

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

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

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

v.

OASIS INTERNATIONAL GROUP,
LIMITED; et al.,

Defendants.

_____ /

**RECEIVER'S MOTION FOR AN ORDER (1) APPROVING A FIRST
INTERIM DISTRIBUTION OF \$10 MILLION; (2) APPROVING THE
RECEIVER'S FINAL DETERMINATIONS REGARDING
UNPERFECTED OR INCOMPLETE CLAIMS; AND (3) OVERRULING
LIMITED OBJECTIONS TO CERTAIN CLAIM DETERMINATIONS**

Burton W. Wiand, the Court-appointed receiver over the assets of the defendants and relief defendants (the “**Receiver**” and the “**Receivership**” or “**Receivership Estate**”), respectfully moves this Court for an order (1) approving a first interim distribution of \$10 million; (2) approving the Receiver’s final determinations regarding unperfected or incomplete claims; and (3) overruling limited objections to certain claim determinations. The first interim distribution of \$10 million will satisfy approximately 17.51% of the “**Allowed Amounts**” (see Doc. 439 at 10) of claims receiving a distribution at this time (as set forth in this motion and **Exhibits 1 and 2**).

BACKGROUND

On April 15, 2019, the Commodity Futures Trading Commission (“**CFTC**”) filed a complaint (Doc. 1) against (1) defendants Oasis International Group, Limited (“**OIG**”); Oasis Management, LLC (“**Oasis Management**”); Michael J. DaCorta (“**DaCorta**”); Joseph S. Anile, II (“**Anile**”); Francisco “Frank” L. Duran (“**Duran**”); Satellite Holdings Company (“**Satellite Holdings**”); John J. Haas (“**Haas**”); and Raymond P. Montie, III (“**Montie**”) (collectively, the “**defendants**”) and (2) relief defendants Fundadministration, Inc. (“**FAI**”); 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 4Oaks LLC (collectively, the “**relief defendants**”). These defendants and relief defendants are referred to as the “**Receivership Entities**.”

On the same day the CFTC filed its complaint, April 15, 2019, the Court entered an order appointing Burton W. Wiand as temporary Receiver for the Receivership Entities. *See* Doc. 7. The Court 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.” *See id.* at p. 14, ¶ 32 & p. 15, ¶ 30.b.

Subsequently, all defendants and relief defendants either defaulted or consented to the entry of a preliminary injunction against them (with some differences unique to the circumstances of each party). *See* Docs. 35, 43, 44, 82, 85, 172, 174-77. On July 11, 2019, the Court entered a Consolidated Receivership Order, which (along with a subsequent order of reappointment) is the operative document governing the Receiver’s activities. *See* Docs. 177 & 390 (collectively, the “**Consolidated Order**”).

On November 9, 2021, the Receiver filed a Motion to (1) Approve Determination and Priority of Claims, (2) Pool Receivership Assets and Liabilities, (3) Approve Plan of Distribution, and (4) Establish Objection Procedure (the “**Claims Determination Motion**”). Doc. 439. The Court

granted the Claims Determination Motion on March 7, 2022. Doc. 482. The Court expressly approved and implemented the Receiver's proposed "**Objection Procedure**" (see Doc. 439 at pp. 44-45):

The Objection Procedure as set forth in the Motion for objections to the plan of distribution and the Receiver's claim determinations and claim priorities is logical, fair, and reasonable and is approved, and any and all objections to claim determinations and claim priorities as set forth in the Motion or Exhibits 1 through 5, or to the plan of distribution shall be presented to the Receiver in accordance with the Objection Procedure as set forth in the Motion.

Doc. 482 ¶ 5 (emphasis added). The Receiver then posted [a copy of the Court's order on the Receivership website](#). The Receiver also sent substantively identical information to claimants and other interested parties via email. On March 25, 2022, the Receiver mailed more than 1,000 customized letters to claimants, and if applicable, their attorneys. As such, the Court-ordered deadline for submitting objections to the Receiver's claim determinations was **April 14, 2022**. See Doc. 439 § VIII.A.(c) at p. 45. Many claim determinations also required the associated claimant(s) to submit additional information to the Receiver – most commonly, a [Personal Verification Form](#) but, in some instances, supplemental documents like bank statements or affidavits.

The Receiver and his professionals have completed their analysis of the claimants' submissions (or lack thereof), which can be summarized as follows:

- Only ten claimants submitted timely objections pursuant to the Court-approved Objection Procedure. The Receiver has resolved all but three of those objections. See *infra* § III.

- Nineteen claimants associated with New Horizon Capital Ventures, Inc. (“**New Horizon**”) were required to submit an independent Proof of Claim Form to maintain their claims. Two of the 19 claimants did not submit the required form.¹
- Approximately eight allowed or allowed-in-part claimants were required to submit supplemental documentation. Several of those claimants failed to submit the required materials.
- Approximately 408 claimants were required to submit a Personal Verification Form approved by the Court. Only approximately 375 claimants initially submitted the required document. Because the Receiver was informed that some individuals were encouraging claimants not to submit the form, he allowed claimants who failed to comply an additional opportunity to do so. Even with this second chance, claimants associated with 14 claims again failed to submit a properly executed Personal Verification Form.
- Approximately 329 claimants who were required to submit a Personal Verification Form altered the form by striking “pursuant to Florida law” from the declaration under penalty of perjury.
- Approximately 345 claimants submitted or filed documents that purported to be “declarations.”² *See, e.g.*, Ex. 6. Like the Notices

¹ In addition, two objections were received from claimants who invested through New Horizon (*see* Claims 775 and 782-V). These investors submitted new Proof of Claim Forms that did not agree with the Receiver’s calculations or determinations. In an abundance of caution and fairness, the Receiver treated these submissions as objections.

² Similarly, in mid-April 2022, approximately 150 individuals filed a substantively identical document entitled “Beneficiary’s Notice And Objection To Receiver’s Continued Operations In The Absence Of Discovery, Hearing, And Final Judgment” (the “**Notices**”). *See* Docs. 489-586, 588-636 (stricken filings). The Notices asked the Court to prohibit the Receiver from making any distributions to any claimants until a final judgment has been entered in this action. On April 18, 2022, the Court *sua sponte* struck the Notices and certain related “declarations” from the docket as a “scheme” to undermine the Receivership. *See* Doc. 638 at 7 (“[T]he deluge of identical filings seems to the Court merely to be a scheme — clearly led and directed by one person or a group of people — to disrupt the orderly administration of this Receivership case.”). After striking the Notices, the Court expressly directed the claimants to follow the Objection Procedure. *Id.* at 9 (“To the extent the [n]otice [c]laimants object to the Receiver’s determination of their claim allowance or amount, they must use the established [O]bjection [P]rocedure. Thus, to the extent the Notices can be construed as objections to claim determination, claim priority, or the plan of distribution, such objection is denied without prejudice to the claimant’s ability to timely submit an objection to the
(footnote cont’d)

(discussed below), these documents are legal nullities, and the Receiver has not treated them as objections under the Objection Procedure.

- Throughout the claims process, a group of approximately 400 individuals have repeatedly submitted deficient, altered, or otherwise improper documents like the “declarations” and Notices based on advice from a purported attorney, Brent Winters, and members of the so-called “Oasis Helper Group.” The Court has rejected these efforts to obstruct the Receivership, but the numerous filings have significantly delayed the distribution of funds to defrauded investors.
- Despite serving and/or filing hundreds of identical documents on several occasions, approximately 342 claimants verified under penalty of perjury that Winters does not represent them in connection with this matter. Approximately 53 claimants, however, verified that Winters does represent them with respect to the claims process, which number includes 29 Personal Verification Forms submitted directly by Winters to the Receiver bearing his signature as “power of attorney.” These forms all strike the phrase “pursuant to Florida law” and include the same declaration as the hundreds of claimants referenced above who indicated that Winters does not represent them. *See, e.g.*, Ex. 6. An additional five claimants verified that Winters initially represented them, but they have since terminated his representation or indicated that they no longer wish for him to represent them.

For more than two years and with the Court’s approval, the Receiver has afforded claimants substantial due process and several opportunities to comply with governing procedures and/or correct deficiencies in claims and supporting

Receiver in accordance with the established [O]bjections [P]rocedure process.”). None of the claimants submitted timely objections through the Objection Procedure.

As such, the Receiver has not treated and will not treat the Notices as objections under the Objection Procedure because, among other procedural and substantive reasons, the Notices have no connection to the Claims Determination Motion. As the Court observed, the Notices essentially sought an injunction against the Receiver’s continued operations until a final judgment has been entered in the enforcement action underlying this Receivership. They failed to address the claimants’ individualized determinations, the pooling of assets and liabilities, the priority of distributions, the use of the “Net Investment Method,” the Objection Procedure, due process requirements, or anything else discussed in the lengthy Claims Determination Motion. *See id.* at 8 (observing “it is difficult to determine each filer’s precise interest in this case” because the Notices are “vague and cookie-cutter in nature”).

documents. The Receiver believes that he has been more than accommodating and fair to claimants and will not provide any further opportunities to claimants unless expressly directed otherwise by the Court.

ARGUMENT

This is a federal equity receivership. *See, e.g., S.E.C. v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992). As such, the Court has “broad powers and wide discretion” to fashion appropriate relief, including to devise a plan for distributing receivership assets. *See, e.g., id.* In resolving claims submitted in a claims process, courts consider a variety of factors, with the goal of fashioning an equitable system that treats similarly situated claimants equally. *See, e.g., S.E.C. v. Homeland Commc’ns Corp.*, 2010 WL 2035326, at *1 (S.D. Fla. May 24, 2010) (“[I]n deciding what claims should be recognized and in what amounts, the fundamental principle which emerges from case law is that any distribution should be done equitably and fairly, with similarly situated investors or customers treated alike.”) (quotation omitted); *Cunningham v. Brown*, 265 U.S. 1, 13 (1924) (as among “equally innocent victims, equality is equity”); *Elliott*, 953 F.2d at 1570 (same). Put simply, equity requires that similarly situated investors be treated equally. *See, e.g., Quilling v. Trade Partners, Inc.*, 2006 WL 3694629, at *1 (W.D. Mich. 2006).

As explained below in Section I, the Court should approve the first interim distribution to claimants with approved claims. As explained in

Section II, however, claimants with incomplete or unperfected claims should be denied and should not be allowed to participate in the distribution. Finally, as explained in Section III, the Court should overrule three objections to the Receiver's claim determinations.

I. THE COURT SHOULD AUTHORIZE A FIRST INTERIM DISTRIBUTION TO CLAIMANTS WITH APPROVED CLAIMS

The Court has already approved the Receiver's use of the Net Investment Method (as defined in the Claims Determination Motion) to make *pro rata* distributions³ to claimants with approved claims.⁴ No claimant submitted an objection through the Objection Procedure regarding the use of the Net Investment Method or *pro rata* calculations. The Receiver and his professionals have performed the pertinent calculations and now ask the Court to authorize the distribution of the calculated amounts, as set forth on **Exhibits 1 and 2**. This will result in an approximate recovery of approximately

³ As also explained in the Claims Determination Motion, "courts have favored *pro rata* distribution of assets where, as here, the funds of defrauded victims were commingled and where victims were similarly situated with respect to their relationship to the defrauders." *S.E.C. v. Credit Bancorp*, 290 F.3d 80, 88 (2d Cir. 2002); see *Quilling v. Trade Partners, Inc.*, 2007 WL 107669, at *2 (W.D. Mich. 2007) (observing that "[t]he use of a *pro rata* distribution plan is especially appropriate for fraud victims of a Ponzi scheme"). A logical, fair, and reasonable distribution plan may provide for reimbursement to certain claimants while excluding others. See *S.E.C. v. Wang*, 944 F.2d 80, 83-84 (2d Cir. 1991); *S.E.C. v. Basic Energy & Affiliated Resources, Inc.*, 273 F.3d 657, 660-61 (6th Cir. 2001).

⁴ Doc. 482 ¶ 3 ("For the reasons discussed in the Motion and under the circumstances of this Receivership, the Net Investment Method as set forth in the Motion and its Exhibits is the proper method for calculating Allowed Amounts for investors."), ¶ 4 ("The plan of distribution as set forth in the Motion is logical, fair, and reasonable and is approved.").

17.51% of the relevant claimants' Allowed Amounts.⁵ As discussed below in Section II, the unperfected or incomplete claims identified on **Exhibit 3** should be denied and will not be entitled to participate in the distribution.⁶

The Court has wide latitude in exercising its inherent equitable power to approve the distribution of Receivership funds. *See, e.g., S.E.C. v. Forex Asset Mgmt. LLC*, 242 F.3d 325, 331 (5th Cir. 2001) (affirming district court's approval of plan of distribution because court used its discretion in "a logical way to divide the money"); *Trade Partners*, 2007 WL 107669 at *1 (same). In approving a distribution plan, "the district court, acting as a court of equity, is afforded the discretion to determine the most equitable remedy." *Forex*, 242 F.3d at 332. The Court may adopt any plan of distribution that is logical, fair, and reasonable. *Wang*, 944 F.2d at 83-84; *Basic Energy*, 273 F.3d at 671; *Trade Partners*, 2007 WL 107669 at *1. "Therefore, any action by a trial court in supervising an equity receivership is committed to his sound discretion and

⁵ As set forth in the Claims Determination Motion and approved by the Court, all or part of the first interim distribution identified on **Exhibit 1** for 14 claims will not be paid to the claimants and instead will revert to the Receivership. *See, e.g., Claim 273*. These claimants received false profits in connection with a related claim. Any distribution up to the amount of each respective claimant's false profits will revert to the Receivership. Any excess funds from the distribution will then be distributed to the claimant.

⁶ Exhibit 1 lists approved claims that will participate in the distribution. Exhibit 2 lists a small number of untimely claims that the Receiver believes should also participate in the distribution due to the claimants' excusable neglect. Exhibit 3 lists contingent claims that are now denied because the claimants did not fulfill the required contingencies. If a claim was listed as denied in Exhibit 3 to the Claims Determination Motion, and the claimant did not submit an objection through the Objection Procedure, that claim remains denied and does not appear on Exhibits 1 through 3 to this motion.

will not be disturbed unless there is a clear showing of abuse.” *S.E.C. v. Safety Fin. Serv., Inc.*, 674 F.2d 368, 373 (5th Cir. 1982) (quotation omitted).

As of December 1, 2022, all Receivership bank accounts contained a total of approximately \$12.3 million. Additionally, the Receiver anticipates obtaining almost \$8 million from the Department of Justice through the remission of seized cash, funds generated from asset sales, and money repatriated from the United Kingdom. The Receiver believes it is appropriate to distribute \$10 million of the \$12.3 million presently in the Receivership Estate. In doing so, the Receiver will be able to provide a significant amount of money to claimants now while still maintaining adequate funds to cover the expenses of (1) ongoing litigation, (2) administering the Receivership, and (3) paying the Receiver’s professionals for services already provided and yet to be provided. The Receiver believes he has reserved more than necessary and intends to distribute the excess in future distributions as appropriate, depending on the outcome of pending litigation and other matters.

The Receiver requests leave to make the first interim distribution in the amounts specified on **Exhibits 1** and **2** as soon as practical following the order authorizing the distribution. The Receiver will send checks by U.S. Mail directly to claimants with approved claims. Given the tremendous uncertainty caused by Winters and his associates, the Receiver will not send checks to lawyers or individuals purporting to hold powers of attorney for claimants. The

Receiver fears doing so could perpetuate the Oasis fraud and further victimize investors. Instead, the Receiver will mail distribution checks directly to claimants using each claimant's most recent address. If the Receiver does not have a reliable address for a given claimant, he will hold the claimant's check and send correspondence by any appropriate method asking the claimant to designate a mailing address.⁷

The Receiver requests that the claimants be allowed 120 days to negotiate the distribution checks. If a check is not negotiated by the claimant within 120 days, the money will revert to the Receivership and likely be distributed on a *pro rata* basis in a future distribution. A deadline for negotiating distribution checks is necessary for the orderly administration of the Receivership Estate. The Receiver anticipates that certain claims were filed by or for investors who are now deceased. The Receiver thus asks the Court to provide him authority to honor requests to change the name of the

⁷ This relief is important because the Proof of Claim Forms expressly asked claimants to designate one mailing address for all communications regarding the claims process. *See* Doc. 230, Ex. A (Proof of Claim Form) & Doc. 231 ¶ 4 (order expressly approving Proof of Claim Form). In early 2020, more than 400 claimants designated an address for Winters, but almost none of those claimants personally verified their Proof of Claim Forms. Instead, Winters signed the forms on their behalf. In the Claims Determination Motion, the Receiver explained the problems with that approach and asked the Court to approve a Personal Verification Form. Doc. 439 at 26 & Ex. D (form); *see also* Doc. 482 (order granting motion). In early 2022, approximately 342 of the claimants who completed the form verified under penalty of perjury that Winters **does not** represent them in connection with the claims process, but most of those claimants failed to change or otherwise update their designated mailing address. The claimants' contradictory actions leave the Receiver in a confusing position, and he has thus determined that he cannot send millions of dollars to an out-of-state attorney who has never subjected himself to this Court's jurisdiction.

claimant/payee of a claim, upon being provided with reasonable substantiation of the new recipient's authority or right to the distribution. If necessary, the Receiver requests authority to reissue distribution checks initially made payable to deceased claimants to the appropriate person(s) or entity if, in the Receiver's discretion, he is provided sufficient notification and proof.

Further, a material number of investments were made through IRA accounts held by custodians. The Receiver will make relevant distribution checks payable to the custodian for the benefit of the claimant. The distribution check will be mailed to the claimant, and it will be the claimant's obligation to deposit the check into the appropriate custodial account. The Receiver anticipates that claimants may have chosen to change or discharge custodians. The Receiver asks that the Court provide him authority to honor requests to change custodians if, in the Receiver's discretion, he is provided sufficient notification and proof of the change of custodian and the individual claimant's entitlement to the proceeds of the claim.

Finally, as noted above and explained below in Sections II.A. and II.C., Winters and the "Oasis Helper Group" have encouraged claimants to file or otherwise submit "declarations" and Notices.⁸ The Court *sua sponte* struck

⁸ The declarations (stricken *sua sponte*) claimed that the Receiver is required to make "payment in full of all principal and interest to which the law entitles . . . less any lawful costs." See also Ex. 6. As ordered by the Court, claimants are not entitled to recover any purported interest payments or false profits. Doc. 482 (finding that "the Net Investment
(footnote cont'd)

these filings from the docket as a scheme to undermine the Receivership. The Court directed the claimants to follow the Objection Procedure, but almost none of them heeded that instruction. As such, the Receiver has not treated the documents as valid objections but rather as legal nullities. In an abundance of caution and to hopefully bring finality to these matters, the Receiver asks the Court to treat any deposit or other negotiation of a distribution check as a waiver of any arguments made outside the Objection Procedure, including through the stricken Notices, “declarations,” and altered Personal Verification Forms. If any claimant does not agree with these terms, he or she must not negotiate the pertinent check and may not participate in any distributions. Any alteration or appendment of conditions to the check should be deemed a violation of the Court’s order.

II. THE COURT SHOULD APPROVE THE RECEIVER’S FINAL DETERMINATIONS REGARDING UNPERFECTED CLAIMS

As noted above, certain determinations were conditional or contingent on further actions by the relevant claimants like the submission of Personal

Method as set forth in the Claims Determination Motion and its Exhibits is the proper method for calculating Allowed Amounts for investors”). These alleged interest payments represent claimed appreciation from the scheme’s purported investment activities, as reflected on statements sent to investors and/or a fraudulent website. These false profits were fictitious because there were no actual profits. Rather, the Receivership Entities were operated as a Ponzi scheme, and the reported profits were fabricated. A Ponzi scheme is an illegal endeavor and thus creates no legal entitlement to profits or interest for its investors. *Warfield v. Carnie*, 2007 WL 1112591, at *12-13 (N.D. Tex. 2007) (referencing *In re United Energy Corp.*, 944 F.2d 589, 595 (9th Cir. 1991)); *see also* Doc 439 at 12-15. In short, claimants are only entitled to a *pro rata* share of distributions based on their Allowed Amounts – not all principal and certainly not false profits or unpaid interest.

Verification Forms, bank records, or affidavits. Hundreds of claimants perfected their claims by submitting the required information, but others failed to comply with the Court-approved instructions. As discussed in the following subsections, the Receiver has made final determinations regarding those claims. Given the extensive due process afforded to claimants since the Receiver established these procedures in February 2020, the Court should treat claims that are still incomplete or unperfected as denied.

A. Claimants that Failed to Provide Necessary Information and/or Documents Should be Denied and Excluded

Claimants associated with certain claims were required to provide additional information or documentation pursuant to the Claims Determination Motion and its exhibits. *See, e.g.*, Claim Nos. 38, 78, 196, 316, 437, 620, 664, 726, 727, and 759. Several of the associated claimants complied with the requirements. *See* Claim Nos. 38, 78, 196, and 759.⁹ These claims should thus be allowed as set forth on **Exhibit 1**.

The Receiver requested that other claimants provide written confirmation of the total amount sought within the time allowed for the

⁹ During Local Rule 3.01(g) communications, defendant Haas provided the Receiver with documents demonstrating that an investment in the scheme by his daughter, Amanda Haas (Claim No. 726), was funded with settlement proceeds from personal injury litigation – not money directly or indirectly from defendant Haas or defrauded investors. As such, the Receiver agreed to reschedule the claim from denied (Doc. 439, Ex. E) to approved with an Allowed Amount of \$134,300 (Ex. 1). Claims submitted by other relatives of defendant Haas are denied due to failures to satisfy contingencies. *See* Claim Nos. 437 (sister), 727 (daughter).

Objection Procedure. *See, e.g.*, Claim Nos. 316, 620, and 664. If the claimants failed to provide confirmation of the total amount sought, the Receiver recommended that the claims remain allowed in part for the Allowed Amounts set forth in the exhibits to the Claims Determination Motion. None of the claimants provided confirmation, written or otherwise, of the total amount sought. Accordingly, the claims should remain allowed in part, as set forth in the Claims Determination Motion and as reflected on **Exhibit 1**.

B. New Horizon Claims

New Horizon¹⁰ submitted a single, collective Proof of Claim Form on behalf of 38 individuals. Approximately 19 of these investors either did not include their investments through New Horizon in Proof of Claim Forms they submitted for their other Oasis investments or did not submit a Proof of Claim Form at all. The Court allowed these individuals to submit a Proof of Claim Form within the time allowed by the Objection Procedure to personally verify their claims. If a claimant failed to submit a Proof of Claim Form to the Receiver within the time allowed by the Objection Procedure, the Receiver recommended that the claim be denied. Only two investors did not submit a

¹⁰ New Horizon essentially acted as a “feeder fund” for the Oasis scheme. The Receiver determined it would be inequitable to send a distribution to New Horizon and trust the promoters of that entity to distribute the funds fairly and accurately. As such and as explained above, the Receiver, with the Court’s approval, required the individual New Horizon investors to verify their claims by submitting independent Proof of Claim Forms.

timely Proof of Claim Form. *See* Claim Nos. 782-E & 782-U, Ex. 3. Accordingly, these claims should be denied and should not participate in the distribution.

The Receiver has reviewed the claims submitted by the New Horizon claimants and recommended determinations of those claims. Sixteen of the claims agreed with the numbers provided by the Receiver. Accordingly, the Receiver recommends that these claims be allowed in full as provided on **Exhibit 1**. The claimant associated with Claim No. 782-V did not agree with the numbers provided by the Receiver. As discussed in Section III below, the Receiver treated the Proof of Claim Form submitted for Claim No. 782-V as an objection and attempted to resolve the issue with the claimant. The purported investment was not supported by any bank records in the Receiver's possession. Accordingly, the Receiver recommends that the objection be overruled, and this claim be denied as provided on **Exhibit 3**.

Claim 782-A was submitted by an entity that is owned, in part, by one of the operators of New Horizon, which was created solely to invest in Oasis. By virtue of this individual's role in New Horizon and connection with the Receivership Entities, he should have recognized at least some of the numerous and easily discernible red flags surrounding the entities and the individual defendants. In turn, he should have conducted a diligent and reasonable investigation, which would have uncovered fraud, or at a minimum, failed to ameliorate suspicions. Further, this owner also personally received false

profits of \$34,515.47. For the foregoing reasons and under principles of equity, the claimant should not be allowed to recover any losses. Accordingly, the Receiver recommends that this claim be denied.

C. Certain Late Claims Should be Allowed

After the Receiver provided notice to claimants of the order granting the Claims Determination Motion, investors submitted 21 new Proof of Claim Forms and made various representations and explanations as to why the claims were untimely. These claims are discussed on **Exhibit 2**. Generally, the Court has discretion to allow late-filed claims if the claimants demonstrate excusable neglect.¹¹ For example, one claimant was serving in the military and deployed overseas during the relevant period. In addition, Proof of Claim Forms were mailed on March 17, 2020, and the Claims Bar Date was June 15, 2020 – *i.e.*, the inception of the COVID-19 pandemic and related lockdowns. This impacted claimants' abilities to obtain bank records and disrupted some postal services. Given these exceptional circumstances, the Receiver believes

¹¹ See, e.g., Fed. R. Civ. P. 60. Excusable neglect is an equitable concept that takes into "account [] all relevant circumstances surrounding the party's omission." *In re Garcia*, 627 B.R. 923, 926 (S.D. Fla. 2020) citing *Pioneer Investment Services Co. v. Brunswick Assoc. Ltd. P'ship*, 507 U.S. 380, 395 (1993). Courts must analyze four factors when determining whether to grant relief under this standard: (1) the danger of prejudice to the receivership; (2) the length of delay and its potential impact on the judicial proceedings; (3) the reasons for the delay, including whether it was within the reasonable control of the movant; and (4) the good faith of the movant." *S.E.C. v. Nadel*, 2013 WL 12161449, at *3-4 (M.D. Fla. Apr. 12, 2013) (In the context of a claims determination process, "Rule 60(b)(1) permits relief from an order based on excusable neglect.").

the claimants can demonstrate excusable neglect. As such, the Court should allow the pertinent claimants to participate in distributions.

D. Claimants with Proof of Claim Forms Who Did Not Submit a Properly Executed Personal Verification Form Should Not Be Allowed to Participate in this Distribution

The Court-approved procedures governing the claims process require that investors “complete and sign the Proof of Claim Form under penalty of perjury.” *See* Doc. 230 at 9; *see also* Doc. 231 ¶ 4. Every claim submitted by Winters failed to comply with this requirement. Those claims instead were executed by Winters pursuant to his purported power of attorney, which is insufficient for these purposes. Instead of denying the associated claims, the Receiver developed a simple form again asking the investors to verify their claims. A copy of the Personal Verification Form approved by the Court is attached as **Exhibit 4**. The form was also made available on the Receiver’s website. The letter sent to claimants regarding the order granting the Claims Determination Motion included a specific reference to the Personal Verification Form and strongly urged all claimants to review their claim determinations to see if they were required to take any additional action to maintain or perfect their claim. As stated on the Personal Verification Form, “[c]laimants who have not personally verified their claim and do not return a complete and executed Personal Verification Form to the Receiver within the time specified will not

be permitted to participate in distributions of recovered money from the Receivership.” Ex. 4 (original emphasis).

The Receiver was informed that certain individuals were encouraging claimants to not submit the forms. Upon learning of this, the Receiver sent a letter to all email addresses registered through the Receivership website to counter the false information and again urge the claimants to sign and return the form to perfect their claims.¹² Some claimants submitted one or more Personal Verification Forms containing good-faith, technical errors. For example, certain claimants only submitted one form despite submitting multiple claims. Others contained a required signature but omitted an additional required signature – *e.g.*, from a joint claimant or on behalf of a related entity. The Receiver has given these claimants the benefit of the doubt because they substantially complied with governing procedures and appear to have acted in good faith. Nevertheless, the Receiver determined that 29 claims still have not been personally verified by the associated claimants.

On August 26, 2022, the Receiver sent a letter to these claimants by mail and email (if available) and also sent a copy to Winters. The letter informed

¹² See **Exhibit 5** (“Again, if you chose to ignore your obligations in this claims process, you risk recovering nothing. Instead, money that would have been paid in satisfaction of your claim(s) could be paid to other investors who either personally and properly executed their initial proof of claim forms in accordance with the governing instructions, or alternatively, submitted a Personal Verification Form, as required by their claim determinations.”).

the claimants that the Receiver had not received a Personal Verification Form from them, provided the claimants an additional window of time to submit the form, and stated that if they failed to submit the form it likely will result in the claim being excluded from the distribution of Receivership funds. The Receiver obtained forms signed by claimants for 15 of those 29 claims.

On the day of the deadline for the second opportunity to submit the Personal Verification Forms, the Receiver's professionals received emails from Winters with 29 virtually identical Personal Verification Forms. *See, e.g., Exhibit 6* (example form submitted by Winters). Despite clear directions that these forms were required to be signed by the claimants themselves, Winters executed all forms as power of attorney. His actions simply repeated the deficiency that caused the Receiver to employ the Personal Verification Forms in the first place. The Winters-submitted Personal Verification Forms all also struck through "pursuant to Florida law" from the declaration under penalty of perjury and attached purported "declarations." These documents are the same as those submitted by approximately 342 claimants who stated that Winters does not represent them. Interestingly, the 29 forms submitted by Winters stated that Winters is representing the claimants in this Receivership, which includes a claimant who resides in Florida, although Winters is not admitted to practice before this Court either permanently or on a *pro hac vice* basis (*see* Claim No. 501 & Ex. 6).

As set forth in the Claims Determination Motion, personal certification of claims is essential to maintaining the integrity of the claims process, and claimants should not be allowed to participate in distributions until they have complied with governing procedures. *See, e.g., F.T.C v. MOBE Ltd.*, 2021 WL 50335, at *3 (M.D. Fla. 2021) (“All [c]laim [f]orms shall be signed under penalty of perjury” and “[m]aterial modifications to the [c]laim [f]orm will constitute grounds for disallowing the [c]laim.”).¹³ Because the Receiver has gone above and beyond to allow these claimants the opportunity to perfect and maintain their claims despite significant, repeated hinderance from Winters and his associates, the Receiver is compelled to ask the Court to determine that the claimants who failed to submit a signed Personal Verification Form not be allowed to participate in the distribution of Receivership funds, as set forth on **Exhibit 3**. *See* Claim Nos. 291, 317, 359, 366, 367, 418, 469, 470, 515, 521, 584, 649, 664, and 674.

III. THE COURT SHOULD OVERRULE THREE OBJECTIONS

Section VIII.A. of the Claims Determination Motion detailed the proposed Objection Procedure through which the Court would review and resolve any outstanding objections. Subsection (h) states that “[t]he Claimant

¹³ *Cf. United States v. Speed Joyeros, S.A.*, 410 F. Supp. 2d 121, 124 (E.D.N.Y. 2006) (“Requiring the claimant to sign personally under penalty of perjury serves the government’s legitimate interest in protecting forfeited assets.”); *In re Harrison*, 158 B.R. 246, 248 (Bankr. M.D. Fla. 1993) (dismissing petition signed by non-debtor as a nullity).

shall have the burden of proof.” The Court has already determined that the Objection Procedure is “logical, fair, and reasonable” and ordered that all objections to claim determinations and claim priorities be presented to the Receiver in accordance with the Objection Procedure as set forth in the Claims Determination Motion. *See* Doc. 482 ¶ 5. In short, the Objection Procedure that governs this dispute places the burden of proof on each objecting claimant.

As stated above, claimants associated with ten claims submitted objections pursuant to the Objection Procedure. *See* Claim Nos. 285, 342, 379, 391, 404, 408, 759, 775, 782-V, and 785. The Receiver has resolved all but **three** of those objections.¹⁴ Through this motion, this Receiver asks the Court to overrule the unresolved objections.¹⁵ First, as discussed in Section II.B. above, the claimant for 782-V (Zielinski) asserted a claim for an investment

¹⁴ The objecting claimants disagreed with either the total amount they invested or the total payments they received, as calculated by the Receiver. In two instances, the Receiver provided information to the claimants to support his determinations, and the claimants agreed to withdraw their objections. *See* Claim Nos. 285 and 391. In four instances, the Receiver obtained sufficient new information to warrant a change to the amounts set forth in the exhibits to the Claims Determination Motion. *See* Claim Nos. 342, 379, 408 and 775. More specific information regarding the changes to the determinations for these claims is on **Exhibit 1**. The claimants associated with these claims have agreed to the revised determinations in resolution of their objections. The claimant associated with claim number 785 asserted a claim for an additional amount invested, which was not supported by Receivership bank records. This claimant informed the Receiver that she was unable to obtain documents supporting her purported investment, given that neither she nor her bank maintained records for the relevant period. She thus agreed to withdraw her objection. As such, only three of the ten objections are still pending and require judicial intervention.

¹⁵ The Court, however, need not delay the first interim distribution to resolve these objections. Should the objectors request additional due process like an in-person hearing or should the Court ultimately sustain the objections, there is enough money in the Receivership Estate to cover the amount in dispute without delaying the distribution to other claimants.

not supported by the Receiver's bank records. The Receiver made multiple attempts to obtain documentation. The claimant provided stock certificates and two dividend checks from New Horizon, but he could not provide any bank support or other evidence of his purported investment in Receivership Entities. As such, the objection should be overruled. Materials in support of this determination are attached to the Declaration of Burton W. Wiand, as Receiver (the "**Receiver's Declaration**"), which is being filed with this motion.

Second, the objection associated with Claim No. 404 (Finch) challenges a payment included in the claim's total payment amount. The Receiver has evidence that the claimants received the payment and that it was properly included in the determination. On September 19, 2022, the Receiver's counsel asked the claimants to withdraw the objection, given the evidence provided. On September 30, 2022, the claimants responded that any questions should be referred to their "attorney, Mr. Brent Winters."¹⁶ Evidentiary materials in support of this claim determination are attached to the Receiver's Declaration. Because the Receiver's claim determination is supported by unrebutted evidence, the Court also should also overrule this objection.

¹⁶ But in their Personal Verification Form, dated April 13, 2022, the claimants marked "No" to the prompt: "Brent Winters is representing me in this Receivership, including my claim to any Receivership assets." *See* Rec. Decl. Ex. E.

Third, the Receiver and his professionals thought the objection associated with Claim No. 759 (Squillante) could be resolved, but in negotiations pursuant to the Objection Procedure, the claimant recently demanded \$500,000. That demand is baseless because the claimant only invested \$400,000 and is not entitled to recover false profits under the Net Investment Method. In addition, Receivership records show that the claimant made withdrawals of \$348,608.32 over five years. As such, the Receiver moves the Court to overrule the objection. The claim should be approved in part with an Allowed Amount of \$51,391.68. Evidentiary materials in support of this determination are attached to the Receiver's Declaration.

As explained in the Claims Determination Motion, the objecting claimants are entitled to due process, which generally means notice and an opportunity to be heard. As such, the Receiver is serving this motion on both the claimants and Winters. If the claimants wish to sustain their objections, they must provide the Court with evidence supporting their positions. Because the claimants bear the burden of proof, the Court should overrule the objections if the claimants cannot provide evidence or fail to respond.

Importantly, no claimants objected to the broader matters discussed in the Claims Determination Motion, including the plan of distribution, or any objection that would warrant a delay of a first interim distribution to claimants with approved claims who are allowed to participate in the distribution. As

previously ordered by the Court, any claimant who failed to properly and timely serve an objection to the Receiver's determinations, claim priority, or plan of distribution has permanently waived their right to object to or contest those matters, and the final claim amount is fixed as the relevant Allowed Amount set forth in the Claims Determination Motion and its exhibits. *See* Doc. 439 at 45; *see also* Doc. 638 at 9 ("To the extent the [n]otice [c]laimants object to the Receiver's determination of their claim allowance or amount, they must use the established [O]bjection [P]rocedure.").

CONCLUSION

For these reasons, the Receiver respectfully requests the Court enter an order in substantially the form attached as **Exhibit 7**:

1. Approving and authorizing a first interim distribution of approximately \$10 million to the claimants identified in **Exhibits 1 and 2**;
2. Denying the incomplete or unperfected claims identified in **Exhibit 3** for the claimants' failures to provide necessary documents and/or Personal Verification Forms;
3. Overruling the objections to the Receiver's determinations of Claim Nos. 285, 391, and 759, subject to the associated claimants' due process rights to oppose this motion with evidence contradicting the Receivership Entities' records, as set forth in the Receiver's Declaration;

4. Authorizing the Receiver to honor requests to change the name of the claimant/payee of a claim if, in the Receiver's discretion, he is provided reasonable substantiation of the new recipient's right to the distribution;

5. Authorizing the Receiver to reissue distribution checks initially made payable to deceased claimants to the appropriate entity or person(s) if, in the Receiver's discretion, he is provided reasonable substantiation of the new recipient's right to the distribution; and

6. Ordering that any deposit or other negotiation of a distribution check shall be deemed a waiver of all arguments made outside the Objection Procedure, including through the stricken "declarations," Notices, and altered or incomplete Personal Verification Forms. If a claimant negotiates a distribution check, the claimant is deemed to have accepted the information provided in the Proof of Claim submitted for that claim as true and correct under penalty of perjury. If any claimant does not agree with the distribution amount or any aspect of the distribution process, he or she must not negotiate the pertinent check and may not participate in the distribution. Any alteration or appendment of conditions to the check shall be deemed a violation of the Court's order.

LOCAL RULE 3.01(G) CERTIFICATION

The undersigned 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 relief sought herein.

The undersigned has also conferred with counsel for the Department of Justice and is authorized to represent to the Court that the Department of Justice takes no position on this motion.

Defendants DaCorta, Montie, Haas, Anile, and Duran do not oppose a first interim distribution of \$10 million to claimants.

The Receiver has consulted with the three objectors through the Objection Procedure and will serve a copy of this motion on them, as indicated in the Certificate of Service.

The Receiver has not consulted with the claimants listed on Exhibit 3 because they did not fulfill their respective contingencies, as set forth in the exhibits to the Claim Determination Motion, and they also did not submit an objection through the Objection Procedure. Nevertheless, and in an abundance of caution, the Receiver will provide notice of this motion, as indicated in the Certificate of Service. The motion will also be posted on the Receiver's website (www.oasisreceivership.com), which is available to the public, including the claimants and all other interested parties.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on December 9, 2022, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which served all counsel of record and *pro se* defendant Duran, who has been afforded e-filing privileges. The motion will also be posted on the Receiver's website (www.oasisreceivership.com), which is available to the public, including the claimants and all other interested parties. I also served the following CM/ECF nonparticipants by the methods indicated below:

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Fourteen of the 19 claimants identified on Exhibit 3 purport to be represented by Winters or otherwise designated his address for mailing. As such, the Receiver will serve this motion on Winters at the address listed above by email and U.S. Mail. In addition, and in an abundance of caution, the Receiver will email a copy of the motion to claimants identified on Exhibit 3 at their last known email addresses. Many of the claimants have never provided the Receiver with a non-Winters mailing address. Finally, to the extent possible, the Receiver will mail a copy of the motion to the remaining five non-Winters claimants identified on Exhibit 3 using their last known addresses.

s/ Jared J. Perez _____

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