

**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.