

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 UNOPPOSED FIRST MOTION TO MODIFY PREVIOUSLY APPROVED CLAIMS

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

COMES NOW, Steven A. Harr (“Receiver”), the Receiver appointed by the Court in these proceedings, and files this *Unopposed First Motion to Modify Previously Approved Claims*, and in support of such would respectfully show the Court the following:

I.
FACTUAL BACKGROUND

1. On August 1, 2011, the Securities and Exchange Commission (“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 the Receiver (the “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").

2. The Receiver was authorized to have complete and exclusive control, possession, and custody of all Receivership assets and Receivership records of Defendants. Receivership Assets and Receivership Records were defined in the Order as "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 [Receivership Entities] and all entities they own or control . . ., 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 [Receivership Entities] or issued by [Receivership Entities] and in possession of any agent or employee of the [Receivership Entities]."1

3. The Receiver has been acting and fulfilling his duties as Receiver since his appointment and has conducted various investigations of the Receivership Entities with the intent to marshal the Receivership assets for the benefit of the Receivership Entities' investors and creditors. These efforts have also included review of corporate records, forensic accounting analysis, records from various legal counsel from the Receivership Entities, and forensic tracing.

II. **INTRODUCTION**

4. In addition to the tasks stated above, the Receiver has the responsibility for resolving claims of investors and third parties against assets of the Receivership Estate. The Receiver and his staff have reviewed the claim forms and the supporting information since the

¹ Order Appointing Receiver, ¶1.

claims process was established. The court-approved claim form requested information necessary to permit the Receiver to evaluate investor claims.² The Court approved both the claim form and the claims procedures plan.³

5. Substantial efforts have been made to establish an accurate understanding of the financial records of the Receivership Entities so that the claims asserted could be cross checked against the records of the company. Based on the information submitted thus far, the Receiver has previously filed four motions to approve claims. All of these motions have been granted.

6. Until recently, the Receiver has maintained separate books of accounting, assets and claims for each of (a) J. David Financial / Group / Parkway Pawn, (b) Select Asset Fund I LLC and (c) Select Asset Prime Index Fund LLC. As a result of the substantial completion of the Receiver's investigation in this matter, the Receiver requested that the Court collapse all of the receivership entities into a single common fund. This request, as the foundation for his plans for an interim distribution and the final distribution, has been granted by the Court. When the collapse occurred, certain of the previously approved claims against Select Asset Fund I LLC and Select Asset Prime Index Fund LLC had to be re-evaluated based on the determination that these funds were likewise insolvent at a very early stage in their existence and thus payments that had been made to investors in those funds needed to be treated as debits against the claims asserted. These adjustments are necessary to allow the Receiver to treat all investor claims in a common fashion.

7. Most of the claims needing this adjustment are listed on the attached Exhibit "A". Investors who filed the claims on the attached Exhibit "A" have been contacted, the situation explained, their consent to the change obtained and their claims reduced to achieve

² See Granted Agreed Order Establish Claims Procedure and Claim Form (DKT #24).

³ *Id.*

common treatment among the investors. The Receiver now asks the Court to modify these previously approved claims to achieve this end.

8. The attached as Exhibit "A" is a list of the claim numbers and the newly modified amounts for these claims. The Receiver requests that the Court approved these modifications so that all investors claims will be resolved on a common basis and so that the pro-rata distributions of the Receiver will treat all investors fairly.

III.
CONCLUSION

9. The Receiver requests that the claims listed in Exhibit "A" be approved by the Court for later payment pursuant to the plan approved by the Court.

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.

DATED: October 28, 2013

Respectfully submitted,

By: /s/ Steven A. Harr

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CERTIFICATE OF CONFERENCE

On October 28, 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.

/s/ Steven A. Harr _____

Steven A. Harr

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 28nd Day of October 2013.

/s/ Steven A. Harr _____

Steven A. Harr

EXHIBIT A

EXHIBIT A

Claims Modification

Select Asset Management, LLC et al.

10/28/2013

<u>Claim #</u>	<u>Previously Approved Claim Amount</u>	<u>Modified Claim Amount</u>
SAA-00002	\$ 143,700.00	\$ 90,643.71
SAA-00007	\$ 226,000.00	\$ 215,802.14
SAA-00008	\$ 272,000.00	\$ 220,083.45
SAA-00012	\$ 1,054,670.41	\$ 822,084.19
SAA-00019	\$ 750,000.00	\$ 715,880.12
SAA-00020	\$ 250,000.00	\$ 236,407.53
SAA-00021	\$ 250,000.00	\$ 236,407.53
SAA-00082	\$ 20,000.00	\$ 16,018.08
SAA-00083	\$ 125,000.00	\$ 122,328.77
SAA-00084	\$ 125,000.00	\$ 122,351.03
SAA-00085	\$ 100,000.00	\$ 94,711.37
SAA-00086	\$ 50,000.00	\$ 40,570.55
SAA-00087	\$ 50,000.00	\$ 48,304.79
SAA-00088	\$ 20,000.00	\$ 19,358.90
SAA-00100	\$ 100,000.00	\$ 77,664.22
SAA-00113	\$ 10,000.00	\$ 8,661.18
SAA-00122	\$ 400,000.00	\$ 309,010.62
SAA-00125	\$ 300,000.00	\$ 282,875.34
SAA-00130	\$ 1,000,000.00	\$ 897,952.00
SAA-00151	\$ 150,000.00	\$ 146,393.84
SAA-00166	\$ 235,000.00	\$ 225,004.45
SAA-00179	\$ 100,000.00	\$ 88,923.29
SAA-00191	\$ 10,000.00	\$ 9,350.82
SAA-00196	\$ 10,000.00	\$ 9,350.82
SAA-00199	\$ 20,000.00	\$ 18,807.12
SAA-00201	\$ 30,000.00	\$ 28,385.48
SAA-00204	\$ 50,000.00	\$ 38,862.67
SAA-00207	\$ 5,000.00	\$ 4,719.52
SAA-00215	\$ 100,000.00	\$ 97,880.82
SAA-00217	\$ 100,000.00	\$ 92,289.04
SAA-00219	\$ 200,000.00	\$ 167,517.81
SAA-00222	\$ 150,000.00	\$ 121,632.48
SAA-00250	\$ 200,000.00	\$ 193,268.49
SAA-00251	\$ 300,000.00	\$ 248,651.71
SAA-00262	\$ 136,562.00	\$ 134,004.03
SAA-00267	\$ 94,500.00	\$ 90,947.47
SAA-00268	\$ 24,500.00	\$ 24,299.30
SAA-00269	\$ 33,000.00	\$ 32,229.92
SAA-00270	\$ 50,000.00	\$ 38,809.34
SAA-00285	\$ 45,000.00	\$ 37,547.26
SAA-00291	\$ 100,000.00	\$ 97,657.53
	41 claims for	<u>\$ 6,523,648.73</u>

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**ORDER GRANTING RECEIVER’S UNOPPOSED FIRST MOTION TO MODIFY
PREVIOUSLY APPROVED CLAIMS**

This matter is before the Court on the Receiver’s *Unopposed First Motion to Modify Previously Approved Claims* (the “Motion”). Because the Court is of the opinion that the Receiver’s Motion is well-taken, it is hereby **GRANTED**.

IT IS HEREBY ORDERED that the claims submitted by the Receiver in the Motion are approved based on the amounts listed in Exhibit “A” to the Motion.

SIGNED this _____ day of _____, 2013.

HONORABLE KEITH P. ELLISON