

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

<hr style="border: 0.5px solid black;"/>	§	
SECURITIES AND EXCHANGE COMMISSION,	§	
	§	
<b>Plaintiff,</b>	§	
	§	
v.	§	
	§	
<b>BRIAN A. BJORK;</b>	§	
<b>ESTATE OF JOEL DAVID SALINAS;</b>	§	
<b>J. DAVID GROUP OF COMPANIES, INC.</b>	§	<b>Civil Action No.: 11-cv-2830</b>
<b>J. DAVID FINANCIAL GROUP, L.P.;</b>	§	<b>ECF</b>
<b>SELECT ASSET MANAGEMENT, LLC;</b>	§	
<b>SELECT CAPITAL MANAGEMENT, LLC</b>	§	
<b>SELECT ASSET FUND I, LLC; and</b>	§	
<b>SELECT ASSET PRIME INDEX FUND LLC,</b>	§	
	§	
<b>Defendants.</b>	§	
	§	
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**MOTION FOR PRELIMINARY INJUNCTION *EX PARTE* TEMPORARY  
RESTRAINING ORDER, ASSET FREEZE, APPOINTMENT OF A RECEIVER, AND  
OTHER EMERGENCY AND ANCILLARY RELIEF**

**I. Introduction**

Plaintiff Securities and Exchange Commission (“Commission”) files this motion supported by a simultaneously filed Certification under Fed.R. Civ. P. 65(b); Brief in Support, Appendix of Evidence; proposed orders, and other papers.

**II. Preliminary Injunction and *Ex Parte* TRO**

The Commission moves the Court for an Order of Preliminary Injunction and, *ex parte*, a Temporary Restraining Order to restrain and enjoin Defendant Brian A. Bjork; Defendant J. David Group of Companies, Inc. (“J. David Group”); Defendant J. David Financial Group LP (“J. David Financial”); Defendant Select Asset Management, LLC (“Select Asset”); Defendant Select Capital Management, LLC (“Select Capital”); Defendant Select Asset Fund I, LLC

(“Fund I”); and Defendant Select Asset Prime Index Fund, LLC (“Fund II”) immediately and pending final adjudication, from violating anti-fraud provisions of the federal securities laws specified below.

Specifically, these Defendants have violated, and, unless enjoined, will likely continue to violate, anti-fraud provisions of the federal securities laws, as follows:

Bjork and Select Asset violated Section 17(a) of the Securities Act of 1933 (“Securities Act”), Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 (“Advisers Act”); aided and abetted other Defendants’ violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5; and, as a control person of other Defendants under Section 20(a) of the Exchange Act, are jointly and severally liable for the violations of Section 10(b) of the Exchange Act and Rule 10b-5 committed by other Defendants.

J. David Group and J. David Financial violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5.

Select Capital violated Sections 206(1) and 206(2) of the Advisers Act; aided and abetted other Defendants’ violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder; and, as a control person of other Defendants under Section 20(a) of the Exchange Act, is jointly and severally liable for the violations of Section 10(b) of the Exchange Act and Rule 10b-5 committed by those other Defendants.

Fund I and Fund II violated Section 17(a) of the Securities Act and Section 10(b) Exchange Act and Rule 10b-5.

### **III. Asset Freeze**

For the purpose of effecting an asset freeze, the Commission further moves the Court *ex*

*parte* for an order restraining and enjoining Defendants their officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of the Order by personal service or otherwise from, directly or indirectly, making any payment or expenditure of funds, incurring any additional liability (including taking advances on any credit line or account), or effecting any sale, gift, hypothecation, or other disposition of any asset, without first proving to the Court they possess and will retain sufficient funds or assets to satisfy all claims alleged in the Commission's Complaint or without first posting a bond or surety with the Court sufficient to assure payment of those claims or until further order of this Court..

The Commission moves the Court *ex parte* for an order (a) restraining and enjoining any bank, savings and loan association, trust company, broker-dealer, or other financial or depository institution that holds an account in the name of or on behalf of the Defendants from engaging in any transaction in securities (except liquidating transactions) or any disbursements of funds or securities on behalf of the Defendants or Relief Defendants unless otherwise ordered by this Court and (b) directing such persons or entities to identify for Commission counsel and any Receiver appointed in this case all such accounts, including account number, and the nature and amount of all assets held therein.

#### **IV. Receiver Appointment**

To ensure the eventual return of the assets at issue in this case to their rightful claimants, the Commission moves the Court *ex parte* to appoint a Receiver for the Defendants, including Defendant Salinas Estate, granting the Receiver the powers necessary to marshal, conserve, hold, and, where necessary, operate their assets pending further order of the Court.

**V. Document-Preservation Order**

The Commission further moves the Court *ex parte* for an order restraining and enjoining Defendants individually and jointly, and their officers, directors, agents, servants, employees, attorneys, and all other persons in active concert or participation with them, including any bank, securities broker-dealer, or any financial or depository institution, who receive actual notice of this order by personal service or otherwise, from destroying, removing, mutilating, altering, concealing, or disposing of, in any manner, any books, records, or accounts owned by or pertaining to the financial transactions and assets of Defendants or Relief Defendants or any persons or entities under their control unless otherwise ordered by this Court.

**VI. Interim Accounting**

The Commission further moves the Court *ex parte* for an order requiring each Defendant to provide an interim accounting, under oath, detailing (a) all investor monies and other benefits received, directly and indirectly, as a result of the activities alleged in the Complaint, (b) all assets wherever they may be located and by whomever they may be held, and (c) all accounts held during the period from January 1, 2006, through the date of the accounting.

**VII. Expedited Discovery**

The Commission further moves the Court for issuance of an order authorizing expedited discovery consistent with the following guidelines:

- A. Any party may notice and conduct depositions upon oral examination and may request production of documents or other things for inspection and or copying from parties prior to the expiration of thirty (30) days after service of the Complaint on the Defendants.
- B. All parties shall comply with the provisions of Rule 45 of the Federal Rules of Civil

Procedure regarding issuance and service of subpoenas unless the person designated to provide testimony or to produce documents or things agrees to provide the testimony or to produce the documents or things without the issuance of a subpoena and/or to do so at a place other than one at which testimony or production can be compelled.

- C. Any party may notice and conduct depositions upon oral examination subject to minimum notice of 72 hours.
- D. All parties shall produce for inspection and copying all documents and things that are requested within 72 hours of service of a written request for those documents and things.
- E. All parties shall serve written responses to any other party's request for discovery, and the interim accounting to be provided by Defendants, by delivery to Plaintiff Commission addressed as follows:

United States Securities and Exchange Commission  
Fort Worth Regional Office  
Attention: Timothy S. McCole  
Burnett Plaza, Suite 1900  
801 Cherry Street, Unit #18  
Fort Worth, TX 76102-6882  
Email: McColeT@SEC.gov  
Facsimile: (817) 978-4927

and by delivery to other parties at such address(es) as may be designated by them in writing. Such delivery shall be made by the most expeditious means available, including by facsimile machine and email.

### **VIII. Alternative Service of Pleadings and Other Papers**

The Commission further moves the Court *ex parte* for an order authorizing service of all pleadings and other papers, including the Summons, the Complaint, and court orders to be made

personally, by facsimile, by electronic mail, by overnight courier, or by mail upon Defendants, their agents or their attorneys by representatives of the Plaintiff Commission, or by an alternative provision for service permitted by Rule 4 of the Federal Rules of Civil Procedure, or as this Court may direct by further order.

The Commission further moves *ex parte* for an order authorizing and directing the United States Marshal in any district in which any Defendant resides, transacts business or may be found, to make service of process at the request of the Commission or any Receiver appointed in this case.

Finally, the Commission moves the Court *ex parte* for an order authorizing service of the orders herein described on any bank, savings and loan association, trust company, broker, dealer, or other financial or depository institution, either by United States mail, email, or facsimile, as if such service were personal service on that bank, savings and loan association, trust company, broker-dealer, or other financial or depository institution.

Dated: August 1, 2011.

Respectfully submitted,

**s/Timothy S. McCole**

TIMOTHY S. MCCOLE

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Attorney in Charge for Plaintiff Securities and  
Exchange Commission

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<b>SELECT ASSET PRIME INDEX FUND LLC,</b>	§	
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<b>Defendants.</b>	§	
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***EX PARTE* ORDER FREEZING ASSETS,  
GRANTING TEMPORARY RESTRAINING ORDER AND OTHER  
EMERGENCY RELIEF, AND SETTING HEARING DATE ON PLAINTIFF’S  
PRELIMINARY-INJUNCTION MOTION**

This matter came before the Court this \_\_\_\_ day of August, 2011, on motion of the Securities and Exchange Commission (“Commission”), for the issuance of an order granting, *ex parte*, certain emergency relief against Defendant Brian A. Bjork; Defendant J. David Group of Companies, Inc. (“J. David Group”); Defendant J. David Financial Group LP (“J. David Financial”); Defendant Select Asset Management, LLC (“Select Asset”); Defendant Select Capital Management, LLC (“Select Capital”); Defendant Select Asset Fund I, LLC (“Fund I”); Defendant Select Asset Prime Index Fund, LLC (“Fund II”); and Defendant Estate of Joel David Salinas (“Salinas Estate”).

The Commission seeks orders: (1) freezing the assets of Defendants, (2) temporarily restraining the Defendants from engaging in certain violative conduct, (3) prohibiting Defendants

from moving, altering, or destroying books, records, and accounts; (4), and requiring each Defendant to provide sworn interim accountings; (5) authorizing expedited discovery; and (6) providing for alternative service of pleadings and other papers. Having considered the Commission's Complaint, motion, supporting memorandum, declarations, and exhibits thereto, and the argument of counsel, the Court finds:

1. This Court has jurisdiction over the subject matter of this action and over the Defendants, and the Commission is a proper party to bring this action seeking the relief sought in its Complaint and in its motion.

2. There is good cause to believe that the Defendants, excluding Defendant Salinas Estate, have engaged, are engaged, and will continue to engage, in acts and practices that constitute and will constitute violations of Sections 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)] and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5] and, Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 ("Advisers Act") [15 U.S.C. §§ 80b-6(1) and (2)].

3. There is good cause to believe that investor funds and assets obtained by the Defendants from the unlawful activities described in the Commission's Complaint have been misapplied and will be misappropriated, hidden, wasted, or otherwise used to the detriment of investors. Furthermore, there is good cause to believe that the Defendants do not have sufficient funds or assets to satisfy the relief that might be ordered in this action.

4. There is good cause to believe that Defendants used improper means to obtain investor funds and assets.



5. There is good cause to believe that Defendant Salinas Estate received proceeds derived from the violative conduct of the other Defendants and Joel David Salinas, deceased, and that Defendant Salinas Estate does not have a legitimate claim to those proceeds or would be unjustly enriched if permitted to retain such proceeds or assets derived therefrom.

6. There is good cause to believe that the Defendants will continue to engage in the acts and practices constituting the violations set forth above unless restrained and enjoined by order of this Court.

7. There is good cause to believe that requiring notice to the Defendants of the Commission's motion for this Order would result in immediate and irreparable injury, loss, or damage to investors.

8. There is good cause to believe that it is necessary to preserve and maintain the business records of the Defendants from destruction.

9. There is good cause to believe that it is necessary to identify quickly all assets in the Defendants' possession or control.

10. This proceeding is one in which the Commission seeks a preliminary injunction.

11. The timing restrictions of Fed. R. Civ. P. 26(d) and (f), 30(a)(2)(C) and 34 do not apply to this proceeding in light of the Commission's requested relief and its demonstration of good cause.

12. Expedited discovery is appropriate to permit a prompt and fair hearing on the Commission's Motion for Preliminary Injunction.

**IT IS THEREFORE ORDERED:**

**I.**

Defendants Bjork, Select Asset, J. David Group, J. David Financial, Fund I and Fund II,

and their agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are restrained and enjoined in the offer or sale of any securities by use of any means or instruments of transportation or communication in interstate commerce, or of the mails, from, directly or indirectly:

- (a) employing any device, scheme or artifice to defraud;
- (b) obtaining money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- (c) engaging in any transactions, practices or courses of business which operate or would operate as a fraud or deceit upon any purchaser or prospective purchaser.

[Securities Act § 17(a) (15 U.S.C. § 77q(a))].

## II.

Defendants Bjork, Select Asset, J. David Group, J. David Financial, Fund I and Fund II, and their agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are restrained and enjoined from making use of any means or instrumentalities of interstate commerce, or of the mails or of any facility of a national security exchange, directly or indirectly, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme or artifice to defraud;
- (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading;

- (c) to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person; or
- (d) to use or employ any manipulative or deceptive device or contrivance in contravention of a rule or regulation prescribed by the Securities and Exchange Commission.

[Exchange Act § 10(b) and Rule 10b-5 thereunder (15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5)].

### III.

Defendants Bjork, Select Asset, and Select Capital and their agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are restrained and enjoined from aiding and abetting or controlling another person in the offer or sale of any securities by use of any means or instruments of transportation or communication in interstate commerce, or of the mails, from, directly or indirectly:

- (d) employing any device, scheme or artifice to defraud;
- (e) obtaining money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- (f) engaging in any transactions, practices or courses of business which operate or would operate as a fraud or deceit upon any purchaser or prospective purchaser.

[Securities Act § 17(a) (15 U.S.C. § 77q(a))].

#### IV.

Defendants Bjork, Select Asset, and Select Capital and their agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are restrained and enjoined from aiding and abetting or controlling another person making use of any means or instrumentalities of interstate commerce, or of the mails or of any facility of a national security exchange, directly or indirectly, in connection with the purchase or sale of any security:

- (e) to employ any device, scheme or artifice to defraud;
- (f) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading;
- (g) to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person; or
- (h) to use or employ any manipulative or deceptive device or contrivance in contravention of a rule or regulation prescribed by the Securities and Exchange Commission.

[Exchange Act § 10(b) and Rule 10b-5 thereunder (15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5)].

#### V.

Defendants Bjork, Select Asset, and Select Capital, and their agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise are restrained and enjoined from and violating Sections 206(1) and 206(2) of the Investment Advisers [15 U.S.C. § 80b-6(1) and (2)], directly or indirectly,

by using the mails or any means or instrumentality of interstate commerce, directly or indirectly: (1) to employ any device, scheme, or artifice to defraud any client or prospective client; or (2) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client.

## **VI.**

Defendants and their officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise are restrained and enjoined from, directly or indirectly, making any payment or expenditure of funds, incurring any additional liability (including, specifically, by advances on any line of credit and any charges on any credit card), or effecting any sale, gift, hypothecation or other disposition of any asset, pending provision of sufficient proof to the Court of sufficient funds or assets to satisfy all claims alleged in the Commission's Complaint, or the posting of a bond or surety sufficient to assure payment of any such claim. Further, any bank, trust company, broker-dealer, depository institution, entity, or individual holding accounts or assets for or on behalf of any of the Defendants shall make no transactions in assets or securities (excepting liquidating necessary as to wasting assets) and no disbursement of assets or securities (including extensions of credit, or advances on existing lines of credit), including the honor of any negotiable instrument (including, specifically, any check, draft, or cashier's check) purchased by or for the Defendants, unless otherwise ordered by this Court.

## **VII.**

The Commission may cause a copy of this Order to be served on any bank, trust company, broker-dealer, depository institution, entity, or individual either by United States mail, email, or facsimile as if such service were personal service, to restrain and enjoin any such institution, entity,

or individual from disbursing assets, directly or indirectly, to or on behalf of Defendants, or any companies or persons or entities under their control.

**VIII.**

Defendants and their agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are restrained and enjoined from destroying, removing, mutilating, altering, concealing or disposing of, in any manner, any of their books and records or any documents relating in any manner to the matters set forth in the Commission's Complaint, or the books and records of any entities under their control, unless otherwise ordered by this Court.

**IX.**

Each Defendant is ordered to provide an interim accounting, under oath, detailing (a) all investor monies and other benefits received, directly and indirectly, as a result of the activities alleged in the Complaint, (b) all assets wherever they may be located and by whomever they may be held, and (c) all accounts held during the period from January 1, 2007, through the date of the accounting.

**X.**

A. Any party may notice and conduct depositions upon oral examination and may request production of documents or other things for inspection and or copying from parties prior to the expiration of thirty (30) days after service of the Complaint on the Defendants .

B. All parties shall comply with the provisions of Rule 45 of the Federal Rules of Civil Procedure regarding issuance and service of subpoenas unless the person designated to provide testimony or to produce documents or things agrees to provide the testimony or to produce the

documents or things without the issuance of a subpoena and/or to do so at a place other than one at which testimony or production can be compelled.

C. Any party may notice and conduct depositions upon oral examination subject to minimum notice of 72 hours.

D. All parties shall produce for inspection and copying all documents and things that are requested within 72 hours of service of a written request for those documents and things.

E. All parties shall serve written responses to any other party's request for discovery. The Defendants' responses, and the interim accounting to be provided by Defendants, shall be sent to the Plaintiff Commission addressed as follows:

United States Securities and Exchange Commission  
Fort Worth Regional Office  
Attention: Timothy S. McCole  
Burnett Plaza, Suite 1900  
801 Cherry Street, Unit #18  
Fort Worth, TX 76102-6882  
McColeT@SEC.gov  
Facsimile: (817) 978-4927

The Plaintiff Commission's responses shall be sent to the other parties at such address(es) as may be designated by them in writing. Such delivery shall be made by the most expeditious means available, including by email and facsimile machine.

## **XI.**

The United States Marshal in any district in which any Defendant resides, transacts business, or may be found, is hereby authorized and directed to make service of process at the request of the Commission. Furthermore, the Commission is permitted to effect service of all pleadings and other papers, including the Summons, the Complaint, and court orders, by facsimile, by electronic mail, by overnight courier, or by mail upon Defendants their agents or

their attorneys or by an alternative provision for service permitted by Rule 4 of the Federal Rules of Civil Procedure, or as this Court may direct by further order.

**XII.**

The hearing on the Commission's motion for a preliminary injunction shall take place at \_\_\_\_\_ o'clock \_\_\_\_ .m. on \_\_\_\_\_, 2011, in Courtroom \_\_\_\_\_ or at such other time or place as counsel may be heard, and that the Defendants , and each of them, shall serve any papers in opposition to the Commission's motion so as to be received no later than five days before the time established in this Order for a hearing on the motion. Service shall be made by fax to Timothy S. McCole, Trial Counsel, at fax number (817) 978-4927, and by overnight delivery of the papers to the Commission, Burnett Plaza, Suite 1900, 801 Cherry Street, Unit 18, Fort Worth, Texas, 76102, to the attention of Timothy S. McCole, Trial Counsel, or such other place and person as counsel for the Commission may direct in writing.

Dated: \_\_\_\_\_ 2011

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE



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<b>SELECT ASSET PRIME INDEX FUND LLC,</b>		§
		§
<b>Defendants.</b>		§
		§
<hr/>		§

**ORDER APPOINTING RECEIVER**

This matter came before me, the undersigned United States District Judge, this \_\_\_\_\_ day of August 2011, on the application of Plaintiff Securities and Exchange Commission (“Commission”) for the appointment of a Receiver for Defendant Brian A. Bjork; Defendant J. David Group of Companies, Inc. (“J. David Group”); Defendant J. David Financial Group LP (“J. David Financial”); Defendant Select Asset Management, LLC (“Select Asset”); Defendant Select Capital Management, LLC (“Select Capital”); Defendant Select Asset Fund I, LLC (“Fund I”); Defendant Select Asset Prime Index Fund, LLC (“Fund II”); and Defendant Estate of Joel David Salinas (“Salinas Estate”). In contemplation of the eventual return of assets to investors harmed by the misconduct alleged in the Complaint, it appears that this Order Appointing Receiver for Defendants is both necessary and appropriate to marshal, conserve, hold and, where necessary, operate the Defendants’ assets pending further order of the Court.

IT IS THEREFORE ORDERED that:

1. This Court assumes exclusive jurisdiction and takes possession of the assets, monies, securities, properties, real and personal, tangible and intangible, of whatever kind and description, wherever located, and the legally recognized privileges (with regard to the entities), of the Defendants and all entities they own or control (“Receivership Assets”), and the books and records, client lists, account statements, financial and accounting documents, computers, computer hard drives, computer disks, internet exchange servers telephones, personal digital devices and other informational resources of or in possession of the Defendants, or issued by Defendants and in possession of any agent or employee of the Defendants (“Receivership Records”).

2. \_\_\_\_\_  
is hereby appointed Receiver for the Receivership Assets and Receivership Records (collectively, “Receivership Estate”), with the full power of an equity receiver under common law as well as such powers as are enumerated herein as of the date of this Order. The Receiver shall not be required to post a bond unless directed by the Court but is hereby ordered to well and faithfully perform the duties of his office, to timely account for all monies, securities, and other properties which may come into his hands, and to abide by and perform all duties set forth in this Order. Except for an act of willful malfeasance or gross negligence, the Receiver shall not be liable for any loss or damage incurred by the Receivership Estate, or of any Defendant and its clients, associates, subsidiaries, affiliates, officers, directors, agents, or employees, or by any of their creditors or equity holders because of any act performed or not performed by him or his agents or assigns in connection with the discharge of his duties and responsibilities hereunder.

3. The duties of the Receiver shall be specifically limited to matters relating to the Receivership Estate and unsettled claims thereof remaining in the possession of the Receiver as of the date of this Order. Nothing in this Order shall be construed to require further investigation of Receivership Estate assets heretofore liquidated and/or distributed or claims of the Receivership Estate settled prior to issuance of this Order. However, this paragraph shall not be construed to limit the powers of the Receiver in any regard with respect to transactions that may have occurred prior to the date of this Order.

4. Until the expiration date of this Order or further Order of this Court, Receiver is authorized to immediately take and have complete and exclusive control, possession, and custody of the Receivership Estate and to any assets traceable to assets owned by the Receivership Estate.

5. As of the entry of this Order, the Receiver is specifically directed and authorized to perform the following duties:

(a) Maintain full control of the Receivership Estate with the power to retain or remove, as the Receiver deems necessary or advisable, any officer, director, independent contractor, employee, or agent of the Receivership Estate;

(b) Collect, marshal, and take custody, control, and possession of all the funds, accounts, mail, and other assets of, or in the possession or under the control of, the Receivership Estate, or assets traceable to assets owned or controlled by the Receivership Estate, wherever situated, the income and profit therefrom and all sums of money now or hereafter due or owing to the Receivership Estate with full power to collect, receive, and take possession of, without limitation, all goods, chattel, rights, credits, monies, effects, lands, leases, books and records, work papers, records of account, including computer maintained information, contracts, financial records, monies on hand in banks and other financial institutions, and other papers and documents

of other individuals, partnerships, or corporations whose interests are now held by or under the direction, possession, custody, or control of the Receivership Estate;

(c) Institute such actions or proceedings to impose a constructive trust, obtain possession, and/or recover judgment with respect to persons or entities who received assets or records traceable to the Receivership Estate. All such actions shall be filed in this Court;

(d) Obtain, by presentation of this Order, documents, books, records, accounts, deposits, testimony, or other information within the custody or control of any person or entity sufficient to identify accounts, properties, liabilities, causes of action, or employees of the Receivership Estate. The attendance of a person or entity for examination and/or production of documents may be compelled in a manner provided in Rule 45, Fed. R. Civ. P., or as provided under the laws of any foreign country where such documents, books, records, accounts, deposits, or testimony may be located;

(e) Without breaching the peace and, if necessary, with the assistance of local peace officers or United States marshals to enter and secure any premises, wherever located or situated, in order to take possession, custody, or control of, or to identify the location or existence of, Receivership Estate assets or records;

(f) Make such ordinary and necessary payments, distributions, and disbursements from the Receivership Estate as the Receiver deems advisable or proper for the marshaling, maintenance, or preservation of the Receivership Estate. Receiver is further authorized to contract and negotiate with any claimants against the Receivership Estate (including, without limitation, creditors) for the purpose of compromising or settling any claim. To this purpose, in those instances in which Receivership Estate assets serve as collateral to secured creditors, the

Receiver has the authority to surrender such assets to secured creditors, conditional upon the waiver of any deficiency of collateral;

(g) Perform all acts necessary to conserve, hold, manage, and preserve the value of the Receivership Estate, in order to prevent any irreparable loss, damage, and injury to the Estate;

(h) Enter into such agreements in connection with the administration of the Receivership Estate, including, but not limited to, the employment of such managers, agents, custodians, consultants, investigators, attorneys, and accountants as Receiver judges necessary to perform the duties set forth in this Order and to compensate them from the Receivership Assets;

(i) Institute, prosecute, compromise, adjust, intervene in, or become party to such actions or proceedings in state, federal, or foreign courts that the Receiver deems necessary and advisable to preserve the value of the Receivership Estate, or that the Receiver deems necessary and advisable to carry out the Receiver's mandate under this Order and likewise to defend, compromise, or adjust or otherwise dispose of any or all actions or proceedings instituted against the Receivership Estate that the Receiver deems necessary and advisable to carry out the Receiver's mandate under this Order;

(j) Preserve the Receivership Estate and minimize expenses in furtherance of maximum and timely disbursement thereof to claimants;

(k) Promptly provide the United States Securities and Exchange Commission and other governmental agencies with all information and documentation they may seek in connection with their regulatory or investigatory activities;

(l) Prepare and submit periodic reports to this Court and to the parties as directed by this Court; and

(m) File with this Court requests for approval of reasonable fees to be paid to the Receiver and any person or entity retained by him and interim and final accountings for any reasonable expenses incurred and paid pursuant to order of this Court. Such fees and expenses shall be paid from the Receivership Estate.

6. Upon the request of the Receiver, the United States Marshal's Office is hereby ordered to assist the Receiver in carrying out his duties to take possession, custody, or control of, or identify the location of, any Receivership Estate assets or records.

7. Creditors and all other persons are hereby restrained and enjoined from the following actions, except in this Court, unless this Court, consistent with general equitable principals and in accordance with its ancillary equitable jurisdiction in this matter, orders that such actions may be conducted in another forum or jurisdiction:

(a) The commencement or continuation, including the issuance or employment of process, of any judicial, administrative, or other proceeding against the Receiver, any of the defendants, the Receivership Estate, or any agent, officer, or employee related to the Receivership Estate, arising from the subject matter of this civil action; or

(b) The enforcement, against the Receiver, or any of the defendants, of any judgment that would attach to or encumber the Receivership Estate that was obtained before the commencement of this proceeding.

8. Creditors and all other persons are hereby restrained and enjoined, without prior approval of the Court, from:

(a) Any act to obtain possession of the Receivership Estate assets;

(b) Any act to create, perfect, or enforce any lien against the property of the Receiver, or the Receivership Estate;

(c) Any act to collect, assess, or recover a claim against the Receiver or that would attach to or encumber the Receivership Estate; or

(d) The set off of any debt owed by the Receivership Estate or secured by the Receivership Estate assets based on any claim against the Receiver or the Receivership Estate.

9. Defendants, their respective officers, agents, and employees and all persons in active concert or participation with them who receive notice of this Order by personal service or otherwise, including, but not limited to, any financial institution, broker-dealer, investment adviser, private equity fund or investment banking firm, and each of them, are hereby ordered, restrained, and enjoined from, directly or indirectly, making any payment or expenditure of any Receivership Estate assets that are owned by Defendants or in the actual or constructive possession of any entity directly or indirectly owned or controlled or under common control with the Receivership Estate, or effecting any sale, gift, hypothecation, assignment, transfer, conveyance, encumbrance, disbursement, dissipation, or concealment of such assets. A copy of this Order may be served on any bank, savings and loan, broker-dealer, or any other financial or depository institution to restrain and enjoin any such institution from disbursing any of the Receivership Estate assets. Upon presentment of this Order, all persons, including financial institutions, shall provide account-balance information, transaction histories, all account records and any other Receivership Records to the Receiver or his agents and to Commission counsel, in the same manner as they would be provided were the Receiver the signatory on the account.

10. Defendants, and their respective agents, officers, and employees and all persons in

active concert or participation with them are hereby enjoined from doing any act or thing whatsoever to interfere with the Receiver's taking control, possession, or management of the Receivership Estate or to in any way interfere with the Receiver or to harass or interfere with the duties of the Receiver or to interfere in any manner with the exclusive jurisdiction of this Court over the Receivership Estate, including the filing or prosecuting any actions or proceedings which involve the Receiver or which affect the Receivership Assets or Receivership Records, specifically including any proceeding initiated pursuant to the United States Bankruptcy Code, except with the permission of this Court. Any actions so authorized to determine disputes relating to Receivership Assets and Receivership Records shall be filed in this Court.

11. Defendants, their respective officers, agents, and employees and all persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, including any financial institution, broker-dealer, investment adviser, private equity fund or investment banking firm, and each of them shall:

(a) To the extent they have possession, custody, or control of same, provide immediate access to and control and possession of the Receivership Estate assets and records, including securities, monies, and property of any kind, real and personal, including all keys, passwords, entry codes, and all monies deposited in any bank deposited to the credit of the Defendants, wherever situated, and the original of all books, records, documents, accounts, computer printouts, disks, and the like of Defendants to Receiver or his duly authorized agents;



(b) Cooperate with the Receiver and his duly authorized agents by promptly and honestly responding to all requests for information regarding Receivership Assets and Records and by promptly acknowledging to third parties the Receiver's authority to act on behalf of the Receivership Estate and by providing such authorizations, signatures, releases, attestations, and access as the Receiver or his duly authorized agents may reasonably request;

(c) Provide the Receiver and the Commission with a prompt, full accounting of all Receivership Estate assets and documents outside the territory of the United States which are held either: (1) by them, (2) for their benefit, or (3) under their control;

(d) Transfer to the territory of the United States all Receivership Estate assets and records in foreign countries held either: (1) by them, (2) for their benefit, or (3) under their control; and

(e) Hold and retain all such repatriated Receivership Estate assets and documents and prevent any transfer, disposition, or dissipation whatsoever of any such assets or documents, until such time as they may be transferred into the possession of the Receiver.

12. Any financial institution, broker-dealer, investment adviser, private equity fund or investment banking firm or person that holds, controls, or maintains accounts or assets of or on behalf of any Defendant, or has held, controlled, or maintained any account or asset of or on behalf of any Defendant since January 1, 2006, shall:

(a) Hold and retain within its control and prohibit the withdrawal, removal, assignment, transfer, pledge, hypothecation, encumbrance, disbursement, dissipation, conversion, sale, gift, or other disposal of any of the assets, funds, or other property held

by or on behalf of any Defendant in any account maintained in the name of or for the benefit of any Defendant in whole or in part except:

- (i) as directed by further order of this Court, or
  - (ii) as directed in writing by the Receiver or his agents;
- (b) Deny access to any safe deposit boxes that are subject to access by any Defendant; and
- (c) The Receiver may obtain, by presentation of this Order, documents, books, records, accounts, deposits, or other information within the custody or control of any person or entity sufficient to identify accounts, properties, liabilities, causes of action, or employees of the Receivership Estate. The attendance of a person or entity for examination and/or production of documents may be compelled by the Receiver in a manner provided in Rule 45, Fed. R. Civ. P., or as provided under the laws of any foreign country where such documents, books, records, accounts, deposits, or testimony may be located;

13. The Defendants, their officers, agents, and employees and all persons in active concert or participation with them and other persons who have notice of this Order by personal service or otherwise, are hereby restrained and enjoined from destroying, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, any contracts, accounting data, correspondence, advertisements, computer tapes, disks or other computerized records, books, written or printed records, handwritten notes, telephone logs, telephone scripts, receipt books, ledgers, personal and business canceled checks and check registers, bank statements, appointment books, copies of federal, state, or local business or personal income or

property tax returns, and other documents or records of any kind that relate in any way to the Receivership Estate or are relevant to this action.

14. The Receiver is hereby authorized to make appropriate notification to the United States Postal Service to forward delivery of any mail addressed to the Defendants, or any company or entity under the direction and control of the Defendants, to himself. Further, the Receiver is hereby authorized to open and inspect all such mail to determine the location or identity of assets or the existence and amount of claims.

15. Nothing in this Order shall prohibit any federal or state law enforcement or regulatory authority from commencing or prosecuting an action against the Defendants their agents, officers, or employees.

So Ordered and signed, this \_\_\_\_ day of August 2011.

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UNITED STATES DISTRICT JUDGE