. I ask the District Court not to approve any motions by the receiver which seeks to expand its jurisdiction and authority prior to a decision by the Appellate Court.

2) The District Court has already rejected an attempt by the receiver to involve ATC Brokers. The Court should reject this new attempt to hire a law firm at the expense of the Oasis Lenders to "prosecute potential claims against ATC brokers". This would be a fishing expedition at high cost to the lenders, but very profitable for the receiver.

I respectfully request the court give serious consideration to my concerns and reject this motion.

Thank you,

Michael DaCorta

On Friday, March 26, 2021, 02:06:52 PM EDT, Andrea Whitby <awhitby@guerraking.com> wrote:

Mr. DaCorta:

Attached please find the Receiver's Motion to Approve the Receiver's Engagement of Sallah Astarita & Cox, LLC to Prosecute Potential Claims Against ATC Brokers. For purposes of Local Rule 3.01(g), please let us know if you have any opposition.

Thank you.

## Case 8:19-cv-00886-VMC-SPF Document 385-6 Filed 03/31/21 Page 3 of 3 PageID 6066

Please note that our firm's name and e-mail addresses have

recently changed.

## Andrea N. Whitby

Assistant to Jared J. Perez, Maya Lockwood, Mike Mariani and

Chemere Ellis

5505 W. Gray Street

Tampa, FL 33609

Phone: 813-347-5129

Fax: 813-347-5198

awhitby@guerraking.com

www.guerraking.com

