

currently on hand. This patience and cooperation has been appreciated and has contributed to the preservation of the Receivership Estate.

2. The Receiver's asset recovery and liquidation efforts have produced approximately \$21,300,000 in cash and cash equivalent assets and \$3,200,000 in other assets. While there remains some uncertainty regarding the actual total value of claims, the Receiver proposes an interim distribution in the amount of \$10,000,000 be made to aggrieved investors reasonably promptly. The Receiver intends for any interim distribution and/or final distribution of receivership funds to be made on a *pro-rata* basis out of a single common fund of pooled assets obtained from all Receivership Entities pursuant to the widely accepted net investment distribution methodology as outlined in greater detail herein. The Receiver intends to treat all aggrieved investors similarly without regard to affiliation and/or investment with a certain entity or fund.

3. With this Motion, the Receiver respectfully asks this Court to accept the equitable principles and administrative procedures the Receiver and his team intend to employ throughout the interim and final distribution process as proposed in the Motion and in the attached and incorporated proposed distribution plan.

II. **BACKGROUND**

A. THE PONZI SCHEME

4. From early 2004 through August 2011, Defendants offered securities through what originally appeared to be two distinct fraudulent securities schemes raising approximately \$52,000,000 combined.

5. In the first scheme, the SEC alleged over 100 investors were defrauded of approximately \$39,000,000. As part of this scheme, Defendants promised investors safe, fixed income by investing in highly rated corporate and other bonds with annual yields up to 9%

through J. David Group of Companies, Inc. and J. David Financial Group, LP. In reality, the J. David corporate bond offerings were bogus. There were no bonds. Through the various Receivership Entities, investor account statements were sent regularly to investors reflecting investments in bonds that did not exist and that neither J. David Group of Companies, Inc. nor J. David Financial Group, LP ever acquired as promised. Tangential to, but included in the flow of money in this scheme, Salinas regularly raised investment money for and moved gross receipts to and from Parkway Pawn.

6. In the second scheme, Select Asset Management, LLC and Select Capital Management, LLC offered securities issued by two private funds (the "Funds"). The SEC alleges that these Funds raised approximately \$13,000,000 from over 50 investors. In addition to commingling investor dollars and failing to properly account for investments, the Funds transferred money to Fund-affiliated entities in related-party transactions undisclosed to investors. These transfers include monies transferred between several of J. David Salinas' related entities, including monies transferred between and amongst the Funds themselves. This shifting of funds regularly occurred without regard to corporate formalities or disclosure requirements.

7. The Receiver's independent forensic analysis confirms that Defendants utilized the various Receivership Entities to perpetrate a massive securities fraud whereby the money of new investors was used to pay old investors, creating the illusion of a viable investment opportunity and inducing additional investors. Funds from various entities were shifted when necessary to protect the fraud from exposure and ultimate failure. The label "Ponzi scheme" is applied to any sort of inherently fraudulent arrangement under which the debtor-transferor utilizes after-acquired investment funds to pay off previous investors in order to forestall

disclosure of the fraud. By definition, Defendants, by and through the use of the Receivership Entities, operated a Ponzi scheme.

B. THE RECEIVER'S APPOINTMENT AND ASSET RECOVERY EFFORTS

8. On August 1, 2011, the SEC filed its Complaint against Defendants. In conjunction therewith, the SEC sought, and by Order Appointing Receiver (the "Order"), the Court appointed Steven A. Harr, as Receiver, for 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 Capital Management, LLC, Select Asset Fund I, LLC, and Select Asset Prime Index Fund, LLC (collectively, the "Receivership Entities").

9. The Receiver has been acting and fulfilling his duties as Receiver since his appointment. Immediately after his appointment, the Receiver arrived at Defendants' corporate offices and seized all physical and electronic data, located and reviewed contemporaneous books and records, and interviewed key former employees. The Receiver quickly learned that the investigative process would not be easy and would involve ever developing information. A detailed account of the Receiver's efforts since appointment can be found in the Receiver's regularly filed Interim Reports.¹

10. The Receiver has pursued a number of successful asset recovery efforts, including but not limited to, the assertion of fraudulent transfer and constructive trust claims on millions of dollars in life insurance death benefits that were transferred by J. David Salinas just weeks before his death to defrauded friends and family, the pursuit and collection of monies owed on several outstanding loans made by the Receivership Entities, the liquidation of various investments, the liquidation of real estate, the collection of cash balances from bank accounts, and the liquidation of miscellaneous assets and personal property. The Receiver has been

¹ To date, the Receiver has filed seven Interim Reports. See Dkt. Nos. 25, 35, 47, 72, 99, 111, 135.

successful in avoiding costly and prolonged litigation relating to the recovery of these assets while ensuring the Receivership Estate received and retained maximum benefit from the same.

11. As a result of the Receiver's successful asset recovery efforts, the Receiver currently maintains approximately \$24,500,000 in total assets. Additional contributions to the Receivership Estate are anticipated. At present, three pieces of real estate remain to be sold, five sub-participation interests/investments remain to be sold or paid, and the Receiver is still exploring and considering litigation against third parties for the return of assets.

III. STATUS OF CLAIMS PROCESS

12. Starting in September 2011, the Receiver established a claims process by which parties could submit claims to the Receivership Estate. Fair and adequate notice of the claims process was provided on the Receiver's website and remains there today. Moreover, the Receiver's claims team has made itself available and accessible to investors to field questions regarding the claims process and procedure. Over the past several months, the Receiver and his claims team have diligently reviewed, finalized, and submitted claims for approval to the Court. These efforts will continue until all claims have been reviewed and approved.

13. The Receiver has been diligent in his review and consideration of claims since the inception of the claims process. To date, a substantial number of claims have already been submitted and approved by the Court. The Receiver intends to continue these efforts. At present, however, the pending unresolved claims are those that are the more "difficult" claims in which disputes are more likely or substantially more information is needed from the claimants. The Receiver and his claims team are working diligently to resolve these more difficult claims.

IV.
ARGUMENTS & AUTHORITIES

14. Federal district courts have broad discretion in fashioning relief in equity receiverships.² Pursuant to these broad powers, courts may authorize any distribution of receivership assets that is “fair and reasonable.”³ So long as a court divides the assets “in a logical way,” a court’s adoption of a distribution plan should not be disturbed.⁴

15. The Receiver is faced with the arduous task of distribution of the funds recovered in the course of the administration of the estate. This process is complicated and could potentially create conflict as no claims allowance can be uniformly equitable. “In any situation in which the pie is limited, each individual desiring a slice of that pie is, in a sense, adverse to others also wanting a slice of the pie.”⁵ The process at hand likely will be no different. The only means to treat all victims fairly would be for each and every victim to be repaid in full. Unfortunately, the very nature of a Ponzi scheme makes full repayment impossible. Instead, the Receiver has contemplated and proposed a distribution plan that he believes is in the best interest of the estate and is the least unfair to the overall pool of defrauded investors.⁶ Under the present facts, equity and equality are best served by employing the net investment distribution methodology and aggregating and collapsing the Receivership Entities for distribution purposes.

² *SEC v. Forex Asset Mgmt., LLC*, 242 F.3d 325, 328 (5th Cir. 2001); *SEC v. Credit Bancorp, Ltd.*, 290 F.3d 80, 91 (2d Cir. 2002); *SEC v. Basic Energy Affiliated Res., Inc.*, 273 F.3d 657, 668 (6th Cir. 2001); *SEC v. Elliott*, 953 F.2d 1560, 1566-67 (11th Cir. 1992); *SEC v. Hardy*, 803 F.2d 1034, 1037-39 (9th Cir. 1986).

³ *SEC v. Wealth Mgmt., LLC*, 628 F.3d 323, 332-33 (7th Cir. 2010); *SEC v. Wang*, 944 F.2d 80, 85 (2d Cir. 1991); *SEC v. Byers*, 637 F. Supp.2d 166, 174 (S.D.N.Y. 2009) (quoting *Wang*, 944 F.2d at 81).

⁴ *Forex*, 242 F.3d at 331; *U.S. v. Durham*, 86 F.3d 70, 73 (5th Cir. 1996).

⁵ See *SEC v. TLC Inv. & Trade Co.*, 147 F. Supp.2d 1031, 1042 (C.D. Ca. 2001).

⁶ *SEC v. Parish*, 2:07-CV-00919-DCN, 2010 WL 5394736 (D.S.C. Feb. 10, 2010) (“It is the task of this court to choose not what is the ‘fairest’ distribution plan, but to choose the plan which is the least unfair.”)

A. METHODOLOGY OF DISTRIBUTION

16. The Receiver proposes the use of the net investment or “cash in/cash out” method in fixing the amount of investor claims and distributions. The net investment methodology is a commonly utilized distribution method in the context of Ponzi schemes.⁷

17. Per the net investment method, the Receiver intends to distribute to investors a *pro rata* share of the Receivership Estate based upon each investor’s net investment. Said otherwise, the Receiver will credit the amount of cash deposited (cash in) by the investor, less any amounts withdrawn (cash out).⁸ The amount of resulting negative equity will serve as the final value of the claim. Investors who managed a positive net equity, *i.e.*, took more cash out than they put in, will not share in any distributions.⁹ The net investment methodology is most appropriate and equitable under the present facts as it accurately treats investors’ withdrawals and claims to profits as redistributed capital, rather than true profits gained from investment.

B. TREATMENT OF CLAIMED AND PREVIOUSLY RECEIVED FICTITIOUS PROFITS

18. In the context of a Ponzi scheme, the promise and actual return of any and all profits, interests, and/or dividends are not generated from legitimate business activity but,

⁷ See *e.g.*, *SEC v. AmeriFirst Funding, Inc.*, No.07-CIV-1188, 2008 WL 919546, at *4 (N.D. Tex. Mar. 13, 2008); *In re Bernard L. Madoff Inv. Sec., LLC*, 654 F.3d 229, 233 (2d Cir. 2011) *cert. dismiss’d*, 132 S. Ct. 2712, 183 L. Ed.2d 5 (U.S. 2012), *and cert. denied*, 133 S. Ct. 24, 183 L. Ed. 2d 675 (U.S. 2012) *and cert. denied*, 133 S. Ct. 25, 183 L. Ed. 2d 675 (U.S. 2012); *United States v. Durham*, 86 F.3d 70, 73 (5th Cir. 1996) (adopting *pro rata* distribution); *U.S. Commodity Futures Trading Comm'n v. Capitalstreet Fin., LLC*, 3:09CV387-RJC-DCK, 2010 WL 2572349 (W.D.N.C. June 18, 2010); *see also SEC v. Byers*, 637 F. Supp.2d 166, 172 (S.D.N.Y. 2009) (holding that claims to be calculated on “net investor method” which means that any cash distributions received prior to the insolvency proceeding would be subtracted from the total amount invested.); *S.E.C. v. Credit Bancorp, Ltd.*, 99 CIV. 11395 RWS, 2000 WL 1752979 (S.D.N.Y. Nov. 29, 2000) *aff'd*, 290 F.3d 80 (2d Cir. 2002) (holding that a “net investment” method was appropriate where the distribution plan provided that “a customer’s claim is limited to the principal balance deposited with Credit Bancorp and is reduced by the amount of distributions. In addition, customers may not assert claims for interest, dividends, or promised returns.”); *U.S. Commodity Futures Trading Comm'n v. Buff Aaron Hoffberg*, No. 93-C-3106, 1993 WL 441984, at *3 (N.D. Ill. Oct. 28, 1993).

⁸ *Madoff*, 654 F.3d at 233.

⁹ *Id.* at 235.

rather, through the influx of resources from additional investors.¹⁰ The underlying scheme is no different.

19. Several investors have included all amounts invested and not returned, plus fictitious profits and interest that were promised but remained unpaid as part of their claims. In addition, some investors also received distributions that were characterized as dividends, profits, and/or interest payments over the life of the Ponzi scheme. The Receiver has and will continue to disregard any claims of such gains and re-characterize any and all past distribution of funds as returns of principal regardless of how these returns were previously characterized.

20. To allow claims based on illusionary profits would encourage the Defendants' fraudulent operations and would unfairly benefit early investors at the expense of later investors.¹¹ While profits were promised at the time of investment, the underlying fraudulent scheme by its very nature was insolvent as a matter of law and could produce no profits. Profits cannot now be expected from a losing endeavor.¹²

21. Likewise, the prior distributions of funds under the guise of dividends, profits, and/or interest payments cannot stand as originally characterized. In essence, all funds collected by the Receivership Entities were directly or indirectly derived from the underlying

¹⁰ *Credit Bancorp*, 2000 WL 1752979 at * 13 (citing *Cunningham v. Brown*, 265 U.S. 1, 44 S. Ct. 424, 68 L. Ed. 873 (1924) (describing scheme of Charles Ponzi)).

¹¹ See *Commodity Futures Trading Comm'n v. Topworth Int'l, Ltd.*, 205 F.3d 1107, 1115-16 (9th Cir. 2000); *Official Cattle Contract Holders Committee v. Commons (In re Tedlock Cattle Co.)*, 552 F.2d 1351, 1352-53 (9th Cir. 1977) (holding that the trustee can use "equitable" theory in excluding profits in calculating the claim rather than the "benefit-of-the-bargain" theory.); *U.S. Commodity Futures Trading Comm'n v. Equity Fin. Group, LLC*, CIV.04-1512 RBK AMD, 2005 WL 2143975, at *23 (D.N.J. Sept. 2, 2005) report and recommendation adopted sub nom. *Commodity Futures Trading Comm'n v. Equity Fin. Group, LLC*, CIV.04-1512(RBK), 2005 WL 2864783 (D.N.J. Oct. 26, 2005) ("The Court agrees that recognizing profits or other earnings in claims for distribution would be to the detriment of later investors and would therefore be in equitable.").

¹² *Lustig v. Weisz & Assocs., Inc. (In re Unified Commercial Capital)*, 2002 WL 35200567, at *8 (W.D.N.Y. June 21, 2002) ("If a person invests money with the understanding that he will share in the profits produced by his investment, and it turns out that there are no profits, it is difficult to see how that person can make a claim to receive any more than the return of his principal investment").

fraud. To allow some investors to stand behind the fiction that the Ponzi scheme had “legitimately withdrawn money to pay them would be carrying the fiction to a fantastic conclusion.”¹³ The alleged profits and dividends that were paid out to certain investors were nothing more than a part of the *res*, the scheme had no profits—just circulating stolen money.¹⁴ While it may seem imperfect to those who previously received distributions over the life of the Ponzi scheme for the Receiver to re-characterize such payments, doing so is the most equitable means to ensure all investors are on equal footing.

22. The decision to disregard unclaimed profits and re-characterize past distributions as returns of principal to determine the total net investment for purposes of final claim values is also consistent with the law of fraudulent transfer. Fifth Circuit fraudulent transfer law generally requires investors to return amounts received in excess of their investment in a fraudulent scheme, regardless of the investor’s good faith or ignorance of the Ponzi scheme.¹⁵ In order to defeat a fraudulent transfer claim, an investor must show they provided “reasonably equivalent value” for the funds received.¹⁶ As a matter of law, however, investors cannot prove that they provided reasonably equivalent value for any net winnings because “investors in illegal Ponzi schemes have only provided reasonably equivalent value up to the portion of their actual investment in the scheme.”¹⁷

¹³ *Teletronics, Ltd. v. Kemp*, 649 F.2d 1236, 1241 (7th Cir. 1981) (citing *Cunningham v. Brown*, 265 U.S. 1, 13, 44 S. Ct. 424, 427, 68 L. Ed. 873 (1924) (case of Charles Ponzi)).

¹⁴ See *U.S. Commodity Futures Trading Comm'n v. Buff Aaron Hoffberg*, No. 93-C-3106, 1993 WL 441984, at *3 (N.D. Ill. Oct. 28, 1993).

¹⁵ *Quilling v. Schonsky*, 247 Fed. Appx. 583, 586 (5th Cir. 2008) (citing *Warfield v. Byron*, 436 F.3d 551, 558 (5th Cir. 2006)); see also *SEC v. Res. Dev. Int'l, LLC*, 487 F.3d 295, 301 (5th Cir. 2007).

¹⁶ See Tex. Bus. & Com. Code Ann. § 24.009(a) (West 2009).

¹⁷ *Warfield v. Carnie*, No. 3:04-CV-644-R, 2007 WL 1112591, at *12 (N.D. Tex. Apr. 13, 2007); see also *Donell v. Kowell*, 533 F.3d at 762, 772 (9th Cir. 2008) (“Where causes of action are brought under UFTA against Ponzi scheme investors, the general rule is that to the extent innocent investors have received payments in excess of the amounts of principal that they originally invested, those payments are avoidable as fraudulent transfers.”).

23. The Receiver intends to treat all investors generally the same. Limited distinctions will be made for investors whose claims require additional efforts to confirm the amount claimed and/or those who fail to present timely claims. Moreover, while the Receiver hopes to share distributions with general creditors in addition to the defrauded investors, higher priority will be given to the payment of funds to claimants whose property was unlawfully taken.¹⁸

C. AGGREGATION AND COLLAPSING OF RECEIVERSHIP ENTITIES FOR DISTRIBUTION

24. To date, the Receiver has treated Select Asset Fund I, LLC (“Fund I”) and Select Asset Prime Index Fund, LLC (“Prime Index”) as if they were separate and distinct legal entities. The Receiver has maintained all funds associated with these entities in separate bank accounts. In contrast, the remaining entities have been aggregated and funds derived therefrom have been pooled together into a single account. When first appointed, the Receiver questioned whether Fund I and Prime Index warranted separate and independent treatment. In an abundance of caution, the Receiver treated Fund I, Prime Index, and the other remaining entities as three separate operations and avoided commingling their funds. However, forensic accounting has made clear that the entire network of Receivership Entities (including Fund I and Prime Index) were utilized as a single integrated unit in order to perpetuate a massive fraud.

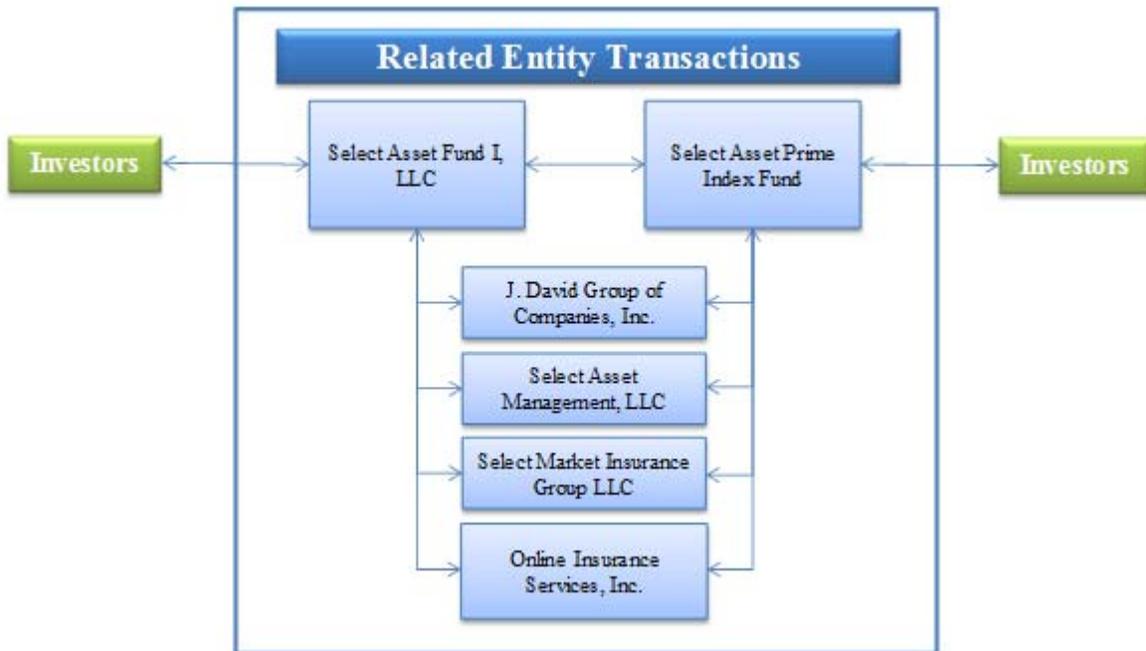
25. A study of business operations and forensic accounting of Fund I and Prime Index revealed a complete disregard for corporate formalities, significant commingling of funds, and the scheme’s principals routinely moving money throughout the Receivership Entities – not limited to just Fund I and Prime Index – without regard for any corporate

¹⁸ See *SEC v. HKW Trading, LLC*, 8:05-CV-1076-T-24-TB, 2009 WL 2499146, at *3 (M.D. Fla. Aug. 14, 2009) (“Payment to claimants whose property was unlawfully taken from them is given a higher priority than payment to the general creditors.”) (citing *Treatise on the Law and Practice of Receivers*, 3d ed. at § 662.1(a), p. 1174, § 667, p. 1198 (1959)).

formalities. Specifically, Fund I and Prime Index regularly accepted transfers from one another as well as the other Receivership Entities to fund payments to investors whenever necessary. While these related entity transactions were never properly document or disclosed, it is now clear that had these transfers not occurred, Fund I and Prime Index would not have been able to function. Both Fund I and Prime Index provided similar support to other Receivership Entities when necessary as well. As a result, principles of equity warrant and demand that the Receivership Entities, collectively, be aggregated and treated as a “unified scheme to defraud.”¹⁹

26. To assist with determining whether to aggregate the entities, the Receiver employed UHY Advisors to conduct an independent forensic analysis. UHY performed a forensic analysis of (i) J. David Group of Companies, Inc.; (ii) Select Asset Management, LLC; (iii) Fund I; and (iv) Prime Index. For each of these entities, UHY analyzed the accounting records and traced the movement of funds through their respective bank accounts. UHY examined the transactions between these entities as well as transactions that involved other related entities including Select Market Insurance Group, LLC (“SMIG”) and Online Insurance Services, Inc. (“OIS”). UHY focused specifically on the transactions involving Fund I and Prime Index to identify the extent, nature and apparent purpose of the transactions as well as the financial condition of Fund I and Prime Index at or near the time of the transfers. The image below reflects the flow of funds between Fund I and Prime Index with each of the related entities:

¹⁹ See *Commodity Futures Trading Comm'n v. Topworth Int'l, Ltd.*, 205 F.3d 1107, 1110-11 (9th Cir. 2000) (treating three companies as one fund for purpose of paying claims because “each entity appeared to be the alter ego of the other.”); *SEC v. Byers*, 637 F. Supp.2d 166, 180-81 (S.D.N.Y. 2009) (Commodity fund investors alleged they were not similarly situated to real estate funds investors, court when where money raised between funds was commingled, scheme’s principals routinely moved money throughout the corporate family without regard to any corporate formalities, receiver found multiple instances of commingling commodities funds, parent corporation managed all related entities and affiliates separate treatment of companies was inappropriate.).



27. UHY also performed a forensic analysis of Parkway Pawn, a pawn shop located in Dickinson, Texas, that was owned by J. David Salinas. Most of the related party transactions involving Parkway Pawn were with J. David Group of Companies, Inc. Although Parkway Pawn did receive funds directly into its bank account from multiple investors totaling at least \$625,000, these funds were quickly transferred to J. David Group of Companies, Inc. and commingled with the funds of other investors. The books of J. David Group reflect that these funds were subsequently used to pay the expenses and debts of J. David Group of Companies, Inc., pay other investors and transfer funds to related entities as needed.

(1) FUND I (SELECT ASSET FUND I, LLC) ANALYSIS²⁰

28. Fund I conducted 87 transactions with the related entities noted above compared to 874 total transactions from August 2007 through July 2011. UHY's analysis of the detailed transactions revealed that many of the transactions with related entities were conducted in order to move cash to fund operations, to pay investors or to fund investments.

²⁰ The analysis and data included relating to Fund I was prepared and provided by UHY Advisors.

The chart below reflects the flow and amount of funds between Fund I and each of the related entities:

Table 1: Fund I Summary of Receipts and Payments (Related Entities)

Entity	Fund I Received	Fund I Paid	Net
J. David Group of Companies	\$ 1,108,448.12	\$ (545,000.00)	\$ 563,448.12
Select Asset Management, LLC	\$ 1,641,613.91	\$ (1,635,883.00)	\$ 5,730.91
Select Asset Prime Index Fund	\$ 204,000.00	\$ (1,087,937.65)	\$ (883,937.65)
Selected Market Insurance Group, LLC	\$ 788,366.52	\$ (2,490,579.17)	\$ (1,702,212.65)
Online Insurance Services, Inc.	\$ -	\$ (293,200.00)	\$ (293,200.00)
Total:	\$ 3,742,428.55	\$ (6,052,599.82)	\$ (2,310,171.27)

(a) Examples of Transfers Used to Fund Operations of Related Entities.

29. SMIG was an Insurance Marketing Organization (IMO) that secured insurance products from various carriers and introduced these products to distribution channels through which SMIG received an over-ride of commission from the earned premiums. OIS is a wholly owned subsidiary of SMIG, and was acquired by SMIG out of bankruptcy. OIS, a full service Third Party Administrator to various insurance carriers, associations, and other administrators, was acquired as SMIG thought it would complement its business lines well. Both of the entities were partially owned and controlled by J. David Salinas, the primary principal for J. David Group of Companies, Inc., Select Asset Management, LLC, Fund I, and Prime Index. Large dollar transfers were made to SMIG and OIS near the inception of Fund I, apparently to fund operations. The table below reflects the timing and amount of transfers to SMIG and OIS:

Table 2: Fund I – Payments to Select Market Insurance Group and Online Insurance Services, Inc.

Date	Counterparty	Fund I Paid
11/27/2007	Online Insurance Services, Inc.	\$ (145,000.00)
12/17/2007	Online Insurance Services, Inc.	(700.00)
12/17/2007	Online Insurance Services, Inc.	(147,500.00)
2/29/2008	Select Market Insurance Group LLC	(500,000.00)
4/24/2008	Select Market Insurance Group LLC	(100,000.00)
4/29/2008	Select Market Insurance Group LLC	(90,579.17)
5/22/2008	Select Market Insurance Group LLC	(150,000.00)
5/28/2008	Select Market Insurance Group LLC	(650,000.00)
5/29/2008	Select Market Insurance Group LLC	(200,000.00)
12/17/2008	Select Market Insurance Group LLC	(300,000.00)
4/29/2009	Select Market Insurance Group LLC	(200,000.00)
11/10/2009	Select Market Insurance Group LLC	(50,000.00)
12/7/2009	Select Market Insurance Group LLC	(30,000.00)
12/11/2009	Select Market Insurance Group LLC	(70,000.00)
12/18/2009	Select Market Insurance Group LLC	(150,000.00)
Total:		\$ (2,783,779.17)

30. Further dealings with SMIG and OIS during the course of this receivership revealed that neither SMIG nor OIS had the ability to repay the amounts transferred from Fund I. Once these transfers were made to SMIG and OIS, Fund I no longer had sufficient assets to repay investors as early as November 2007. The table below reflects a summary of the assets and liabilities during the periods in which transfers were made to SMIG and OIS.

Table 3: Select Asset Fund I – Assets and Liabilities Balance Summary (Source: Select Asset Fund I Quickbooks Records)

	9/30/2007	12/31/2007	6/30/2008	12/31/2008	6/30/2009	12/31/2009
Total Assets Listed In Quickbooks	\$ 650,174.22	\$ 3,174,775.58	\$ 6,945,056.75	\$ 7,831,105.64	\$ 7,590,845.02	\$ 8,420,936.10
Less:						
SMIG Note Receivable	\$ -	\$ -	\$ (1,700,000.00)	\$ (2,000,000.00)	\$ (2,475,000.00)	\$ (1,995,000.00)
OIS Note Receivable	\$ -	\$ (300,000.00)	\$ (300,000.00)	\$ (300,000.00)	\$ (300,000.00)	\$ (300,000.00)
Total Adjusted Assets:	\$ 650,174.22	\$ 2,874,775.58	\$ 4,945,056.75	\$ 5,531,105.64	\$ 4,815,845.02	\$ 6,125,936.10
Investor Liability ¹	\$ 650,000.00	\$ 3,118,550.00	\$ 6,947,550.00	\$ 7,680,550.00	\$ 7,580,550.00	\$ 7,680,550.00
Other Liabilities	\$ -	\$ 38,009.24	\$ 6,790.95	\$ 137,856.34	\$ 6,763.75	\$ 754,925.12
Total Adjusted Liabilities:	\$ 650,000.00	\$ 3,156,559.24	\$ 6,954,340.95	\$ 7,818,406.34	\$ 7,587,313.75	\$ 8,435,475.12
Total Adjusted Assets - Total Adjusted Liabilities:	\$ 174.22	\$ (281,783.66)	\$ (2,009,284.20)	\$ (2,287,300.70)	\$ (2,771,468.73)	\$ (2,309,539.02)

¹Note: Member's Capital re-classified to Investor Liability for purposes of this analysis.

(b) Examples of Transfers Used to Fund Investments and Pay Investors

31. Fund I also received transfers from related entities to fund investments and pay interest payments to investors. For example, in September 2009, Fund I received a transfer of \$779,905 from J. David Group of Companies, Inc. Had this transfer not been made, Fund I would not have had sufficient cash in the bank to fund investments and make interest payments to Fund I investors. See Table 4 below.

Table 4: Select Asset Fund I – Receipts, Payments, and Cash Balance Excerpt

Date	Description/Counterparty	Fund I Received	Fund I Paid	Cash Balance
08/31/09				\$ 25,601.59
09/01/09	Portfolio Loan Deposit	\$ 20,000.00	\$ -	\$ 45,601.59
09/01/09	J David Group of Companies	\$ 779,905.12	\$ -	\$ 825,506.71
09/01/09	Portfolio Loan Deposit	\$ 3,659.72	\$ -	\$ 829,166.43
09/04/09	Portfolio Loan Investment	\$ -	\$ (70,000.00)	\$ 759,166.43
09/09/09	Portfolio Loan Deposit	\$ 3,293.96	\$ -	\$ 762,460.39
09/10/09	Bank Service Charge	\$ -	\$ (56.00)	\$ 762,404.39
09/10/09	Bank Service Charge	\$ -	\$ (61.00)	\$ 762,343.39
09/11/09	Portfolio Loan Deposit	\$ 4,305.51	\$ -	\$ 766,648.90
09/15/09	Portfolio Loan Investment	\$ -	\$ (74,814.38)	\$ 691,834.52
09/30/09	Interest Income to Fund I	\$ 194.66	\$ -	\$ 692,029.18
09/30/09	Portfolio Loan Deposit	\$ 3,541.67	\$ -	\$ 695,570.85
10/02/09	Select Market Insurance Group, LLC	\$ 19,656.30	\$ -	\$ 715,227.15
10/06/09	Portfolio Loan Deposit	\$ 3,303.67	\$ -	\$ 718,530.82
10/08/09	Select Market Insurance Group, LLC	\$ 19,656.30	\$ -	\$ 738,187.12
10/09/09	Bank Service Charge	\$ -	\$ (32.00)	\$ 738,155.12
10/09/09	Bank Service Charge	\$ -	\$ (73.00)	\$ 738,082.12
10/14/09	Portfolio Loan Investment	\$ -	\$ (20,000.00)	\$ 718,082.12
10/14/09	Interest Payment to Fund I Investor	\$ -	\$ (7,745.97)	\$ 710,336.15
10/14/09	Interest Payment to Fund I Investor	\$ -	\$ (6,553.42)	\$ 703,782.73
10/14/09	Interest Payment to Fund I Investor	\$ -	\$ (36,863.01)	\$ 666,919.72
10/14/09	Interest Payment to Fund I Investor	\$ -	\$ (819.18)	\$ 666,100.54
10/14/09	Interest Payment to Fund I Investor	\$ -	\$ (819.18)	\$ 665,281.36
10/14/09	Interest Payment to Fund I Investor	\$ -	\$ (8,191.78)	\$ 657,089.58
10/14/09	Interest Payment to Fund I Investor	\$ -	\$ (20,540.07)	\$ 636,549.51
10/14/09	Interest Payment to Fund I Investor	\$ -	\$ (4,869.85)	\$ 631,679.66
10/14/09	Interest Payment to Fund I Investor	\$ -	\$ (2,457.54)	\$ 629,222.12
10/14/09	Interest Payment to Fund I Investor	\$ -	\$ (4,915.07)	\$ 624,307.05
10/14/09	Interest Payment to Fund I Investor	\$ -	\$ (2,457.53)	\$ 621,849.52
10/14/09	Interest Payment to Fund I Investor	\$ -	\$ (3,686.30)	\$ 618,163.22
10/14/09	Interest Payment to Fund I Investor	\$ -	\$ (2,457.54)	\$ 615,705.68
10/14/09	Interest Payment to Fund I Investor	\$ -	\$ (98.30)	\$ 615,607.38
10/14/09	Interest Payment to Fund I Investor	\$ -	\$ (4,878.39)	\$ 610,728.99
10/14/09	Interest Payment to Fund I Investor	\$ -	\$ (737.26)	\$ 609,991.73
10/14/09	Interest Payment to Fund I Investor	\$ -	\$ (3,276.71)	\$ 606,715.02
10/14/09	Interest Payment to Fund I Investor	\$ -	\$ (1,335.62)	\$ 605,379.40
10/14/09	Portfolio Loan Deposit	\$ 4,145.79	\$ -	\$ 609,525.19

32. Similarly, Fund I also received funds from related entities in order to fund principal withdrawals from Fund I investors. In August 2009, Fund I received \$70,000 from J. David Group of Companies, Inc. just prior to a principal payment to a Fund I investor. See Table 5 below.

Table 5: Select Asset Fund I – Receipts, Payments, and Cash Balance Excerpt

Date	Description/Counterparty	Fund I Received	Fund I Paid	Cash Balance
08/17/09				\$ 85,630.53
08/18/09	J David Group of Companies	\$ 70,000.00	\$ -	\$ 155,630.53
08/19/09	Investor Withdrawal Payout	\$ -	\$ (70,000.00)	\$ 85,630.53

33. In April 2010, Fund I received \$50,000 from Prime Index the same day it made a loan to a third party. Had the transfer not been made, Fund I would not have had sufficient cash in the bank to fund a loan to a third party. See Table 6 below.

Table 6: Select Asset Fund I – Receipts, Payments, and Cash Balance Excerpt

Date	Description/Counterparty	Fund I Received	Fund I Paid	Cash Balance
04/29/10				\$ 77,659.64
04/30/10	Select Asset Prime Index Fund	\$ 50,000.00	\$ -	\$ 127,659.64
04/30/10	Portfolio Loan Investment	\$ -	\$ (108,888.74)	\$ 18,770.90

(2) PRIME INDEX (SELECT ASSET PRIME INDEX, LLC) ANALYSIS²¹

34. From January 2010 through July 2011, Prime Index conducted 43 transactions with related entities, compared to 287 total transactions. UHY's analysis of the detailed transactions revealed that many of the transactions with related entities were conducted in order to move cash to fund operations, to pay investors or to fund investments. The chart below is a summary of the funds received and paid to related entities:

²¹ The analysis and data included relating to Prime Index was prepared and provided by UHY Advisors.

Table 7: Select Asset Prime Index Fund Summary of Receipts and Payments (Related Entities)

Entity	Prime Index Fund Received	Prime Index Fund Paid	Net
J David Group of Companies	\$ 109,731.51	\$ (400,000.00)	\$ (290,268.49)
Select Asset Management, LLC	\$ 80,000.00	\$ (1,083,323.66)	\$ (1,003,323.66)
Select Asset Fund 1 LLC	\$ 1,087,937.65	\$ (204,000.00)	\$ 883,937.65
Selected Market Insurance Group, LLC	\$ 226,900.00	\$ (175,000.00)	\$ 51,900.00
Total:	\$ 1,504,569.16	\$ (1,862,323.66)	\$ (357,754.50)

(a) Examples of Transfers Used to Fund Operations of Related Entities

35. As reflected in Table 4 above, J. David Group of Companies, Inc. transferred \$779,905.12 to Fund I. Although the cash did not pass directly from Prime Index to Fund I, on the books of Prime Index, this amount (rounded to \$780,000) was attributed to a specific investor and a Note Receivable was recorded from Fund I for \$780,000. On the same day, the Note Receivable from Fund I was adjusted to be a Note Receivable from SMIG. On the books of Fund I, a corresponding reduction of a Note Receivable from SMIG was recorded for \$780,000. In effect, J. David Group of Companies, Inc. transferred investor funds to Fund I resulting in Note Receivable from SMIG to Prime Index Fund of \$780,000 near the inception of Prime Index. This transaction was not properly documented and effectively concealed the movement of money among J. David Group of Companies, Inc., Fund I, Prime Index, and SMIG.

36. The table below reflects the timing and amount of additional transfers to SMIG directly from Prime Index Fund.

Table 8: Select Asset Prime Index Fund – Payments to Select Market Insurance Group

Date	Counterparty	Prime Index Fund Paid
3/11/2010	Select Market Insurance Group LLC	\$ (100,000.00)
7/29/2010	Select Market Insurance Group LLC	(75,000.00)
	Total:	\$ (175,000.00)

37. Further dealings with SMIG during the course of this receivership revealed that SMIG did not have the ability to repay Prime Index. Once these transfers were made to SMIG,

Prime Index no longer had sufficient assets to repay investors as early as October 2009. See Table 9 below.

Table 9: Prime Index– Assets and Liabilities Balance Summary (Source: Select Asset Prime Index Fund Quickbooks Records)

	10/31/2009	12/31/2009	6/30/2010	12/31/2010	6/30/2011
Total Assets Listed In Quickbooks	\$ 790,000.00	\$ 1,430,419.73	\$ 3,943,490.03	\$ 5,436,446.04	\$ 5,467,283.23
Less:					
SMIG Note Receivable	\$ (780,000.00)	\$ (780,000.00)	\$ (810,000.00)	\$ (810,000.00)	\$ (810,000.00)
Total Adjusted Assets:	\$ 10,000.00	\$ 650,419.73	\$ 3,133,490.03	\$ 4,626,446.04	\$ 4,657,283.23
Investor Liability ¹	\$ 790,000.00	\$ 1,422,000.00	\$ 3,947,000.00	\$ 5,389,000.00	\$ 5,401,000.00
Other Liabilities	\$ -	\$ -	\$ 78.88	\$ 60,380.45	\$ 4,156.00
Total Adjusted Liabilities:	\$ 790,000.00	\$ 1,422,000.00	\$ 3,947,078.88	\$ 5,449,380.45	\$ 5,405,156.00
Total Adjusted Assets - Total Adjusted Liabilities:	\$ (780,000.00)	\$ (771,580.27)	\$ (813,588.85)	\$ (822,934.41)	\$ (747,872.77)

Notes:

¹ Member's Capital re-classified to Investor Liability for purposes of this analysis.

(b) Examples of Transfers Used to Fund Investments and Pay Investors

38. In October 2010, Prime Index Fund received a transfer from Fund I of \$7,500 immediately prior to a series of investor interest payments. See Table 10 below.

Table 10: Select Asset Prime Index Fund – Receipts, Payments, and Cash Balance Excerpt

Date	Description/Counterparty	Prime Index Fund Received	Prime Index Fund Paid	Cash Balance
10/22/10				\$ 44,739.38
10/26/10	Interest Payment to Prime Index Fund Investor	\$ -	\$ (6.16)	\$ 44,733.22
10/26/10	Interest Payment to Prime Index Fund Investor	\$ -	\$ (20,189.58)	\$ 24,543.64
10/26/10	Select Asset Fund 1 LLC - Escrow	\$ 7,500.00	\$ -	\$ 32,043.64
10/26/10	Interest Payment to Prime Index Fund Investor	\$ -	\$ (3,402.74)	\$ 28,640.90
10/26/10	Interest Payment to Prime Index Fund Investor	\$ -	\$ (2,835.62)	\$ 25,805.28
10/26/10	Interest Payment to Prime Index Fund Investor	\$ -	\$ (5,671.23)	\$ 20,134.05
10/26/10	Interest Payment to Prime Index Fund Investor	\$ -	\$ (2,835.62)	\$ 17,298.43
10/26/10	Interest Payment to Prime Index Fund Investor	\$ -	\$ (567.12)	\$ 16,731.31
10/26/10	Interest Payment to Prime Index Fund Investor	\$ -	\$ (1,134.25)	\$ 15,597.06
10/26/10	Interest Payment to Prime Index Fund Investor	\$ -	\$ (2,665.48)	\$ 12,931.58
10/26/10	Interest Payment to Prime Index Fund Investor	\$ -	\$ (567.13)	\$ 12,364.45
10/26/10	Interest Payment to Prime Index Fund Investor	\$ -	\$ (2,243.84)	\$ 10,120.61
10/26/10	Interest Payment to Prime Index Fund Investor	\$ -	\$ (192.33)	\$ 9,928.28
10/26/10	Interest Payment to Prime Index Fund Investor	\$ -	\$ (56.71)	\$ 9,871.57
10/26/10	Interest Payment to Prime Index Fund Investor	\$ -	\$ (357.53)	\$ 9,514.04
10/26/10	Interest Payment to Prime Index Fund Investor	\$ -	\$ (240.41)	\$ 9,273.63
10/31/10	Interest Income to Prime Index Fund	\$ 2.56	\$ -	\$ 9,276.19
10/31/10	Interest Income to Prime Index Fund	\$ 2.20	\$ -	\$ 9,278.39
11/03/10	Interest Payment to Prime Index Fund Investor	\$ -	\$ (1,406.47)	\$ 7,871.92
11/03/10	Interest Payment to Prime Index Fund Investor	\$ -	\$ (56.71)	\$ 7,815.21

39. There are numerous instances where Prime Index received funds from related entities in order to fund its investments. On January 12, 2010, near its inception, Prime Index received a transfer of \$973,000 from Fund I. Without this transfer, Prime Index would not have had sufficient cash to pay for its investment with a third party. See Table 11 below.

Table 11: Select Asset Prime Index Fund – Receipts, Payments, and Cash Balance Excerpt

Date	Description/Counterparty	Prime Index Fund Received	Prime Index Fund Paid	Cash Balance
01/07/10				\$ 36,100.00
01/12/10	Select Asset Fund 1 LLC - Escrow	\$ 973,000.00	\$ -	\$ 1,009,100.00
01/13/10	Membership Interest Investment	\$ 1,000.00	\$ -	\$ 1,010,100.00
01/13/10	Third Party Investment	\$ -	\$ (1,000,000.00)	\$ 10,100.00

40. Prime Index Fund also received funds from Select Asset Management, LLC to fund investment activities. In April 2010, Prime Index Fund received a transfer in order to fund another third party investment. Without this transfer, Prime Index Fund would not have had sufficient cash to pay for its investment with a third party. See Table 12 below.

Table 12: Select Asset Prime Index Fund – Receipts, Payments, and Cash Balance Excerpt

Date	Description/Counterparty	Prime Index Fund Received	Prime Index Fund Paid	Cash Balance
04/12/10				\$ 282,065.69
04/13/10	Select Asset Management, LLC	\$ 80,000.00	\$ -	\$ 362,065.69
04/14/10	Third Party Investment	\$ -	\$ (350,000.00)	\$ 12,065.69
04/14/10	Bank Service Charge	\$ -	\$ (15.00)	\$ 12,050.69

41. Based on the foregoing, the Court should disregard the separate identities of the Receivership Entities for purposes of distribution. The Receiver's forensic analysis, as highlighted above, clearly shows that the Fund I and Prime Index were part of a single "unified scheme to defraud" and could not operate or stay afloat without the improper benefit and assistance from the other Receivership Entities. The same is true of the other Receivership Entities as well. This Court has a greater authority to disregard the corporate form in the context of a distribution because the Court may exercise its broad equitable powers to approve

any distribution plan that is “fair and reasonable.”²² Here, equity demands the Receivership Entities be aggregated and collapsed and all funds derived from such be pooled together for the common benefit of all those defrauded.

V.
OVERVIEW OF PROPOSED DISTRIBUTION PLAN

42. The terms and conditions of the Receiver’s proposed distribution plan addressing both an interim and final distribution is attached hereto as Exhibit “A” (the “Plan”). An interim distribution is recommended to both begin the return of money to claimants who have been affected by the underlying fraud and to reduce the negative effect of the uncertainty as to when the final distribution will be made and this matter closed.

43. The Plan sets forth procedures that the Receiver and his team intend to employ to reconcile competing claims to recovered funds and the distribution of recovered funds. The plan incorporates and fully employs the legal and equitable principles relied upon and discussed in the Motion. The Receiver fully intends and will make his best efforts to adhere to the procedures set forth in the Plan. Formal adoption the Plan permits the Receiver to obtain the essential cooperation of all involved parties. While the Plan will principally be utilized to provide direction to the Receiver, it will also allow the Receiver a means to remain consistent with any explanations and directions that may need to be given to involved parties as to the wishes of the Court relative to the disposition of assets.

44. The Plan proposes an interim distribution following the net investment methodology in the amount of \$10,000,000.00 to be paid promptly following approval (the “Interim Distribution”). Only claims approved by the Court, whether already approved or those that will be approved in the near future, will share and benefit from the Interim

²² *SEC v. Wealth Mgmt., LLC*, 628 F.3d 323, 332-33 (7th Cir. 2010); *SEC v. Wang*, 944 F.2d 80, 85 (2d Cir. 1991); *SEC v. Byers*, 637 F. Supp.2d 166, 174 (S.D.N.Y. 2009) (quoting *Wang*, 944 F.2d at 81).

Distribution. The total dollars distributed to each claimant will be determined based on a *pro-rata* calculation. To calculate the value of such distribution, the Receiver will employ a formula in which the numerator is \$10,000,000 and the denominator is the total sum of all approved investor claim amounts *plus* the actual asserted claim amounts that have not yet been approved by the Court. To the extent that unapproved claims are adjusted to a lower sum at the time they are approved by the Court, the distribution amount payable to that claimant will be reduced by the same percentage. It is possible under this scenario that the full \$10,000,000 amount will not be fully paid out with the Interim Distribution. Any funds from the Interim Distribution not distributed will be distributed at the time of final distribution.

45. The Plan proposes a final distribution premised on the same *pro-rata* basis and formula outlined above. Final distribution will occur when all assets have been liquidated and the Court approves both the final distribution and that no further investigation or pursuit of additional claims or assets is warranted.

46. The Plan also addresses certain routine housekeeping matters in order to ensure equal and consistent treatment of objections, reviews of evidence and handling of reserves.

47. The Receiver submits that the adoption of the Plan is in the best interest of the estate, will permit the efficient management of the claims determination and distribution process, as well as the ultimate wind up of the receivership. Based on the foregoing, the Receiver prays the Plan be approved in accordance with the equitable and administrative procedures provided herein.

VI. **CONCLUSION**

WHEREFORE, the Receiver prays that the Court enter an Order in the form submitted with this Motion, or for substantially the same relief in such form as the Court may find just and proper.

DATED: September 17, 2013

Respectfully submitted,

By: /s/ Steven A. Harr

Steven A. Harr

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CERTIFICATE OF CONFERENCE

On September 6, 2013, I conferred with Tim McCole and he stated that the Securities and Exchange Commission is not opposed to the relief sought in this motion. Also on September 6, 2013, the Receiver posted the Motion on his website (selectassetreceiver.com) for comment by affected investors for ten (10) days and has not received any objections.

/s/ Sameer S. Karim

Sameer S. Karim

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was filed electronically with the Clerk via the CM/ECF system. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system.

Houston, Texas, this 17th day of September 2013.

/s/ Sameer S. Karim

Sameer S. Karim

EXHIBIT A

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

SECURITIES AND EXCHANGE §
COMMISSION, §
§
PLAINTIFF, §
§
vs. §
§
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. §

CIVIL ACTION NO. 4:11 CV - 02830

RECEIVER'S PLAN FOR DISTRIBUTION TO CLAIMANTS

Respectfully submitted,

/s/ Steven A. Harr

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RECEIVER & COUNSEL FOR
RECEIVERSHIP ENTITIES

PREAMBLE

This receivership is an ancillary proceeding commenced at the request of the Securities and Exchange Commission. The Receiver has now recovered sufficient assets to merit the undertaking of an interim distribution. The Plan¹ below will also govern any future and final distributions of all assets in this proceeding.

The Receiver has been engaged in a Claims review process for approximately fourteen months. Currently, the Claims process is not complete. Irrespective of whether the Plan for distribution is approved by the Court, claims will continue to be reviewed, processed, approved and/or disputed.

The Plan set forth below will permit the Receiver to make an interim distribution. In addition, the Plan will serve as the guide for all future distributions without the need to file a second plan for distribution at the end of the receivership proceeding.

The Receiver has determined that the Receivership Assets described in the Receiver's Interim Reports² were derived from the securities fraud in question. The Receiver has further concluded that the Receivership Assets constitute the corpus of a constructive trust, whose assets should be either utilized for the benefit of the trust beneficiaries and/or returned to them.

The Receiver has prepared the Plan in order to formalize the procedures that he and his team intend to employ to: (i) reconcile competing Claims to the recovered funds; (ii) distribute recovered funds; and (iii) assist with the ongoing distribution of recovered Investor Funds. The Receiver is presenting a formal plan to the Court for its consideration because of the large number of involved beneficial interest holders, the amount of the assets recovered, and the difficulty in estimating the length of time it will take to resolve all pending issues and complete the liquidation of all the assets in the Receivership Estate. In seeking to effect a return of the recovered Receivership Assets to the beneficial owners, the Receiver will make his best efforts to adhere to the procedures set forth in the Plan.

Formal adoption of the Plan permits the Receiver to obtain the orderly cooperation of all involved parties. Although this Plan is principally designed to provide direction to the Receiver, it also allows the Receiver to accurately provide an explanation to all involved as to the wishes of the Court relative to the disposition of Receivership Assets. Accordingly, persons failing to follow the direction of the Receiver made in furtherance of the provisions of the Plan will be acting in contravention of the Court's own direction, and may be subject to appropriate sanction.

The Plan seeks to make a prompt distribution of a portion of the constructive trust assets back to the victims based upon the net cash losses of those victims. The Plan generally treats investors the same, although there are some Claims that may be equitably subordinated. The Plan also addresses certain routine housekeeping matters in order to ensure, to the extent

¹ All capitalized terms shall have the meaning set forth in Article V below.

² At present there are seven such reports available for review at www.selectassetreceiver.com.

possible, equal and consistent treatment of objections, reviews of evidence, handling of reserves, and parallel proceedings.

ARTICLE I
CLAIMS REVIEW AND DETERMINATION

Section 1.01: CLAIMS PROCESS AND ACKNOWLEDGMENT. On September 16, 2011, the Receiver filed his Unopposed Motion to Establish Claims Procedure Plan and Approve Claim Form (Dkt# 23) and on September 20, 2011 the Court approved the Claims process and Claims Form (Dkt# 24). Once sufficiently reliable financial information was obtained, the Receiver engaged in the Court approved Claims process through which those negatively affected by this securities fraud have made Claims against the Receivership Assets. This has been ongoing for approximately fourteen months. Claims have been submitted and each person who has made a Claim has been provided with a Claims Acknowledgment that includes the date of the Receiver's receipt of the Claim and the Claim Number.

Section 1.02: DISCRETION OF RECEIVER. The Receiver shall, in the exercise of his sole discretion, determine whether a Claim should be approved, in whole or in part, or denied, or subordinated, and what information, if any, to require before approving or denying a Claim. Claims shall be reviewed and approved, denied or subordinated based upon the Net Cash Loss, if any, of the Claimant. Before a Claim can be paid by the Receiver pursuant to the Plan, it must be approved by the Court.

Section 1.03: COLLECTION OF SUPPORTING DOCUMENTS. All records within the care, custody or control of any Claimant or Broker (including bank records) that pertain in any fashion to the solicitation and/or transfer of Investor Funds shall be considered Receivership Records, and shall be turned over to the Receiver upon receipt of notice of this provision and the Order Appointing Receiver.

Section 1.04: NOTICE OF CLAIMS DETERMINATIONS. As the Receiver determines that Claims should be approved, approved in part, denied, or that such determination should be revised, he shall send a Notice of Claims Determination to the involved Claimant(s) via mail to the address given on the Claim Form, and shall post conspicuously on the Receiver's Website a running list of all Claims Determinations, including on such list: (1) the Claim Number; (2) the class(es) set forth in the Plan assigned by the Receiver; and (3) the amount determined for approval, if any. This notice procedure shall be sufficient for all purposes, including for any and all potentially interested Persons.

Section 1.05: OBJECTIONS TO CLAIMS DETERMINATIONS. Any Person seeking to contest a claims determination shall file with the Receiver an Objection within twenty (20) days of the date of the posting of the Notice of Claims Determination. By filing such an Objection, any such Person shall be deemed to have submitted himself or herself to the jurisdiction of this Court, and shall be considered a party for purposes of discovery as permitted by the Federal Rules of Civil Procedure. A Person filing an Objection shall be entitled to notice pursuant to Rule 21 of the Federal Rules of Civil Procedure, but only with respect to the adjudication of such Objection and the Claim to which the Objection is directed. The Receiver may consider any Objections for

ten business days, and may attempt to resolve the Objection during that period. Thereafter, the Objector may file the Objection with the Court. The Objection shall be treated as an ancillary proceeding under this cause number.

ARTICLE II **PAYMENT OF CLAIMS**

Section 2.01: **PRIORITY OF DISTRIBUTIONS.** Determined Claims shall be paid from the Receivership Assets. The Receiver is hereby further authorized to distribute Receivership Assets (in the form of a check made payable to the Claimant and sent via first-class mail to the Claimant using the information listed on the Claim) in the following order of priority:

Class 1 - Timely, Verifiable Claims - Good Cause Shown. Timely claims shall be acceptable in one of two forms. The first acceptable form is (a) Claims submitted with documents sufficient to show the source of the deposited funds, amounts and dates funds were deposited and the amounts and dates of all withdrawn funds. The second acceptable form is (b) Claims for which the Claimant represents all documentation in the possession of the Claimant has been submitted, but which nonetheless are insufficient to qualify as a Claim under subsection (a) above. In support of Claims under subsection (b), the Receiver may obtain the missing records, or in his sole discretion determine that such Claims are reasonably and adequately supported by the documentation provided. Claimants are encouraged to assist the Receiver to obtain documents sufficient to verify their Claims. The Receiver is expressly authorized to use reasonable efforts to obtain such verifying information. Brokers are hereby directed to provide supporting documentation, so as to permit verification without additional administrative expense, and an accounting that sets forth all transfers of investor funds through accounts maintained by such Broker.

Class 2 - De Minimis Claims. Any Determined Claim under \$1,500.

Class 3 - Late and/or Unverified Claims. Claims submitted after the Claims Bar Date and/or any Claim or any part of a Claim that is either not submitted or not sufficiently supported to qualify as a Class 1 Claim. As to unverified claims, the Receiver shall reasonably promptly send the Claimant a notice of the nature of the claim deficiency. The Receiver has no obligation to pay Class 3 Claims, but may do so from funds remaining, if any, after all Class 1 and 2 claims are satisfied.

Class 4 - Trade Debt. Claims submitted for debts incurred in the ordinary course of business, such as utility bills, business expenses, and the like. These claims shall not be paid unless and until Classes 1-3 herein are fully paid.

Class 5 - Subordinated Claims. Claims made by persons who substantially assisted in the fraud scheme are hereby declared equitably subordinated. If the Receiver reasonably determines, based upon available evidence, that the Claimant substantially assisted in the fraud scheme, then the Receiver shall assign the Claimant Class 5 status. Members of this class shall not be paid unless Classes 1-4 above are fully paid.

Section 2.02: DISTRIBUTIONS TO BE MADE FROM RECEIVERSHIP ASSETS. In making distributions of Receivership Assets as authorized by this Article or any other order of this Court, the Receiver may utilize any Receivership Asset. If assets are transferred by agreement of the holder, trustee, bailee, bank or record owner thereof, they shall be deemed Receivership Assets. Likewise, whenever assets are transferred to the Receiver pursuant to an order of any court or legal authority in any jurisdiction, such assets shall be deemed Receivership Assets.

Section 2.03: DISTRIBUTIONS; ACCRUAL PERMITTED BUT NOT REQUIRED. The Receiver has made his best efforts to notify all potential Claimants of this proceeding and the Claims process. As the process for review and approval or rejection of Claims has not been completed, the Court expressly authorizes an interim distribution of Receivership Assets to the Determined Claims, as of the date of the order approving this plan and to those Determined Claims that are approved after the date of the Order approving this plan. All such interim and final distributions shall be paid on a pro-rata calculation considering the amount of the Receivership Assets to be distributed and the amount of the Determined Claims to be paid. The Court expressly approves an interim distribution in the amount of \$10,000,000.00. Thereafter, once the Receiver determines that no further assets are likely to be recovered, he may apply for discharge and thereafter make a final distribution of all remaining assets to the holders of all Determined Claims, pro-rata, from the remaining Receivership Assets and pursuant to the priority of this plan, withholding only such administrative reserves that the Court may allow. The Court expressly authorizes the Receiver to pay Determined Claims according to the terms of this Article without regard for the possibility that Claims may, with good cause, be presented or supported after the Claims Bar Date. The Court does not expect or order the Receiver to have accrued Receivership Assets to pay Claims filed after the Claims Bar Date. Reasonably promptly after the Claims Bar Date, the Receiver, in his sole discretion, may reserve Receivership Assets for Class 2-5 claims, based upon the gross Class 1 Claims presented and/or for potential administrative expenses.

Section 2.04: PAYMENT EFFECTS RELEASE. If a Determined Claim is paid by the Receiver (in whole or in part) and no objection thereto is received as provided in the preceding section, then any and all claims, demands, rights, and causes of action of any nature whatsoever, whether arising at law or in equity, known or unknown, asserted or unasserted, for all damages (whether actual or punitive, known or unknown, latent or patent, foreseen or unforeseen, direct or indirect or consequential, matured or unmatured, and accrued or not accrued), and debts, and liabilities of whatever nature that are or could be asserted by the Claimant or any other person against the Receiver or his agents, the SEC or any Defendant or Relief Defendant, or any Receivership Asset are hereby discharged, released, extinguished, and satisfied. By effecting notice of approved Determined Claims according to the terms of this Plan, the Receiver shall be deemed to have provided reasonable and sufficient notice to all Persons, and neither the Receiver nor any Person accepting Receivership Assets from the Receiver shall have any liability to any person to return any assets used for payment or satisfaction of a Determined Claim, nor to compensate any person in any respect for having paid or otherwise satisfied a Determined Claim, nor for any other action taken in good faith under or relating to the Plan or arising out of the processing of any Claim, including, but not limited to, any act or omission in connection with or arising out of the administration of Claims or the Plan or the Receivership

Assets to be distributed hereby; except that, the Receiver shall be liable for willful misconduct found by the Court. In the event of any claim being made against the Receiver for such matters, whether or not willful misconduct is alleged, the Receiver shall be entitled to full and complete indemnity and a defense by counsel of his choice, payable as any other professional expenses herein. Notwithstanding anything in this plan or specifically this Section 2.04 to the contrary, nothing contained herein is intended to release or discharge any restitution order entered by any court against Brian Bjork.

Section 2.05: RESIDUAL CREDITOR – U.S. TREASURY. The Receiver's primary function is to marshal Receivership Assets for the SEC and this Court, including its own claims herein. The Receiver is entitled under the Plan, however, to resolve Claims and to distribute Receivership Assets to Claimants. The Receiver shall hold any residual funds for the benefit of the United States Treasury until such time as they may be transferred to same with the agreement of the SEC.

ARTICLE III **PARALLEL AND RELATED PROCEEDINGS**

Section 3.01: CLAIMS OF OTHER CREDITORS AND ACTIONS TO RESOLVE OTHER CLAIMS OR OTHER DISPUTES INVOLVING RECEIVERSHIP ASSETS. Claims made by Persons asserting security interests, attachments, liens, or encumbrances in specific Receivership Assets may be resolved by agreement or by contested motion submitted to the Court or in accordance with this paragraph. Claims of such Persons may be paid first, without regard to any other provision of this Plan, but only to the extent of such interest. In the event that Claims are not resolved by agreement, the Receiver is hereby expressly authorized to institute legal proceedings and to seek to join parties with any claim to any Receivership Asset, wherever situated. In such an action, the Receiver's claim to actual or alleged Receivership Assets shall be given the same priority as a judgment creditor obtaining a judgment on the date that the Receiver was appointed, as such is the date when this Court took exclusive jurisdiction over all Receivership Assets. Any court in which the Receiver shall institute proceedings, or intervene in on-going proceedings, may transfer consideration of all or any part of such action to this Court. Notwithstanding the foregoing, a valid attachment, lien, encumbrance or security interest that presents itself may be settled and paid ahead of any Class payment herein.

Section 3.02: INTERPLEADER – RECEIVER AS STAKEHOLDER. The Receiver is hereby expressly authorized to receive and to hold separate and apart from other Receivership Assets any assets tendered voluntarily to the Receiver by any person in the same fashion as would the Clerk of the Court in a case where assets are interpled or otherwise deposited into the registry of the Court, and to refrain from commingling such assets with Receivership Assets otherwise available for distribution under this Plan. The Receiver is authorized to settle out of such assets any claims thereto. The Receiver is further authorized to apply to this Court for a determination as to the ownership of any such assets, and to join any parties necessary to effect such a determination.

Section 3.03: EFFORTS TO RECOVER INVESTOR FUNDS. The Receiver may exercise his discretion as to whether to expend Receivership Assets to recover any Investor Funds from wherever they may presently be. In the event that the Receiver concludes that a substantial likelihood exists that such expenditure may cause a net loss to the Receivership Estate, the Receiver may retain counsel (other than the Receiver's own firm) to pursue such Investor Funds and/or any other claim belonging to the Receivership Estate on a contingent fee basis on terms no less favorable than payment to counsel of one-third of the gross recovery. The Receiver may initiate any proceeding in any jurisdiction as may be necessary, and further may sue any person before this Court to enforce the constructive trust that the Court finds exists.

ARTICLE IV **CONFLICT WITH OTHER ORDERS**

Section 4.01: OTHER ORDERS NOT ABROGATED. Nothing in this Plan shall abrogate any other Order of the Court relative to distributions made by the Receiver. Rather, this Plan is designed to supplement the powers granted to the Receiver. Accordingly, the fees and expenses of the Receiver and his professionals shall continue to be addressed separately and paid from any Receivership Assets pursuant to the Agreed Order Appointing Receiver, but such distributions shall now be entitled to the releases provided in the Plan.

ARTICLE V **DEFINED TERMS**

All capitalized terms shall have the meanings as stated below:

Section 5.01: "BAR DATE FOR CLAIMS" or "Claims Bar Date" refers to a date yet to be determined by the Court but which will be determined by separate Order.

Section 5.02: "BROKER" refers to any person who effected an investment in any Defendant for another, but does not include a bank.

Section 5.03: "CLAIM" refers to any demand made in writing that is received by the Receiver from any Person that demands payment from Receivership Assets. Claims that do not conform to the Claims Procedure Order may be considered by the Receiver, in his sole discretion, or as otherwise permitted by the Plan, but the Receiver is not obligated to consider such Claims.

Section 5.04: "CLAIM NUMBER" refers to the number assigned to a Claim by the Receiver as reflected on the Claims Acknowledgement.

Section 5.05: "CLAIMANT" refers to a Person who asserts a Claim in this case.

Section 5.06: "CLAIMS ACKNOWLEDGMENT" is a document sent to a Claimant at their address as specified on their Claim, which provides the date of the Receiver's receipt of the Claim and a Claim Number. A Claim lacking a complete or incorrect return address shall be deemed defective, and may be wholly disregarded by the Receiver.

Section 5.07: "DETERMINED CLAIM" refers to a Claim designated on the Receiver's Website as a Claim that has been approved, approved in part, or denied, or a Claim determined by separate Order of the Court.

Section 5.08: "CLAIMS FORM" means the form to be utilized to assert a Claim as authorized and approved by this Court.

Section 5.09: "INVESTOR FUNDS" means all funds held at any time by any Defendant and the proceeds thereof and any funds commingled with such funds or proceeds thereof.

Section 5.10: "NET CASH LOSS" refers to the amount the Claimant transferred to any Broker or Defendant less any value received back from any Broker or Defendant prior to the institution of this Receivership. Loans made to any Claimant that have not been repaid shall not be included in the calculation of Net Cash Loss and shall be repaid according to their contract terms.

Section 5.11: "NOTICE OF CLAIMS DETERMINATION" refers to a document sent to a Claimant at their address as specified on their Claim, which provides the Claim number assigned by the Receiver as stated in the Claims Acknowledgment, and the amount for which the Claim has been approved, or a statement that the Claim has been denied.

Section 5.13: "OBJECTION" means a written document received by the Receiver which also contains the objector's name, address, and telephone number, states the nature of the objection, and is signed under penalty of perjury.

Section 5.14: "PLAN" refers to this Plan for Distribution.

Section 5.15: "PERSON" means any natural person, corporation, partnership, association, trustee, agent, or other entity of any kind.

Section 5.16: "RECEIVER" refers to Steven A. Harr, Receiver, appointed pursuant to this Court's Unopposed Order Appointing Receiver.

Section 5.17: "RECEIVER'S WEBSITE" refers to www.selectassetreceiver.com.

Section 5.18: "RECEIVERSHIP ASSETS" refers to the assets defined as Receivership Assets in this Court's Unopposed Order Appointing Receiver and any subsequent order directing and/or authorizing the recovery by or turnover of assets to the Receiver.

Section 5.19: "RECEIVERSHIP ESTATE" refers to the Receivership Assets that have been or may be collected by the Receiver.

Section 5.20: "SEC" refers to the United States Securities and Exchange Commission.

ARTICLE VI
RETENTION OF JURISDICTION

Section 6.01: **EXCLUSIVE JURISDICTION.** This Court has taken jurisdiction, and shall continue to retain exclusive jurisdiction, over the Receiver, the Receivership and all Receivership Assets. Accordingly, in determining whether a Claim or any portion thereof is an approved and thus a Determined Claim, the Receiver may, but shall not be required to, consider (nor shall the Receiver be subject to) any judicial determination by any court, tribunal, agency or authority whatsoever (other than this Court) rendered as to any Receivership Asset from and after the institution of this Receivership, unless this Court directs otherwise. No action taken by or against the Receiver with regard to any pending matter in any other court shall be deemed to have terminated, limited, reduced, waived, or relinquished this Court's exclusive jurisdiction.

Section 6.02: **CONTINUING JURISDICTION.** The Plan and the Order approving the Plan is not, and is not intended to be, and therefore shall not be deemed to be either a final adjudication of this matter or a termination, limitation, reduction, waiver or relinquishment of this Court's exclusive jurisdiction with regard to all Receivership Assets and all matters in controversy in this case. This Court shall continue to have and retain exclusive jurisdiction over all matters existing or arising in this Receivership or related in any way thereto, including, but not limited to, all matters relating to approving or disapproving Claims, making Distributions on Determined Claims, and locating, recovering, settling claims to, and liquidating Receivership Assets.

