

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

SECURITIES AND EXCHANGE §
COMMISSION, §

PLAINTIFF, §

vs. §

CIVIL ACTION NO. 4:11 CV - 02830

BRIAN A. BJORK, THE ESTATE OF JOEL §
DAVID SALINAS, J. DAVID GROUP OF §
COMPANIES, INC., J. DAVID §
FINANCIAL GROUP LP, SELECT ASSET §
MANAGEMENT LLC, SELECT ASSET §
CAPITAL MANAGEMENT LLC, SELECT §
ASSET FUND I, LLC, AND SELECT §
ASSET PRIME INDEX FUND, LLC. §

DEFENDANTS. §

**RECEIVER’S UNOPPOSED MOTION TO ESTABLISH
CLAIMS PROCEDURE PLAN AND TO APPROVE CLAIM FORM**

TO THE HONORABLE KEITH P. ELLISON, UNITED STATES DISTRICT COURT:

Steven A. Harr (“Receiver”), the Receiver appointed by the Court in these proceedings, files this Motion to Establish Claims Procedure Plan and to Approve Claim Form and in support of same respectfully shows the Court as follows:

INTRODUCTION

1. The preliminary investigation that the Receiver has conducted indicates that money invested and the receivership assets were used to support a series of investment offerings to several hundred investors. It appears that with respect to some of the funds received, investment dollars were commingled and used to support the appearance of vitality in typical ponzi fashion, and that as to those dollars, the offerings were substantially similar. It also appears at this preliminary stage that the integrity of some investments were maintained and not commingled.

The Receiver seeks authority to solicit claims from all parties impacted by the people and companies that are the subject of the orders of this Court so that he can effectively and efficiently complete a forensic analysis and move forward to discharge the duties assigned to him.

2. The Receiver's preliminary investigation is consistent with the allegations of the Securities and Exchange Commission ("SEC") in this case.

3. The Receiver's preliminary investigation is supported, in part, by the acquiescence of Mr. Bjork in the appointment of a receiver. The Receiver has also conferred with former employees, begun a review of available corporate records, and interviewed numerous third-parties. The Receiver is therefore reasonably confident of his preliminary assessment, and accordingly seeks that he be granted authority to proceed to establish a claims process consistent with applicable law. Even if the preliminary assessment changes, the claims process requested below will still serve the ends of the receivership and not have to be re-started.

FACTS

4. On August 1, 2011, the Securities and Exchange Commission filed its Complaint against Defendants. In conjunction therewith, the SEC sought, and by Order of the Court (the "Order"), the Court appointed, Steven A. Harr as the Receiver of Brian A. Bjork, The Estate of Joel David Salinas, J. David Group of Companies, Inc., J. David Financial Group LP, Select Asset Management LLC, Select Asset Capital Management, LLC, Select Asset Fund I, LLC and Select Asset Prime Index Fund, LLC (collectively the "Receivership Entities").

5. Mr. Harr was authorized to have complete and exclusive control, possession, and custody of all Receivership Assets and Receivership Records of Defendants. Receivership Assets were defined in the Order as "the assets, monies, securities, claims in action, and properties, real and personal, tangible and intangible, of whatever kind and description, wherever

situated, of Defendants, entities that they own or control, and all limited partnerships of which any of them is a general partner.”

6. The Receiver has been acting and fulfilling his duties as Receiver since his appointment and has conducted various investigations of the Receivership Entities and some of their related entities with the intent to marshal the Receivership Assets for the benefit of the Receivership Entities' investors and creditors.

7. There are six entities, an Estate and an individual involved in this receivership. With regard to some of the entities, it appears the money invested by third parties was co-mingled while for others it appears, based on the preliminary investigation, that the integrity of the money intended for certain investments was maintained.

AUTHORITIES

8. This Motion seeks to invoke the Court's equitable power to allow the Receiver to establish an official claim form and procedure to be used in the evaluation of claims made by those affected by these events. Despite the Receiver's desire to establish this procedure at this early date, the investigation of the Receivership Entities has not progressed to a point that the Receiver can generally propose how the assets of the Receivership will be treated among the investors and creditors. Regardless, historically the claims process is lengthy and thus getting underway will help move this matter to a final conclusion more quickly.

9. Establishing a claims process in receiverships such as this is a common undertaking. *See e.g., Cunningham*, 265 U.S. at 13; *Durham*, 86 F.3d at 72-73; *Forex Asset Mgt.*, 242 F.3d at 331; and *SEC v. Credit Bancorp, Ltd.*, 290 F.3d 80, 88-89 (2d Cir. 2002); *CFTC v. Topworth Int'l. Ltd.*, 205 F.3d 1107, 1115-16 (9th Cir. 1999); *U.S. v. Real Property Located at 13328 and*

13324 State Hwy., 89 F.3d 551, 553 (9th Cir. 1996); *U.S. v. Vanguard Inv. Co.*, 6 F.3d 70, 73 (4th Cir. 1993).

10. Sitting in equity, this Court is a “court of conscience.” *Wilson v. Wall*, 73 U.S. 83, 90 (1867). As such, this Court has the power in equity “to do what is right under the circumstances.” *U.S. v. Durham*, 86 F.3d 70, 73 (5th Cir. 1996).

CLAIMS PROCEDURE PLAN

11. The Receiver has designed proposed claim forms that will solicit from investors and potential trade creditors the information that he believes will be needed to complete a basic forensic reconstruction, assess and verify claims, and propose a distribution plan. The proposed forms are collectively attached as Exhibit “A.” Instructions are part of each of the forms.

12. The Claim Form requests information necessary to permit the Receiver to evaluate investor claims. The records available to the Receiver may be incomplete or untrustworthy and much of the claims verification process will need to be conducted with reference to investment and bank records. Accordingly, considerable information is being requested. Additionally, there are a number of different investments that need to be evaluated separately by the Receiver. The nature of how the investments were solicited is important to evaluate the extent of commonality between the various investments and to help determine the proper perspective of establishing classes for distribution. Accordingly, a request for information on the means of solicitation has been included on the claim form. Moreover, the Receiver has solicited comments to the form from the Securities and Exchange Commission.

13. The Receiver proposes to post the Official Claim Form on a website that he has established, www.selectassetreceiver.com. As well, the Receiver proposes to mail a copy of the

claim form with instructions to all known investors and creditors as shown on the books and records of the Receivership Entities.

14. The Receiver proposes that Claim Forms be sent to investors and potential trade creditors and posted on the Receivership website even though the Receiver is not yet in a position to propose a distribution plan. Based upon the information collected in the course of the claims solicitation process as well as other contemporaneous investigatory efforts, the Receiver expects to be able to propose a distribution plan for the Court's consideration at a later date.

15. The Receiver further proposes that a cover letter in the format of Exhibit "B" attached hereto would be sent along with each Claim Form that is mailed. Likewise, the Receiver intends to place the essential information set forth in Exhibit "B" on the Receivership website.

16. The Claim Form states that it must be returned to the Receiver's Claims Manager, Stephen Tomasky, within sixty (60) days after the Claim Form is mailed to the potential claimant. The Receiver proposes that the Claim Form must be returned to the Receiver's Claims Manager within sixty (60) days after the Claim Form is downloaded by a potential claimant from the Receivership website or otherwise sent to a potential claimant. The Receiver seeks discretion to utilize the failure to return a form within that period as a potential ground for disallowance of a claim with the understanding that any mitigating circumstances would also be considered.¹

17. As a Claim Form is received, the Receiver intends to assign a sequential claim number to be used to identify the claim during further proceedings before this Court. Further, as a Claim Form is received, the Receiver proposes to send a post card in the format of Exhibit "C"

¹ The Receiver does not intend to use such a deadline as a hard and fast rule to penalize claimants but rather only as a means to prompt a timely return of the completed form. The Receiver intends to make exceptions to the deadline as circumstances dictate.

attached hereto to each claimant, in order to properly acknowledge the claim and provide notice of the claim number.

18. The allowance of a claim(s) will not, in and of itself, establish any priority as to ultimate payment of the claim. Further, the allowance of a claim(s) will not determine when the claim will be paid. Rather, priority of payment and payment of all claims will be authorized by future Order of the Court.

19. The Receiver proposes to use the claims team of Stephen Tomasky and Leslie Finn of the firm of Quilling, Selander, Lownds, Winslett & Moser, PC, 2001 Bryan Street Suite 1800, Dallas, TX 75201; 214-871-2100 (main); 214-871-2111 (fax). Mr. Tomasky and Ms. Finn are highly experienced claims managers² in Federal receiverships and will provide the Court and the Receiver with a highly efficient and effective claims process.

CONCLUSION

The Receiver requests that the Court approve its claims process as stated above and a single Claim Form for all potential claimants to file in the Receivership.

20. Pursuant to Local Rule CV-7, the Receiver advises the Court that he has conferred with both the Plaintiff Securities and Exchange Commission and Defendant Bjork and that they consent to the relief requested in this motion. The Defendant entities are all controlled by the Receiver and no notice is required.

WHEREFORE, PREMISES CONSIDERED, the Receiver requests that upon final consideration of this Motion that the Court enter an Order consistent with the foregoing requested relief and for such other and further relief, general or special, at law or in equity, to which the Receiver may show himself justly entitled.

² Over the past 10 plus years they have processed and are in the midst of processing in excess of 20,000 claims for other receivers.

Respectfully submitted,

/s/ Steven A. Harr

Steven A. Harr, #09035600
MUNSCH HARDT KOPF & HARR, P.C.
700 Louisiana, Suite 4600
Houston, Texas 77002
(713) 222-4044 (telephone)
(713) 222-4047 (telecopy)
E-Mail: sharr@munsch.com

ATTORNEYS FOR THE RECEIVER

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of September, 2011, a true and correct copy of the foregoing document has been served, via certified mail return receipt requested, on the following individuals and or entities:

Timothy S. McCole
Securities and Exchange Commission
Fort Worth District Office
Burnett Plaza, Suite 1900
801 Cherry Street, Unit #18
Fort Worth, TX 76102

Matt Hennessy | Attorney at Law
1001 Fannin, Suite 1950
Houston, Texas 77002

/s/ Steven A. Harr

Steven A. Harr

MHDocs 3422093_1 4856.15

Exhibit B

STEVEN A. HARR, RECEIVER
c/o Stephen Tomasky
Quilling Selander Lownds Winslett & Moser, P.C.
2001 Bryan Street, Suite 1800
Dallas, Texas 75201

Re: *Securities and Exchange Commission v. Brian A. Bjork, The Estate of Joel David Salinas, J. David Group of Companies, Inc., J. David Financial Group, LP, Select Asset Management LLC, Select Asset Capital Management LLC, Select Asset Fund I, LLC and Select Asset Prime Index Fund, LLC; cause no. 4:11 CV - 02830*

Dear Potential Claimant:

As you may be aware, I am the Receiver appointed by the United States District Court for the Southern District of Texas, Houston Division, as to the entities listed above. Records which I have reviewed indicate that you may have a claim against one of more of the entities for whom I act as Receiver. If you believe you have a claim of any nature whatsoever against any of them, you need to carefully read this letter and the enclosure.

Enclosed with this letter is an Official Court-Approved Claim Form which you need to complete and return. As indicated in the Claim Form, when you complete and return the form it is important that you provide copies of any documents which you have relating to your claim. It is strongly recommended that you send the completed Claim Form via certified mail or delivery service. Be sure to keep a copy of the completed form for your records. The enclosed Claim Form was approved by the Court on _____. It is the **ONLY** Claim Form which will be considered in determining the amount of your claim. Accordingly, if you want your claim considered and verified, you **MUST** complete the enclosed form even if you have previously sent your information to me. **DO NOT SEND THE COMPLETED FORM TO THE COURT! SEND IT ONLY TO ME AT THE ADDRESS SET FORTH ABOVE.**

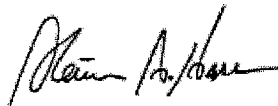
At the time the Court approved the enclosed Claim Form, the Court also ordered that you must complete and return the Claim Form within 60 days after it was mailed to you. Failure to return the Claim Form by the deadline may result in consideration of your claim being delayed and/or your claim being disallowed. **BE SURE TO COMPLY WITH THE DEADLINE.**

I believe the Claim Form is self-explanatory, but if you have questions, you may call the Claims Administrator assigned to this case, Stephen Tomasky at (214) 880-1812. Because of the number of people involved, it may take several days for him to return your call. For those of you who have access to the internet you can also contact Stephen Tomasky at stomasky@gslwm.com. *When your completed Claim Form is received, you will be sent a postcard acknowledging receipt of your Claim Form. If you do not receive a post card within thirty (30) days after you send your completed Claim Form please contact Stephen Tomasky. After your completed Claim Form has been reviewed, you will be contacted if there is a problem with your claim. There is no need for you to contact us, we will contact you. Repeated phone inquiries or internet inquiries by you will only delay and add to the cost of the process. If you do need to contact us, make sure your contact relates to the completion of the Claim Form and ONLY completion of the Claim Form. If you are contacting us about the status of the case or anything which does not relate to the completion of the Claim Form, those calls will not be immediately returned.*

Page Two

For those of you who do not already know, you can monitor the progress of the receivership at my website: www.selectassetreceiver.com.

Very truly yours,

A handwritten signature in black ink, appearing to read "Alan A. Hase". The signature is written in a cursive style with a long horizontal stroke at the end.

Enc.

Exhibit C

**SEC v. Brian Bjork, J. David Group of Companies Inc., Select Asset
Management LLC et al.
Civil Action No. 4:11-CV-02830 (S. D. of Texas)
Claim Form Confirmation**

****PLEASE READ****

Your claim has been received by the Receiver, Steven A. Harr:

Your CLAIM NUMBER is: SAA-

Please refer to this claim number in all future correspondence.

**You may monitor the progress of this case at:
www.selectassetreceiver.com**

Please Note: It is your responsibility to notify us of any change in address or telephone number!

**SEC v. Brian Bjork, J. David Group of Companies Inc., Select Asset
Management LLC et al.
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Please Note: It is your responsibility to notify us of any change in address or telephone number!

Steven A. Harr, Receiver
C/o Stephen Tomasky
2001 Bryan St, Suite 1800
Dallas, Texas 75201

PLACE
POSTAGE
HERE

