CAUSE NO. D-1-GN-24-001018

SAJID MAQSOOD, TRUSTEE OF THE SAJID & JOAN M. MAQSOOD REVOCABLE TRUST, ET. AL.,	§	IN THE DISTRICT COURT
	§	TRAVIS COUNTY, TEXAS
v.	§	
PRIDE OF AUSTIN HIGH YIELD FUND I, LLC, ET. AL.	§	201ST JUDICIAL DISTRICT

RECEIVER'S AMENDED MOTION TO APPROVE DISTRIBUTION PLAN

Gregory S. Milligan, in his capacity as the Court-appointed receiver ("***Receiver***") for Defendant Pride of Austin High Yield Fund I, LLC ("***POA***" or the "***Fund***"), pursuant to the *Agreed Order Appointing Receiver* dated April 30, 2024 and amended May 6, 2024 (the "***Receivership Order***"), files this *Amended Motion to Approve Distribution Plan* (the "***Motion***" or the "***Plan***") and would respectfully show the Court as follows:

I. SUMMARY OF PLAN[1]

1. This Plan establishes the equitable framework for distributing proceeds from the monetization of receivership assets, consisting primarily of outstanding note payable collections, real estate sales, and net winner litigation recoveries. The Receiver's Forensic Report, issued April 15, 2025, determined that POA operated as a *Ponzi* scheme from its inception, with distributions paid from invested capital rather than profits, underscoring the need for an equitable distribution plan.

[1] Capitalized terms not otherwise defined in this section shall have the meaning ascribed to them in the body of the Motion.

2. On May 20, 2025, the Receiver filed his *Original Motion to Approve Distribution Plan* (the "***Original Plan***"). The Original Plan contemplated that Class 4 Membership Judgment Holders, being ten investors with judgments from pre-receivership lawsuits totaling $5.6 million, would be subordinated to Class 2 Investor Claims. Since the filing of the Original Plan, the Receiver has entered into settlement agreements (which remain subject to this Court's approval) with all ten of the Membership Judgment Holders. For the reasons detailed herein, as well as in the Receivers' *Motions to Approve Settlement Agreements*, the Receiver believes that the settlement agreements are in the best interest of the estate because they (i) eliminate the risk that the Receiver's proposed subordination of the Membership Judgment Holders' judgments are not subordinated (and therefore reduce the distributions to the Investor Claimants by as much as $5.6 million); and (ii) eliminate the risk and delay of potential appeals of an order approving the Distribution Plan by the Membership Judgment Holders. As part of the Settlement Agreements, the Receiver has agreed to amend the Distribution Plan to create a class for certain of the Settling Judgment Holders, which will be Class 2 and will be treated *parri passu* with Class 1.

3. The rising tide methodology, proposed for Class 3 Investor Claims, equalizes the percentage recovery of each investor's principal by crediting pre-receivership withdrawals against their principal investment, ensuring those with the lowest current recovery percentages (*e.g.*, 0%) receive distributions before those who recovered more pre-receivership (*e.g.*, net winners). This method is widely favored by receivers and courts across the country as the most equitable and prioritizes limited funds to investors who lost the most.

4. For the reasons detailed below, the Court should approve this Plan.

II. BACKGROUND

A. THE FUND AND THE EVENTS LEADING TO THE APPOINTMENT OF THE RECEIVER

5. POA is a Texas limited liability company. Its manager is CCG Capital Group, LLC ("***CCG***"). POA has more than 200 members, each of whom have subscribed to purchase membership interests in POA in accordance with the terms and conditions of a Subscription Agreement, POA's Operating Agreement, and the Private Placement Memorandum dated December 1, 2008. POA raised investor capital for the purpose of making and arranging residential, commercial, and construction loans to the general public, acquiring existing loans, and selling loans, all of which were to be secured by deeds of trust and mortgages on real estate or personal property.

6. Beginning in 2023, POA was hit with an onslaught of investor lawsuits after POA ceased distributions and failed to adequately communicate with investors. At least 36 different lawsuits were filed against POA prior to the appointment of the Receiver in this action. Most of the lawsuits also included claims against CCG as well as its principal Robert Buchanan ("***Buchanan***").

7. At the recommendation of POA's counsel, POA retained HMP Advisory Holdings, LLC d/b/a/ Harney Partners on March 1, 2024, for the purposes of analyzing the books, records, and operations of POA. On April 15, 2024, Harney Partners issued its Preliminary Report to investors of POA. The Preliminary Report unearthed significant issues concerning the operations of POA, including fraud. Shortly after the dissemination of the Report to POA's investors, POA agreed to the appointment of Gregory S. Milligan of Harney Partners as receiver for POA.

B. THE CLAIMS PROCESS

8. On June 17, 2024, the Court entered its *Order Granting Receiver's Motion to Approve (I) Proposed Claims Verification Procedure; and (II) Claims Bar Date* (the "***Claims***

Order"). The Claims Order contemplated separate processes for the Fund's investors ("***Investor Claimants***") and creditor claimants ("***Creditor Claimants***" or "***Other Claimants***").

i. INVESTOR CLAIMANTS

9. With respect to Investor Claimants, the Claims Order required the Receiver to send Reconciliation Notices to the Fund's current and former investors (the "***Reconciliation Notices***"), which were required to include: (i) cash invested into the Fund; (ii) cash paid out to the Investor Claimants by the Fund (whether as redemptions or purported distributions); and (iii) the amount of reinvested dividends, if any (the "***Transaction Histories***").

10. On August 2, 2024, the Receiver, through his claims agent Stretto, sent Reconciliation Notices to all known Investor Claimants. The Reconciliation Notices were sent to each Investor Claimant at their last known physical address via regular U.S. mail and at their last known email address. Pursuant to the Claims Order, because the Reconciliation Notices were served on August 2, 2024, the deadline to object to the Reconciliation Notices was August 23, 2024 (the "***Objection Deadline***").

11. On August 5, 2024, the Receiver sent a notification to all Investor Claimants receiving email notices that the Objection Deadline was August 23, 2024. On August 6, 2024, the Receiver filed a Notice Regarding Objections to Reconciliation Notices that stated the Objection Deadline was August 23, 2024, and also sent that notice to all Investor Claimants through the same means as they received the Reconciliation Notices. In addition, also on August 6, 2024, the Notice Regarding Objections to Reconciliation Notices was also posted to a special investor website established by the Receiver as another way to timely communicate important case information to investors during the pendency of the receivership proceeding[2].

[2] www.PrideofAustinReceivership.com ("***Receivership Website***")

12. Out of the 373 Reconciliation Notices that were sent to current and former investors, 32 objections were submitted to the Receiver. Pursuant to the Claims Order, for any Investor Claimant that did not file an objection to the Reconciliation Notice they received, the "Reconciliation Notice shall be the final, binding, determination as to the Transaction History for such Investor Claimant." Claims Order, ¶ 4(b). The Receiver resolved all 32 objections received either by stipulation or through such Investor Claimant agreeing to withdrawal their objections. As a result, the determination of all of the Investors' transactions with the Fund are resolved and final.

ii. CREDITOR CLAIMANTS

a. THE PROCESS

13. The Claims Order also contemplated an "***Other Claims***" process, which addressed claims that were not Investor Claims. Pursuant to the Claims Order, the Receiver was required to notify Other Claimants of the claims process and bar dates by transmitting a Claims Package, which included a *Notice of Claims Process and Claims Bar Dates* (the "***Claims Notice***"), the Claims Order, and a Claim Form, to all known Other Claimants with actual or potential claims. Claims Order, ¶ 4(c). On June 24, 2024, the Receiver, through the Claims Agent, served the Claims Notice on all Other Claimants and posted a copy of the Claims Notice to the Receivership Website.

14. The claims bar date was October 15, 2024 (the "***Bar Date***"). On June 27, 2024, the Receiver posted a *Notice of Claims Bar Date* to the Receivership Website. Pursuant to the Claims Order, any Other Claimant's "failure to timely file a claim shall be forever barred, estopped, and enjoined from asserting such Claim against the Receivership Estate or the Receiver and shall not be treated as a Claimant with respect to such Other Claim for the purposes of any distributions from the Receivership Estate." *Id.* at ¶ 5(d).

b. FILED CLAIMS AND THE REPORT

15. After the Bar Date passed, the Receiver was required to evaluate all Other Claims that were filed and then file with the Court a "report outlining the Receiver's recommendation as to the allowable amount and priority of each Other Claim" (the "***Other Claims Report***"). *Id.* at ¶ 7(a). On January 20, 2025, the Other Claims Report was posted to the Receivership Website.

16. Thirty-seven (37) Other Claims were filed on or before the Bar Date in the total amount of $10,069,184.72. Consistent with the Claims Order, the Receiver filed the Other Claims Report and detailed the allowability, amount, and priority of the Other Claims.

17. The Other Claims Report is incorporated herein by reference. The Other Claims Report detailed the following categories of claims that were filed:

Class of Claims	**Aggregate Amount of Filed Claims in Class**	**Receiver's Recommendation for Amount of Allowed Claims in Class**
Secured Tax Claim of Van Zandt County, Texas	$93,959.99	$0.00[3]
General Trade Claims	$260,466.47	$207,173.88
Investor Claims filed as Other Claims	$4,100,470.07	$93,724.97
Judgment Holders	$5,614,288.19	$179,302.08[4]
	Total: $10,069,184.72	**Total: $429,979.96**

[3] A claim was filed by the Van Zandt Appraisal District for ad valorem property taxes secured by a tax lien arising under Section 32.01 and 32.05 of the Texas Property Tax Code in the amount of $93,959.99. This claim was secured by certain property located at 17389 I-20 S. Access Road, Canton, Texas 75103 (the "***Canton Property***"). The Receiver sold the Canton Property pursuant to the *Order Granting Receiver's Motion to Approve the Sale of Certain Real Property and Related Improvements in Canton, Texas* (the "***Canton Sale Order***"). Consistent with the Canton Sale Order, the property taxes due and owing to the Van Zandt Appraisal District were paid at the closing of the sale of the Canton Property. Accordingly, this claim is moot, and no further distributions to Van Zandt Appraisal District will be made.

[4] As detailed below, each of the Judgment Holders have subsequently settled their claims and to the extent any Judgment Holder is receiving money from the Receivership Estate on account of their settlements, they will be paid in Class 2.

18. In short, the Receiver proposed to treat $429,979.96[5] of the $10,069,184.72 of filed Other Claims as allowed Other Claims (the "***Allowed Creditor Claims***"). Under the Claims Order, any Other Claimant that disagreed with the Receiver's proposal was required to file an objection within 14 days of the filing of the Other Claims Report. Claims Order, ¶ 7(a). If "no objections or responses are timely filed with respect to the Other Claims Report, the Other Claims Report shall be the final, binding determination on each Other Claim." No objections to the Other Claims Report were filed, and therefore the Receiver's recommendations in the Other Claims Report are final and binding.

C. THE RECEIVER'S FORENSIC REPORT

19. On April 15, 2025, the Receiver, through his financial advisors at Harney Partners, prepared a forensic report (the "***Forensic Report***"). A copy of the Forensic Report is attached as Exhibit A[6]. The Forensic Report identifies that the Fund operated as a *Ponzi* scheme since its inception, with distributions paid from invested capital rather than profits. Exhibit A, p. 5 ("Ponzi scheme started from the very beginning of the [Fund] – distributions were declared and paid from purported profits that were not realized yet and so the distributed money could only have come from invested capital."). The findings detail how POA's distributions, misrepresented as profits, were funded by new investor capital, and highlight badges of fraud, including self-dealing and misleading financial reporting.

20. The Forensic Report determines that POA operated as a *Ponzi* scheme from its start, as distributions declared as "Net Profits" were paid from invested capital rather than realized

[5] The Receiver will be amending the Other Claims Report to include an additional $50,220.97 of pre-receivership attorneys' fees to certain investors that, in good faith, submitted their claims after the Bar Date, which will increase the Allowed Creditor Claims to $480,200.93.

[6] The Forensic Report was also posted to the Receivership Website on April 15, 2025.

profits, starting in June of 2010. *Id.* Unlike legitimate hard money lending fund operations where profits derive from loan interest and fees, POA's cash flows showed that member distributions were funded by new investments, a hallmark of a *Ponzi* scheme. *Id.* at p. 6. The Forensic Report identifies red flags, such as consistent distributions despite declining loan portfolio performance and a material decrease in accounting activity post-2015, incompatible with reported returns. *Id.* at pp. 9, 42. Additional badges of fraud included misleading investor reports (*e.g.*, overstating Assets Under Management as collateral values), two sets of loan schedules hiding insider loans, and failure to file tax returns (2016-2023) while issuing inflated Schedule K-1s. *Id.* at pp. 39-41.

21. The facts and conclusions of the Forensic Report support the Receiver's efforts to equitably distribute funds as detailed in this Plan.

D. SETTLEMENTS WITH CERTAIN JUDGMENT HOLDERS

22. As detailed in the Claims Report, there were ten investors that obtained judgments on account of their equity interests in POA (the "***Judgments***"). Since the filing of the Original Distribution Plan, the Receiver has engaged in productive discussions with the judgment holders and has now entered into settlement agreements with all ten Membership Judgment Holders, subject to this Court's approval (the "***Settling Judgment Holders***"). The Settling Judgment Holders filed claims, on account of their Judgments, that totaled, in the aggregate, $5,570,574.04. The settlement agreements with the Settling Judgment Holders contemplate an aggregate reduction of the Settling Judgment Holders' claims of $2,340,600.50 as shown in the chart below. The Receiver believes that these settlements are in the best interest of the Receivership Estate because it reduces the risk of an adverse ruling with respect to the priority of the Settling Judgment Holders for an amount that does not have a material impact on the distributions to other Investor Claimants.

Investor	Amount of Claim Pursuant to Judgment	Amount of Net Winnings or Losses	Settlement Amount	Difference Between Claim Amount and Settlement Amount
John Arizpe and Judy Arizpe	$923,769.62	Net winnings of $35,274.04	Receiver to pay $28,224.50	$895,545.12
Richard Gardner and Lorena Gardner	$378,773.85	Net losses of $29,753.99	Receiver to pay $35,244.99	$343,528.86
Jeffrey Walton	$816,251.67	Net losses of $244,345.44	Receiver to pay $322,345.44	$493,906.23
David O'Connor	$388,479.87	Net losses of $117,466.91	Receiver to pay $122,466.91	$271,012.96
Michael O'Connor	$294,330.77	Net losses of $100,970.43	Receiver to pay $105,970.43	$188,360.34
Graham Wootten	$540,647.26	Net losses of $387,400.27	Receiver to pay $392,400.27	$148,246.99
Anish Tolia and Tolia Revocable Trust	$506,308.44	Net win of $69,026.89	Receiver to pay $52,500	$453,808.44
Patricia Lloyd Jones, Individually and as the Independent Executor of the Estate of James L. Lloyd, deceased, and on behalf of the James L. Lloyd IRA and James L. Lloyd Roth IRA	$1,722,012.56	Net win of $684,342.40	Jones to pay Receiver $350,000	$2,072,012.56

23. Each of Walton, David O'Connor, Michael O'Connor, and Graham Wootten were "net losers" in the Fund and, notwithstanding their judgments, would have been paid substantial amounts on account of their Investor Claims. Assuming the Receiver prevailed in subordinating the Membership Judgment Holders' claims and liens and assuming an 80% recovery (i) Mr. Wootten would have received $292,400.27 under the Plan (making the actual settlement cost to the Receivership Estate $100,000); (ii) Mr. David O'Connor would have received $70,166.91 under the Plan (making the actual settlement cost to the Receivership Estate $52,300); (iii) Mr. Michale O'Connor would have received $85,776.34 under the Plan (making the actual settlement

cost to the Receivership Estate $20,194.09); and (iv) Mr. Walton would have received $198,932.23 under the Plan (making the actual settlement cost to the Receivership Estate $123,413.21).

24. The Receiver submits that approval of these settlements is in the best interest of the Receivership Estate. The settlements eliminate the risk that approximately $5.6 million in judgments will be paid ahead of Investor Claimants. The actual price to eliminate that risk is approximately $60,000 or approximately 1% of the total amount of the Judgments if the Judgments are deemed to have priority over other Investor Claimants. The Receiver has determined the "actual cost" to the Receivership Estate by calculating the value of the amounts the Receiver is paying the Settling Judgment Holders, collectively, over and above what they would have received on account of their Investor Claims (that amount is approximately $410,000) and subtracting the amount of money the Receiver is receiving from certain Settling Judgment Holders (that amount is $350,000), thus making the actual cost to the Receivership Estate $60,000 to eliminate approximately $5.6 million in risk. These settlements avoid the material impact to Investor Claimants that would result if the Judgments were deemed to have priority over Investor Claimants. Additionally, the Receiver anticipates that at least some of the Judgment Holders would appeal rulings that adversely impacted their rights, including the approval of the Distribution Plan that subordinated their Judgments, which could delay or reduce an initial distribution to Investor Claimants. As a result, the Receiver believes that approval of the settlement agreements is in the best interest of the Receivership Estate and will allow the Receiver to begin making meaningful distributions to Investor Claimants in the near term.

E. SOURCES OF FUNDING FOR DISTRIBUTIONS

25. The Receiver will fund distributions to POA's stakeholders through the monetization of the Fund's assets, net of the costs to administer the receivership estate.

F. CLASSES OF CLAIMS

26. The Receiver has classified the stakeholders into five classes of claims:

Class 1: Allowed Creditor Claims: to be paid in the amount of the Allowed Creditor Claims as stated in the Receiver's Other Claims Report.

Class 2: Settling Judgment Holders (receiving payments)[7]: to be paid *parri passu* with Class 1 in the amounts contemplated in Section D of this Amended Distribution Plan

Class 3: Investor Claims: to be paid pursuant to the rising tide methodology after Class 1 and Class 2 are paid in full.

Class 4: Potential claims by the Internal Revenue Service: to be paid after payment in full of Class 1,Class 2, and Class 3 related to the Fund's failure to file tax returns after 2015.

Class 5: Insider Claims: claims of insiders will be subordinated to all other classes

27. The Receiver proposes that Class 1 Claimants be paid in full. Class 1 Claimants includes those claimants with Allowed Creditor Claims. Class 1 consists of pre-receivership trade creditors as well as the allowed out-of-pocket attorneys' fees claims of investors that asserted their rights prior to the commencement of the Receivership, all as detailed in the Other Claims Report[8].

28. Class 2 Claimants shall include Settling Judgment Holders. Class 2 Claimants will be paid *parri passu* with Class 1 Claimants.

29. Class 3 Claimants shall include Investor Claimants. As discussed in more detail below, including an analysis of the calculation of the distributions and comparisons to other methodologies, the Receiver proposes that allowed Class 3 Claimants be paid pursuant to the rising tide methodology. *At this time, the Receiver does not believe that allowed Class 3 Claimants will be paid the full amount of their claim*.

[7] This class does not include Jones who is making a payment to the Receivership Estate of $350,000.

[8] The Receiver's Retained Personnel shall continue to be paid as administrative creditors pursuant to the terms of the Receivership Order and are therefore not classified for Plan purposes.

30. As detailed below, the Class 4 Claimant will receive a distribution only if Class 1 and Class 2 Claimants are paid in full (*i.e.,* all Investor Claimants have received 100% of their principal investment in the Fund back[9]). Class 4 will consist solely of any potential claims asserted by the Internal Revenue Service for, including but not limited to, amounts owed due to the Fund's failure to file federal income tax returns since 2015. No such claim has been asserted by the Internal Revenue Service, but the Receiver understands that such a claim may be asserted by the Internal Revenue Service after the Receiver has filed the delinquent tax returns.

31. Class 5 Claimants shall consist of Insider Investor Claimants. Class 5 Claimants are subordinated to Classes 1-4 and shall not receive a distribution until Classes 1-4 have been satisfied in full.

III. ARGUMENT & AUTHORITIES

A. LEGAL FRAMEWORK

32. "Upon completion of the claims reconciliation process identified herein, the Receiver shall, within a reasonable period of time, file a motion approving the amount and method of distributions to be made to Other Claimants and to Investor Claimants." Claims Order, ¶ 7(c). Tex. Civ. Prac. & Rem. Code § 64.004 provides that "[u]nless inconsistent with this chapter or other general law, the rules of equity govern all matters relating to the appointment, powers, duties, and liabilities of a receiver and to the powers of a court regarding a receiver." There is a dearth of state law interpreting the propriety of distribution plans under Texas state receivership law. However, there is an abundance of federal case law contemplating distribution plans and the

[9] As explained herein, the calculation of whether an Investor Claimant has received 100% of their principal investment in the Fund back will be determined on the basis of cash in and cash out of the Fund. For example, if an Investor Claimant invested $100,000 in the Fund and then took distributions over the life of the investment totaling $80,000, it would only take $20,000 of distributions from the Receivership Estate for such (hypothetical) Investor Claimant to have received 100% of their principal investment in the Fund back for the purposes of distributions.

Court's discretion for fixing the priority of payments in receiverships, the reasoning of which this Court should adopt. As detailed below, the Receiver proposes a "rising tide" methodology for distributions to Class 3 Investor Claimants, which he submits is the fairest and most equitable methodology for distributing proceeds to Class 3 Investor Claimants. The "rising tide" methodology is widely accepted as the favored distribution method in *Ponzi* scheme receiverships, including in cases in which Mr. Milligan has acted as receiver, and had a "rising tide" methodology approved by a district court and affirmed by the court of appeals. *See CCWB Asset Invs. v. Milligan*, 112 F.4th 171 (4th Cir. 2024).

33. A district court has "broad powers and wide discretion to determine the appropriate relief in an equity receivership." *SEC v. Safety Fin. Serv., Inc*., 674 F.2d 368, 372-73 (5th Cir. 1982); *see also Milligan*, 112 F.4th at 178 ("the district court's power to supervise receivership is 'extremely broad', and 'appellate scrutiny is narrow'"). In approving a distribution plan of receivership funds, "the district court, acting as a court of equity, [is] afforded the discretion to determine the most equitable remedy." *SEC v. Forex Asset Mgmt. LLC*, 242 F.3d 325, 332 (5th Cir. 2001). The Court's "primary job . . . is to ensure that the proposed plan of distribution is fair and reasonable." *SEC v. Wealth Mgmt. LLC*, 628 F.3d 323, 332 (7th Cir. 2010) (citing *Official Comm. of Unsecured Creditors of WorldCom, Inc. v. SEC*, 467 F.3d 73, 84 (2d Cir. 2006)). In crafting an equitable plan of distribution, the Court is not bound to follow any particular plan or method of distribution simply because it is "permissible under the circumstances." *United States v. Durham*, 86 F.3d 70, 73 (5th Cir. 1996). The Court is afforded broad discretion to determine "a logical way to divide the money," and tailor a distribution plan accordingly. *Forex*, 242 F.3d at 331 (citing *Durham*, 86 F.3d at 73); *see also Wealth Mgmt. LLC,* 628 F.3d at 333 ("[D]istrict courts

supervising receiverships have the power to 'classify claims sensibly.'" (quoting *SEC v. Enter. Tr. Co*., 559 F.3d 649, 652 (7th Cir. 2009))).

34. The distribution plan should strive to "grant fair relief to as many investors as possible," *SEC v. Torchia*, 922 F.3d 1307, 1311 (11th Cir. 2019), while doing so "in a logical way," *SEC v. Pension Fund of Am. L.C*., 377 F. App'x 957, 962 (11th Cir. 2010) (internal quotation marks omitted); *see also Milligan*, 112 F.4th at 178 ("[t]he goal of a receivership is 'the fair distribution of the liquidated assets'"). In summary, so long as a distribution plan is fair and reasonable, it should be approved. This is especially true where "funds are limited, [and] hard choices must be made." *Official Comm. of Unsecured Creditors of WorldCom, Inc. v. SEC*, 467 F.3d 73, 84 (2d Cir. 2006).

iii. SUBORDINATION OF INSIDER CLAIMS

35. The Receiver finally proposes that a final Class 5 be created that includes insiders of POA who are Investor Claimants. Insiders shall include family members, employees, officers, directors of POA. The Receiver proposes that any individual or entity falling within this category who is an Investor Claimant be removed from Class 3 and be paid *pro rata* only after all other classes have been fully satisfied. At this time, the Receiver does not anticipate having sufficient funds to make payments to Class 5.

36. The Receiver believes subordination of Class 5 claimants is fair and reasonable. In equitable receiverships, Courts have subordinated the claims of insiders or outright denied their right to a distribution on the grounds they are not similarly situated to other investors or victims. As equity is equity, it is inequitable to allow employees or others who participated in the *Ponzi* scheme or should have been aware of the fraudulent conduct at issue to recover a distribution. *See S.E.C. v. Byers*, 637 F.Supp.2d 166, 173, 184 (S.D.N.Y. 2009) (collecting cases).

B. METHOD OF DISTRIBUTION

37. "Receivership cases . . . often involve the issue of whether to use a pro rata distribution or a tracing method when determining the appropriate form of relief for defrauded investors' claims." *SEC v. HKW Trading LLC*, No. 8:05-CV-1076-T-24-TB, 2009 WL 2499146, at *5 (M.D. Fla. Aug. 14, 2009) (citing *SEC v. Elliott*, 953 F.2d 1560, 1569-70 (11th Cir. 1992)); *see also Byers,* 637 F. Supp. 2d at 176 (recognizing that distribution can also be made based on "level of risk," timing of investment," or "some other factor").

38. Notwithstanding a receiver's available alternatives for distributions, "case law . . . is quite clear that pro rata distributions are the most fair and most favored in receivership cases." *Byers*, 637 F. Supp. 2d at 176. Indeed, "[t]racing . . . has been almost universally rejected by courts as inequitable." *Id*. at 177 (citing *Elliott*, 953 F.2d at 1569); *see also id*. (noting that tracing is "difficult, time-consuming, and expensive"). Indeed, even if it is possible for a receiver to employ tracing, a district court will not abuse its discretion "by disallowing tracing." *Elliot*, 953 F.2d at 1569 (disallowing tracing because it would allow a defrauded investor to recoup his entire investment, which would elevate his position over that of similarly situated victims and cause an inequitable result); *see also SEC v. Forex Asset Mgmt. LLC*, 242 F.3d 325, 331 (5th Cir. 2001) (finding that the district court did not abuse its discretion in approving a pro rata distribution plan even though the party's assets were held by a fraudster in a segregated account); *United States v. Durham*, 86 F.3d 70, 73 (5th Cir. 1996) (holding that the district court did not err in approving a pro rata distribution plan despite the fact that the majority of funds were traceable to one victim).

39. Courts have set forth two factors that must be satisfied to approve a pro rata distribution. *First*, investors' funds must have been commingled. *SEC v. Credit Bancorp, Ltd*., 290 F.3d 80, 88- 89 (2d Cir. 2002). The evidence of commingling does not necessarily have to be "systematic." *Commodity Futures Trading Comm'n v. Eustace*, No. CIV.A. 05-2973, 2008 WL

471574, at *7 (E.D. Pa. Feb. 19, 2008). Here, funds invested into POA were commingled and used to perpetuate the *Ponzi* scheme by using new investments to pay fictitious profits to existing POA members and were not segregated or traceable.

40. *Second*, the investors must be similarly situated "with respect to their relationship to the defrauders." *Credit Bancorp, Ltd*., 290 F.3d at 88-89. So, "where a victim seeking preferential treatment cannot materially distinguish his situation from that of other victims, a pro rata distribution is recognized as the most equitable solution." *SEC v. Alleca*, No. 1:12-CV-3261-WSD, 2017 WL 5494434, at *3 (N.D. Ga. Nov. 16, 2017). As such, in pro rata distributions, "investors generally occupy the same legal position as other investors." *SEC v. EB5 Asset Manager, LLC,* No. 15-62323-CIV, 2016 WL 11486857, at *4 (S.D. Fla. Dec. 8, 2016). Here, the Receiver's investigation and resulting Forensic Report found that the investors were similarly situated. As such, *pro rata* distribution is the most equitable approach and the approach the Receiver should use in this case.

C. CALCULATION OF DISTRIBUTION

41. A receiver must also select the "method[] of calculating the pro rata distribution." *Byers*, 637 F. Supp. 2d at 181. There are three distribution methods that are typically considered in equitable receiverships. These are: (i) rising tide; (ii) net investment or net loss; and (iii) last statement method. The rising tide method is the "most commonly used (and juridically approved) for apportioning receivership assets." *S.E.C. v. Huber*, 702 F.3d 903, 906 (7th Cir. 2012). The Receiver has concluded, as more fully detailed below, that the rising tide method is the most equitable in this case as it equalizes the lowest percentage return the victims of the *Ponzi* scheme will recover on their investment and it provides the most equitable recovery for the largest number of Investor Claimants. The Receiver therefore requests the Court approve its use here. Below, the

Receiver will explain each of the methods of distribution, thus demonstrating that the rising tide method is the most equitable under the circumstances.

i. EXPLANATION OF RISING TIDE METHODOLOGY (RECEIVER'S RECOMMENDED METHOD)

42. The rising tide method uses the distribution process to equalize the percentage return of each Investor Claimant in Class 3 on their loss with the Fund. Under the rising tide method, an investor's pre-receivership withdrawals are considered a part of the overall distributions received by an investor. As such, the Investor Claimant's pre-receivership withdrawals for Class 3 Claimants are credited dollar-for-dollar from the principal amount they invested with the Fund. *Huber*, 702 F.3d at 903. This methodology ensures each allowed Investor Claimant receives the same minimum recovery before any allowed Investor Claimant who received pre-receivership withdrawals receives a distribution. As the rising tide recovery percentage reaches allowed Investor Claimants who received pre-receivership withdrawals, those allowed Investor Claimants begin sharing in *pro rata* distributions until the next allowed Investor Claimant in the rising tide is reached and is added to the *pro rata* distributions. This methodology results in those investors who received the largest pre-receivership withdrawals (on a percentage basis) potentially not receiving any distribution.

ii. EXPLANATION OF NET INVESTMENT METHODOLOGY (NOT RECOMMENDED)

43. Under the net loss or net investment method, recoveries are considered as an offset to the claim amount, as opposed to a pre-receivership recovery, and investors receive a *pro rata* distribution based on their claim amount compared to the total amount of all allowed claims in the case. *U.S. Commodity Futures Trading Comm'n v. Lake Shore Asset Mgmt. Ltd.*, 2010 WL 960362, at *9 (N.D. Ill. Mar. 15, 2010). In other words, a pre-receivership withdrawal would only reduce an investor's claim amount, not their eligibility to receive a distribution as is the case under

the rising tide methodology. This methodology would pay all Class 3 Claimants on a *pro rata* basis based on the dollar amount of their claim compared to the total dollar amount of all Claimants.

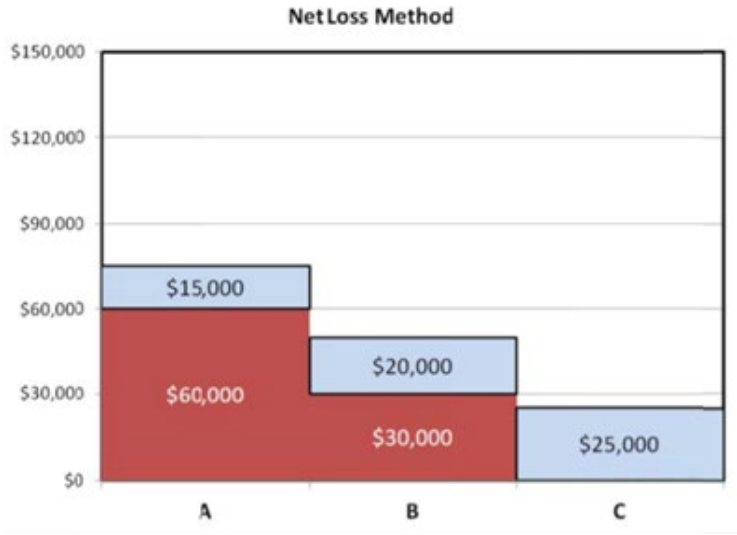
iii. EXPLANATION OF LAST STATEMENT METHODOLOGY (NOT RECOMMENDED)

44. Under the last statement method, an investor's claim amount is determined by taking the value of their investment as of the last investor statement. *In re Bernard L. Madoff Invs. Secs. LLC*, No. 15-CV-01151, 2016 WL 183492, at *1 (S.D.N.Y. 2016). Courts have rejected the use of the last statement method when statements are based on fictitious profits as this method has "the absurd effect of treating fictitious and arbitrarily assigned paper profits as real and would give legal effect to [the Ponzi scheme's] machinations." *In re Bernard L. Madoff Invs. Secs., LLC*, 779 F.3d 74, 78 (2d Cir. 2015). Here, the Last Statement Method would calculate net equity based on the fictitious account balances shown on the last statements provided to the investors of POA and is therefore not equitable or appropriate.

iv. ANALYSIS OF RISING TIDE METHODOLOGY VERSUS NET LOSS METHODOLOGY

45. The Seventh Circuit in *SEC v. Huber* provided two useful charts copied below to illustrate the differences between the net loss (or net investment) and rising tide methodologies. In the Seventh Circuit's example, the Court assumed that investors A, B, and C each invested $150,000 in the *Ponzi* scheme. Investor A withdrew $60,000 before the scheme collapsed, Investor B withdrew $30,000 before the scheme collapsed, and Investor C withdrew nothing. Thus, Investor A lost $90,000, Investor B lost $120,000, and Investor C lost $150,000. The Seventh Circuit then assumed that the Receiver had $60,000 to distribute. Applying the net loss method, Investors A, B, and C would each receive 1/6 of their loss as there was a total of $60,000 in assets and $360,000 in losses, *i.e.* $60,000/ ($90,000 + $120,000 + $150,000). In other words, Investor A would receive $15,000, Investor B would receive $20,000, and Investor C would receive $25,000. Despite each

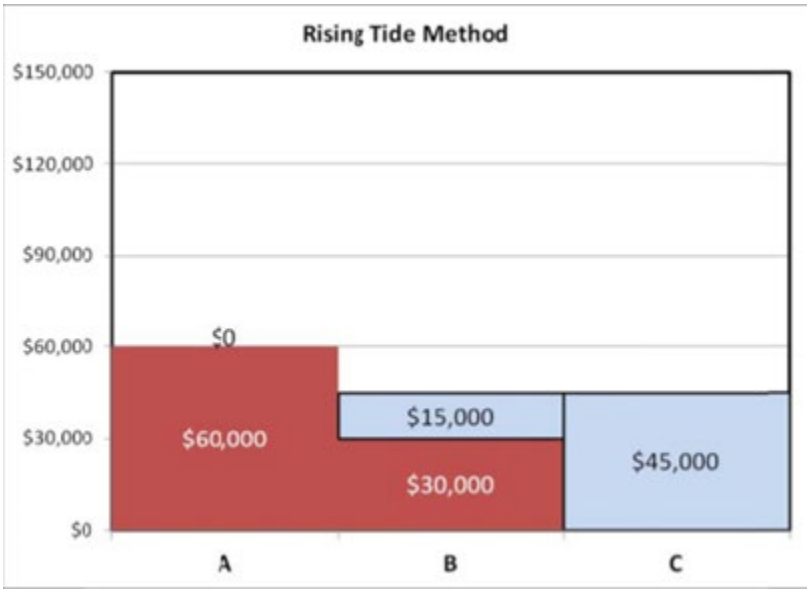
investor investing the same amount in the *Ponzi* scheme, Investor A will have only lost $75,000, Investor B will have lost $100,000, and Investor C would have lost $125,000.



See SEC v. Huber, 702 F.3d at 904-06.

46. Under the rising tide methodology, however, pre-receivership withdrawals are considered in determining whether an investor is entitled to a distribution, and if so, in what amount and in what order. Using the example in *Huber*, the Receiver has $60,000 in assets to distribute. Because Investor A has already received $60,000 pre-receivership, it would not recover anything further. The $60,000 available would be distributed between Investors B and C to bring their distributions as close as possible to the amount Investor A received pre-receivership. Because Investor C had not received anything on its investment, it would first be entitled to $30,000 so that Investors B and C will have both received $30,000. The remaining $30,000 would be shared equally between Investors B and C. Thus, Investor B would receive a $15,000 distribution and Investor C would receive an additional $15,000 for a total distribution of $45,000. The following chart from *SEC v. Huber* illustrates the effect of the same $60,000 distribution under the rising tide methodology. These charts show that the rising tide methodology has the ability to neutralize the

worst losses amongst the victims of the defrauded investors; whereas the net loss methodology can favor investors who made pre-Receivership withdrawals.



See SEC v. Huber, 702 F.3d at 904-06.

47. Another way to compare the amount investors receive under the net loss methodology vs. the rising tide methodology is to consider the percentage of each investor's loss. Using the same *SEC v. Huber* example above, Investor A lost 60% of its investment pre-receivership, Investor B lost 80%, and Investor C lost 100%. All three investors will receive distributions under the net loss methodology, with Investor A going from a 60% loss pre-receivership to a 50% loss, Investor B going from an 80% loss to a 67% loss, and Investor C going from a 100% loss to an 83% loss. Under the rising tide methodology, Investor B will not receive a distribution until Investor C's loss percentage reaches 80%, and Investor A will not receive a distribution until Investor B's and Investor's C's loss percentage reaches 60%. Because Investor B and Investor C's loss percentage reached only 70%, Investor A in the example above will not receive a distribution under the rising tide methodology. Once again, the rising tide methodology seeks to treat all similarly situated investors the same by using the distribution process to equalize

the losses suffered by the victims throughout the entire *Ponzi* scheme by not favoring those who received larger pre-receivership withdrawals earlier in the *Ponzi* scheme. The rising tide methodology favors investors who lost the highest percentage of their principal investment and ensures the most-harmed investors receive distributions before those who lost a lower percentage of their principal investment.

v. REINVESTED DIVIDENDS SHOULD BE IGNORED

48. Consistent with the rising tide method of distributions, any reinvested dividends in the Fund should be ignored for the purposes of determining distributions. Any such dividends were the reinvestment of "profits" which were fictitious. *Sec. Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC (In re Bernard L. Madoff Inv. Sec. LLC),* 424 B. R. 122, 138 (Bankr. S.D.N.Y. 2010) ("claims should be based upon the net cash invested in the scheme, not the fictitious interest or dividend reinvestments reflected on the claimants' account statements").

vi. COLLAPSING OF CERTAIN INVESTMENTS IS APPROPRIATE

49. The Receiver also requests the Court allow the Receiver to collapse investor accounts that share the same name (*e.g.*, John Smith, individually, and John Smith, IRA). For example, there are some investors that hold multiple accounts and such accounts have differing results. A person may have incurred a loss on one account but received a profit on the other account. In such instances, the Receiver proposes that such accounts be treated as one account to ensure that Class 3 Claimants are treated identically with respect to the total recovery of their principal investments. If, however, an investor invested in their own name, and then also owned an interest in an entity that had a separate investment, those accounts should remain separate.

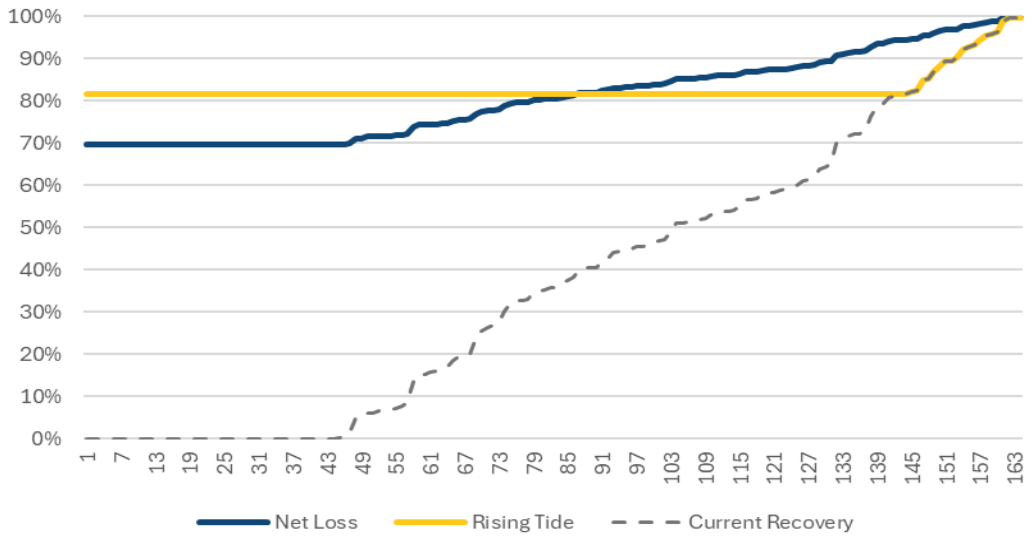
vii. APPLICATION OF RISING TIDE METHODOLOGY TO CLASS 3

50. After Class 1 and 2 Claimants are paid in full, the Receiver recommends that a rising tide methodology be applied to Class 3 Claimants. 166 Investor Claimants incurred a loss

on their investment with POA across 193 accounts. 103 Investor Claimants lost 50% or more of their principal investment, with 44 Investor Claimants losing 100% of their investment.

51. If the Court adopts a rising tide methodology, and assuming an aggregate $15,000,000 distribution to Class 3, 144 Investor Claimants would receive a distribution increasing the lowest recovery from 0.0% to 81.68%. 20 Investor Claimants (that were not "net winners") would not receive a distribution as they already recovered at least 81.68% of their principal investment. To be clear, this calculation is on a cash in versus cash out basis[10].

52. If the Court were to adopt the net loss method, all allowed Investor Claimants would receive a distribution; however, it would be at the cost of the allowed Claimants who sustained a 100% loss. Instead of these Claimants recovering 81.68% of their principal under rising tide methodology, the lowest recovery would drop to 69.64% under the net loss methodology. Accordingly, the allowed Investor Claimants who lost everything would suffer at the expense of the investors who received distributions pre-Receivership.



[10] For example, if an investor invested $100,000, reinvested its "dividends", and never received any cash back from the Fund, it would have a 100% loss and a claim for $100,000. If another investor invested $100,000 and received $50,000 in "dividend" distributions over the life of its investment, it would have a 50% loss and a $50,000 claim.

53. The rising tide is also a more equitable distribution methodology to apply here as 86 Investor Claimants would recover more under a rising tide methodology than net loss, assuming a $15,000,000 distribution, whereas 78 Investor Claimants would receive a higher recovery under the net loss methodology.

54. Accordingly, the Receiver recommends the Court adopt a rising tide methodology as (1) it equalizes the lowest percentage return victims of the *Ponzi* scheme recover on their investment, and (2) it raises the lowest percentage of recovery to 81.68% with a $15,000,000 distribution when compared against the net loss methodology.

D. OTHER RELIEF/PROCESS FOR MAKING DISTRIBUTIONS

55. To be eligible for a distribution payment, the Receiver requests the Court enter an Order that the all Investor Claimants be required to provide the Receiver with a completed and signed W-9 on the most recent form, which will be mailed and/or emailed to each allowed Claimant and is also available at https://www.irs.gov/pub/irs-pdf/fw9.pdf.

56. The Receiver is still in the process of monetizing the various assets of the Receivership Estate. The Receiver anticipates that sufficient funds will be available to make a first and final distribution to Class 1 and Class 2 Claimants upon the entry of an order approving this Plan. The Receiver further anticipates the ability to make a first interim distribution to Class 3 Claimants during Q3 of 2025. The Receiver requests the authority to make further periodic interim distributions to Class 3 Claimants as further assets are monetized. Specifically, the Receiver requests authority to make such interim distributions when, in the Receiver's business judgment, sufficient funds are maintained by the Receivership Estate, subject to adequate amounts reserved for the Receiver's Retained Personnel and other administrative claims, and after considering the costs to make such an interim distribution. When the Receiver determines a further interim or final distribution is advisable, the Receiver proposes that he file a notice (the "***Distribution Notice***").

Within 30 days of the filing of the Distribution Notice, the Receiver will make distributions consistent with this Plan as approved by the Court. Distributions will be sent to the same address on file with the Fund that all prior notices and other documents have been sent to the claimants in this case.

57. The Receiver will distribute payments to each allowed Claimant that has returned a W-9 to the Receiver. If an allowed Claimant does not return a W-9 or does not cash a check received on account of a distribution, the Receiver will retain such allowed Claimant's distribution in escrow. The Receiver will make his best efforts to make contact with any allowed Claimant that does not return a W-9 or cash their distribution check. If prior to the final distribution in this case, there are any allowed Claimants that have failed to return a W-9 or cash their distribution check, the Receiver will file a notice naming such allowed Claimants, as well as detailing the efforts he has taken to notify such allowed Claimant of their entitlement to a distribution. If no W-9 is returned (or if a distribution check is not cashed) before the final distribution, then the underlying funds will remain in the Receivership Estate for distribution to other allowed Claimants in this case pursuant to the priority established by the Plan or as otherwise ordered by this Court.

WHEREFORE, the Receiver respectfully requests that the Court enter an order approving this Plan, including, but not limited to:

i. Approving the classification of claims as described in Section II (E) of this Plan;

ii. Approving the method of distribution, including approval of a rising tide distribution methodology for Class 3 Claimants;

iii. Approving the process for making distributions detailed in Section III (D) of this Plan; and

iv. For all other and further relief to which the Receiver shows himself justly entitled.

Respectfully submitted,

KANE RUSSELL COLEMAN & LOGAN, PC

By: */s/ Trip Nix*

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ATTORNEYS FOR RECEIVER

CERTIFICATE OF SERVICE

I hereby certify that, on July 22, 2025, a true and correct copy of the foregoing Motion was served electronically upon all counsel of record via eFileTexas. The Motion will, as soon as practicable, be served on all known POA investors via the methods set forth above.

/s/ Trip Nix
Trip Nix

Automated Certificate of eService

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TGreenblum@krcl.com
Envelope ID: 103453394
Filing Code Description: Motion (No Fee)
Filing Description: RECEIVER'S AMENDED MOTION TO APPROVE DISTRIBUTION PLAN
Status as of 7/22/2025 4:32 PM CST

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