

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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U.S. COMMODITY FUTURES  
TRADING COMMISSION,

Plaintiff,

Case No. 09-cv-3332 (MJD/FLN)

v.

TREVOR COOK et al.,

Defendants,

R.J. ZAYED,

Receiver.

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UNITED STATES SECURITIES  
AND EXCHANGE COMMISSION,

Plaintiff,

Case No. 09-cv-3333 (MJD/FLN)

v.

TREVOR G. COOK et al.,

Defendants,

R.J. ZAYED,

Receiver.

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UNITED STATES SECURITIES  
AND EXCHANGE COMMISSION,

Plaintiff,

Case No. 11-CV-574 (MJD/FLN)

v.

JASON BO-ALAN BECKMAN, et al.,

Defendants,

R.J. ZAYED,

Receiver.

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**MEMORANDUM OF LAW IN SUPPORT OF RECEIVER'S MOTION  
SEEKING THE ENTRY OF AN ORDER AUTHORIZING THE  
RECEIVER TO SELL THE RECEIVER ESTATES' CLAIM IN  
THE PEREGRINE FINANCIAL GROUP, INC. BANKRUPTCY CASE AT AN  
AUCTION TO THE BIDDER WITH THE HIGHEST OR BEST OFFER**

R.J. Zayed, in his capacity as court-appointed receiver (the “**Receiver**”) for the Estates of Trevor G. Cook, Patrick J. Kiley, Jason Bo-Alan Beckman, UBS Diversified Growth, LLC, Market Shot, LLC, Oxford Global Advisors, LLC, Oxford Global Partners, LLC, Oxford Global FX, LLC, Oxford Growth FX L.P., and various other individuals and entities controlled by them (the “**Receiver Estates**”), by his counsel, respectfully submits this memorandum of law in support of the Receiver’s motion seeking the entry of an Order by this Court authorizing the Receiver to sell the Receiver Estates’ bankruptcy claim against the estate of Peregrine Financial Group, Inc., a chapter 7 debtor (“**PFG**”), at an auction to the bidder with the highest or best offer pursuant to 28 U.S.C. § 2001 and 28 U.S.C. § 2004.

## **I. BACKGROUND**

### **A. The Receiver’s Lawsuit Against PFG**

PFG was a futures commission merchant and forex dealer based in Chicago and Iowa. Declaration of William T. Reid, IV, dated July 28, 2014 (“**Reid Declaration**” or “**Reid Decl.**”), ¶ 5. From 2005 through at least June 2009, Trevor Cook and his cohorts transferred tens of millions of dollars, totaling approximately \$48 million, to futures and forex accounts at PFG from the Receiver Estates. *Id.* On February 1, 2012, the Receiver filed a lawsuit against PFG, alleging nine separate causes of action to recover those fraudulent transfers. *Zayed v. Peregrine Financial Group*, No. 12-cv-00269 (D. Minn. Feb. 1, 2012), ECF No. 1; *see also* Reid Decl., Ex. B (attaching complaint) (“**Minnesota PFG Action**”).

Among other things, the Receiver alleged that PFG did not receive the challenged transfers in good faith because, in permitting the accounts to be opened, and then permitting the accounts to remain open and under Cook's management, PFG violated industry rules, regulations, guidelines, and practices, as well as its own compliance policies and procedures. Reid Decl., ¶ 6, Ex. B. As detailed in the Receiver's 207-paragraph complaint, PFG ignored a myriad of objective red flags of fraud or insolvency that would have caused a reasonable broker in PFG's position to refuse to open the accounts or, if the accounts were opened, to close them and prohibit any further trading. *Id.*, ¶ 6, Ex. B.

On June 22, 2012, this Court issued a Memorandum Opinion and Order denying PFG's motion to transfer venue. Minnesota PFG Action, ECF No. 30. The Receiver immediately requested deposition dates for key fact witnesses, such as the company's CEO, Russell Wasendorf, Sr., his son Russell Wasendorf, Jr., and the employee who worked closely with Cook and others in the Ponzi scheme, Nolan Schiff. *Id.*, ¶ 7.

#### **B. PFG is Exposed as a Fraud**

On July 9, 2012, the true nature of PFG's business was further exposed when Wasendorf Sr. attempted to take his own life in a parked car outside of PFG's headquarters in Cedar Falls, Iowa. *Id.*, ¶ 8. Within hours, the National Futures Association issued an emergency order freezing PFG's operations after discovering that a PFG customer-segregated account at U.S. Bank that was supposed to hold \$225 million

held only \$5 million.<sup>1</sup> On July 10, 2012, the Commodity Futures Trading Commission filed a complaint against PFG. Complaint, *U.S. Commodity Futures Trading Commission v. Peregrine Financial Group, Inc.*, No. 12-cv-5383 (N.D. Ill. July 10, 2012), ECF No. 1. The same day, PFG filed a voluntary petition for relief under chapter 7 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Illinois (the “**Bankruptcy Court**”), No. 12-27488 (“**PFG Bankruptcy**”). Ira Bodenstein was appointed the chapter 7 trustee of the PFG estate (“**PFG Bankruptcy Trustee**”). Reid Decl., ¶ 9.

On July 11, 2012, the United States filed a criminal complaint against Wasendorf Sr., who had survived his suicide attempt. See Criminal Complaint (attaching affidavit from FBI Special Agent), *United States of America v. Wasendorf, Sr.*, No. 12-mj-131 (N.D. Iowa July 11, 2012), ECF No. 2. Wasendorf Sr.’s suicide note, which became public through the affidavit attached to the criminal complaint, said, in part: “I have committed fraud . . . . Through a scheme of using false bank statements I have been able to embezzle millions of dollars from customer accounts at Peregrine Financial Group, Inc. The forgeries started nearly twenty years ago and have gone undetected until now.” *Id.* at 2. Wasendorf later pleaded guilty to embezzling more than \$100 million and was sentenced to 50 years in prison. Reid Decl., ¶ 10.

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<sup>1</sup> See <http://www.bloomberg.com/news/2012-07-09/peregrine-investigated-over-missing-money-after-suicide-attempt.html>

### C. Continuation of the Receiver's Claims in the PFG Bankruptcy

As required by the automatic stay that came into effect with the PFG Bankruptcy, the Minnesota PFG Action was stayed. *Id.*, ¶ 11. The Receiver filed 12 separate claims in the PFG Bankruptcy, which would become the new venue for the Receiver's claims against PFG.<sup>2</sup> *Id.* In response, the PFG Trustee asserted various defenses, disputing the amount and nature of the Receiver's claims. *Id.*

From 2013 to early 2014, the Receiver, through his counsel, engaged in a detailed and extended dialogue with the PFG Bankruptcy Trustee about the merits of the Receiver's claims. *Id.*, ¶ 12. Eventually, after almost a year of telephone conferences and information and email exchanges, the parties agreed to settle the Receiver's claim in the PFG Bankruptcy for an allowed general unsecured claim of \$10 million (the "**Allowed PFG Claim**"). *Id.* Specifically, the PFG Bankruptcy Trustee and the Receiver agreed that the Receiver would have one allowed claim, claim number 11615, as a nonpriority, general unsecured claim in the amount of \$10,000,000.00. *Id.* All other claims filed by the Receiver in the PFG Bankruptcy would be disallowed. *Id.* This agreement was set forth in the Stipulation and Agreed Order Resolving Claim Nos.

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<sup>2</sup> The Receiver also filed a set of consolidated claims known as Claim No. 10605, asserting forex customer claims against PFG on the basis that Trevor Cook maintained accounts with PFG that were funded with money that Cook stole in his Ponzi scheme, including accounts by and on behalf of Belinda Tomlinson (the "**Tomlinson et al. Claims**"). The Receiver contends that any distributions on account of Belinda Tomlinson's claim, or any other similarly-situated person or entity associated with Claim No. 10605 as a forex customer of PFG, should be made to the Receiver, and not to Ms. Tomlinson or any other such person or entity. The Tomlinson et al. Claims are not part of the present motion or the sale proposed herein.

11099, 11116, 11138, 11252, 11265, 11437, 11445, 11451, 11460, 11484, 11615 and 11828 Asserted by R.J. Zayed, as Receiver of Estates of Trevor Cook, et al. (“**Stipulation**”), dated May 2, 2014, and so ordered by the Bankruptcy Court on May 29, 2014. This Stipulation is annexed to the Reid Declaration as **Exhibit C**.

**D. The Receiver’s Decision to Liquidate the PFG Bankruptcy Claim**

With the Allowed PFG Claim, the Receiver had two options to monetize that asset for the victims of the Ponzi scheme: hold the claim, and wait to see whether and how much it would receive in eventual distributions from the PFG Bankruptcy, or, sell the claim. *Id.*, ¶ 13. As with every action taken on behalf of the Receivership, the Receiver weighed the costs and benefits of both of these options. *Id.* After considering all of the information available concerning the PFG Bankruptcy, the needs of the victims of this fraud, and his duties and responsibilities under this Court’s Orders, the Receiver determined that it is in the best interest of the Receivership to monetize the Allowed PFG Claim via sale at public auction. *Id.*, ¶ 14. The Receiver’s proposed auction procedure is outlined below.

**II. THE RECEIVER’S PROPOSED PROCEDURE FOR SALE OF THE PFG BANKRUPTCY CLAIM**

To obtain the greatest value for the Receiver Estates, the Receiver proposes to sell the Allowed PFG Claim at an auction to be held in September 16, 2014 in New York City, where most of the likely buyers reside, at the office of Receiver’s counsel, Reid Collins & Tsai LLP, One Penn Plaza, 49<sup>th</sup> Floor, New York, New York 10119 (“**Auction**”).

**Sale**”). *Id.*, ¶ 15. To maximize access to and participation in the auction, bidders may participate by agent or telephonically, subject to determination by the Receiver. *Id.*

The complete details of the Receiver’s proposed terms and conditions governing the Auction Sale (“**Terms of Sale**”) are attached to the Reid Declaration as **Exhibit D**.

**A. Pre-Auction Sale Activities**

The Receiver, through his counsel, has engaged in considerable pre-Auction Sale communications with parties who may be interested in purchasing the Allowed PFG Claim. Reid Decl., ¶ 17. Over the course of several months, the Receiver’s counsel researched, identified, and reached out to several potential buyers. *Id.* As part of that process, the Receiver’s counsel discussed with potential buyers the possibility of selling the Allowed PFG Claim on certain terms and conditions, including a term that provided that any sale would be subject to higher and/or better offers. *Id.* This process of identifying and informing likely purchasers about the public sale of the Allowed PFG Claim continued for a period of weeks and culminated in a buyer (the “**Stalking Horse Bidder**”) committing to purchase the Allowed PFG Claim subject to higher and/or better offers, as set forth in the Stalking Horse Bid, which is described more fully below. *Id.*

In an effort to reach the broadest possible audience of potential buyers, the Receiver, through his counsel, will continue to market the Allowed PFG Claim for fourteen (14) days from the date of entry of an order by this Court approving the auction (the “**Marketing Period**”). *Id.*, ¶ 19, Ex. D § 3. During the Marketing Period, the Receiver’s marketing efforts shall consist of, among other things: (1) posting notice of the Auction Sale and Terms of Sale on the Receiver’s website,

<http://www.cookkileyreceiver.com>; (2) advertising the Auction Sale one day a week for two weeks by notice in the Minneapolis Star Tribune, pursuant to 28 U.S.C. §§ 2001-2004,<sup>3</sup> and one time in PRNewswire; (3) contacting any and all parties that have expressed interest in purchasing the Allowed PFG Claim or any newly identified potential purchasers; and (4) contacting, by email, certain parties believed to be engaged in the claims trading industry. *Id.*, ¶ 19, Ex. D § 3.

## **B. Terms of the Auction Sale of the Allowed PFG Claim**

### **1. Stalking Horse Bidder and Competing Bidders**

The Stalking Horse Bidder has agreed to open bidding at, and pay a minimum of, \$1.355 million for the Allowed PFG Claim, subject to higher and/or better bids at the Auction Sale. *Id.*, ¶ 18. To memorialize the terms of his agreement with the Stalking Horse Bidder, the Receiver has entered into a stalking horse agreement (“**Stalking Horse Agreement**”), attached to the Reid Declaration as **Exhibit E**. *Id.*, ¶ 17. In the event that the Allowed PFG Claim is sold to a competing bidder, the Stalking Horse Bidder shall not receive a break-up fee, nor shall the Stalking Horse Bidder receive any reimbursement for any costs or fees (including but not limited to legal fees and costs). *Id.*, Ex. E § 6.

In order to participate in the Auction Sale, a prospective competing bidder must agree to and execute the Terms of Sale, and (i) deliver an executed copy to the Receiver’s

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<sup>3</sup> Section 2004 of title 28 of the United States Code provides that “[a]ny personalty sold under any order or decree of any court of the United States shall be sold in accordance with 2001 of this title, *unless the court orders otherwise.*” (Emphasis added). Here, the Receiver is requesting that the District Court approve a notice period of fourteen (14) days.

counsel at Reid Collins & Tsai LLP, Attn: Anne M. Bahr, One Penn Plaza, 49<sup>th</sup> Floor, New York, New York 10119 to be received by no later than by 11 a.m. one business day before the Auction Sale and be qualified by the Receiver in his sole discretion, or (ii) be otherwise qualified by the Receiver in his sole discretion. *Id.*, Ex. D § 4(a).

## 2. Auction Sale Process

The Auction Sale for the Receiver's Allowed PFG Claim will open with the Stalking Horse Bidder's opening bid of \$1.355 million. *Id.*, ¶ 18. Thereafter, competing bids must be in increments of \$25,000.00. *Id.* When the highest offer is obtained, the Stalking Horse Bidder has an option to "top" the highest offer for the Allowed PFG Claim by paying \$50,000.00 more than the amount of the highest offer ("**Topping Option**"). *Id.*, Ex. D § 2(d), Ex. E § 4. Such Topping Option must be exercised by the close of business on the date of the auction. *Id.*, Ex. D § 2(d), Ex. E § 4.

At the conclusion of the Auction Sale, and after time for consideration, the Receiver will select the best bid ("**Best Bid**") in his sole judgment and discretion made by either a competing bidder or the Stalking Horse Bidder (the "**Successful Bidder**"). *Id.*, Ex. D § 4(d). The Receiver shall also identify the second highest bidder and the third highest bidder at the Auction Sale. *Id.* The Receiver's selection of the Best Bid shall conclude the Auction Sale. *Id.* By close of business the day after the auction, the Successful Bidder shall (i) execute a Memorandum of Bid, attached to the Reid Declaration as **Exhibit D-2**, and submit it to Receiver's counsel, Reid Collins & Tsai LLP, Attn: Anne M. Bahr, One Penn Plaza, 49<sup>th</sup> Floor, New York, New York 10119, and (ii) deposit 10% ("**Deposit**") of the amount of the Best Bid ("**Purchase Price**") by bank

check or wire transfer to the account of the Receiver, pursuant to the instructions delivered by the Receiver, to be held until the Closing and applied at that time to the purchase price. *Id.* The purchase price of the Allowed PFG Claim obtained at the Auction Sale shall not be adjusted for additional expenses or otherwise.<sup>4</sup> *Id.*

### **C. Confirmation of Sale by the Court**

Section 9 of the Terms of Sale provides that following the Auction Sale but prior to Closing (as defined below), the Receiver shall submit to the Court a motion seeking approval of the sale of the Allowed PFG Claim (“**Sale Motion**”), which shall include, but not be limited to: (a) a report of sale, in the form attached to the Reid Declaration as **Exhibit F**; (b) a declaration or affidavit describing in detail (i) the marketing efforts undertaken by the Receiver for the Auction Sale, (ii) the bids received at the Auction Sale, and (iii) the identity and amount bid by the Successful Bidder at the Auction Sale; and (c) a proposed order approving the sale of the Allowed PFG Claim to the person or entity deemed to have been the Successful Bidder at the Auction Sale (the “**Sale Order**”), in a form substantially similar to the proposed order attached to the Reid Declaration as **Exhibit G**. *Id.*, ¶ 20, Ex. 4 § 9.

### **D. Closing of Sale**

Sections 5 through 8 of the Terms of Sale govern the closing of the Sale of the Allowed PFG Claim (the “**Closing**”). As specified in section 5 of the Terms of Sale, the Closing shall take place at the offices of Receiver’s counsel, Reid Collins & Tsai LLP,

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<sup>4</sup> The Purchase Price may be adjusted by the Distributions In Trust, as provided for in the Terms of Sale.

One Penn Plaza, 49<sup>th</sup> Floor, New York, New York 10119 commencing at 11:00 a.m. (EST) on a date to be determined, but in no event later than ten (10) days after the Sale Order is a final, non-appealable order or such other date as may be mutually agreeable to the Receiver and the Successful Bidder (the “**Closing Date**”), TIME BEING OF THE ESSENCE as to the Successful Bidder, although the Closing Date may be extended solely by the Receiver with the consent of the Successful Bidder, not to be unreasonably withheld. *Id.*, Ex. D § 5.

Section 6 of the Terms of Sale describes the documents that will be exchanged at the Closing. *Id.*, Ex. D § 6. Specifically, it provides that “at the Closing:

- a. the Receiver will deliver to the Successful Bidder: (i) an executed Transfer of Claim, attached hereto as Exhibit C (including an executed copy of the Evidence of Transfer of Claim attached thereto as Exhibit A (“**Evidence of Transfer of Claim**”)), which shall transfer, assign, convey, and deliver to the Successful Bidder, all of the Receiver and the Estates’ right, title, and interest in and to the Allowed PFG Claim; (ii) a copy of the order from the PFG Court approving the Stipulation (defined below); (iii) a copy of the order from the District Court authorizing the Auction Sale; and (iv) such other documents as the parties may deem necessary; and
- a. subject to section 7 below, the Successful Bidder agrees to (i) deliver to the Receiver the entire Purchase Price by only a bank check, or wire transfer, made payable to “R.J. Zayed as Receiver for Trevor Cook et al.” less the Deposit, which has already been delivered to the Receiver, and any Distributions In Trust (as hereinafter defined), (ii) execute such documents as necessary to satisfy all of these Terms of Sale and the Sale Order (as defined below), and (iii) authorize the release of the Deposit and any Distributions In Trust at the time of the Closing to the Receiver.
- b. When all actions described in this section and section 7 have been completed, the transaction will be deemed closed (“**Close**” or “**Closed**”).” *Id.*

Section 7 of the Terms of Sale concerns Conditions to the Successful Bidder's Obligations and provides that:

“The obligations of Successful Bidder to purchase the Allowed PFG Claim and to consummate the transactions contemplated hereby are subject to the satisfaction, on or prior to the Closing Date, of each of the following conditions, any of which may be waived (in whole or in part) by Successful Bidder:

- a. a final, non-appealable Sale Order (as defined below) authorizing the sale of the Allowed PFG Claim shall have been entered by the District Court;
- b. there shall not be any judgment, decree, injunction, order or ruling in effect which prevents the consummation of the transactions contemplated by these Terms of Sale;
- c. the Receiver shall have performed in all material respects all agreements and covenants required hereby to be performed by the Receiver on or prior to the Closing Date, and the representations and warranties of the Receiver in section 14 shall be true and correct in all material respects as of the Closing Date, unless such representation or warranty expressly specifies a particular date, and shall be incorporated by reference into the Transfer of Allowed Claim attached hereto as Exhibit C;
- d. the Receiver shall have executed and delivered to Successful Bidder all of the documents provided for in section 6(a); and
- e. on or prior to the Closing Date, the Receiver shall have delivered to Successful Bidder a certificate from the Receiver, dated as of the Closing Date, stating that the conditions specified in section 7(b) have been satisfied, attached hereto as Exhibit D.” *Id.*, Ex. D § 7.

In order to fulfill certain Bankruptcy Rule requirements for the transfer of the Allowed PFG Claim, Section 7 of the Terms of Sale further provides that:

“If the Successful Bidder satisfies these Terms and Conditions, Closes on the transaction contemplated herein, and files Evidence of Transfer of Claim, in accordance with Federal Rule of Bankruptcy Procedure 3001 (e)(1) & (2), in the PFG Bankruptcy within two (2) business days of

Closing on the transaction contemplated herein, the Receiver shall hold the Purchase Price tendered by the Successful Bidder in escrow for 21 days from the date the Successful Bidder files the Evidence of Transfer of Claim. Should the PFG Court fail to honor the Evidence of Transfer of Claim filed by the Successful Bidder and not substitute the Successful Bidder for the Receiver as holder of the Allowed PFG Claim, the transaction contemplated herein shall be treated as if the Receiver had failed to Close and the Purchase Price shall be returned to the Successful Bidder.” *Id.*

The Terms of Sale also contemplate the failure of a Successful Bidder to complete the sale at the Closing, and provide for actions the Receiver can take under those circumstances. *Id.* These actions include retaining the deposit and selling the Allowed PFG Claim to another Competing Bidder. *Id.* Section 7 of the Terms of Sale further provides that, if the Successful Bidder does not close:

“In the event that the foregoing conditions are satisfied and the Successful Bidder fails to comply with these Terms of Sale for any reason whatsoever, including failure to tender the entire Purchase Price (less the Deposit) at the Closing, the Successful Bidder shall forfeit (a) the Deposit to the Estates, and (b) the right to obtain the Allowed PFG Claim. The Receiver, at his sole option, shall thereafter be authorized to sell the Allowed PFG Claim to the Competing Bidder (or, if appropriate, the Stalking Horse Bidder) with the second highest or best bid from the Auction Sale (the “**Second Highest Bidder**”), without any further notice, and without giving the Second Highest Bidder credit for the Deposit forfeited by the Successful Bidder, and upon such other terms and conditions as the Receiver deems appropriate. The election to Close the sale of the Allowed PFG Claim with the Second Highest Bidder shall be communicated with a short and simple correspondence sent by the Receiver to the Second Highest Bidder expressing the Receiver’s desire to Close the sale of the Allowed PFG Claim with the Second Highest Bidder together with a request that the Second Highest Bidder execute the letter and confirm the Second Highest Bidder’s desire to Close the sale of the Allowed PFG Claim. Should the Second Highest Bidder fail to Close on the Allowed PFG Claim, within such time as the parties may agree but not to exceed twenty (20) days after notice from the Receiver to the Second Highest Bidder of its obligations to Close, the Receiver shall be authorized to sell the Allowed PFG Claim to the next highest or best bidder at the Auction Sale (“**Third Highest**”

**Bidder**”), without the necessity of any further notice. The election to Close the sale of the Allowed PFG Claim with the Third Highest Bidder shall be communicated with a short and simple correspondence sent by the Receiver to the Third Highest Bidder expressing the Receiver’s desire to Close the sale of the Allowed PFG Claim with the Third Highest Bidder together with a request that the Third Highest Bidder execute the letter and confirm the Third Highest Bidder’s desire to Close the sale of the Allowed PFG Claim. All bidders who execute a copy of these Terms of Sale shall be bound to all terms and conditions contained herein, whether they are the Successful Bidder, until such time as the transaction selling the Allowed PFG Claim is Closed.” *Id.*

With respect to expenses, section 8 of the Terms of Sale provides that “[e]xpenses incurred by the Successful Bidder, or any Competing Bidder concerning any due diligence, shall be the sole responsibility of such bidder, and under no circumstances shall the Receiver, the Receiver’s retained professionals (including Receiver’s counsel), or the Estates be responsible for, or pay, such expenses.” *Id.*, Ex. D § 8.

### **III. ARGUMENT**

The Receiver respectfully submits that approval of the Auction Sale of the Allowed PFG Claim is authorized by law and in the best interests of the defrauded investors.

#### **A. The Receiver has the Power to Sell the Allowed PFG Claim for the Benefit of the Receivership Estate**

A common-law equity receiver has the power to dispose of the property of the receivership estate when it appears that the entities it acts for are, or were, continuing an enterprise that does not show evident signs of working out for the benefit of creditors. *See Jones v. Village of Proctorville*, 290 F.2d 49, 50 (6th Cir. 1961). Courts appointing a receiver “should see that the business is liquidated as economically and speedily as

possible, unless its continuance is demonstrably beneficial to creditors.” *Id.* (citing *Kingsport Press, Inc. v. Brief English Sys.*, 54 F.2d 497, 501 (2d Cir. 1931)).

Further, this Court “has broad powers and wide discretion to determine appropriate relief in equity receiverships.” *SEC v. American Capital Invest., Inc.*, 98 F.3d 1133, 1144 (9th Cir. 1996). *See also Gockstetter v. Williams*, 9 F.2d 354, 357 (9th Cir. 1925) (“In authorizing the sale of property by receivers, courts of equity are vested with broad discretion as to price and terms.”) As the United States Supreme Court has held, the provisions for conditions of sale shall be determined by the court “as will in his judgment best protect the rights of all interested, and make the sale most profitable to all.” *Pewabic Mining Co. v. Mason*, 145 U.S. 349, 356 (1891).

A receiver’s sale of non-real property assets in the United States is governed by 28 U.S.C. § 2004. Section 2004 provides that “[a]ny personalty sold under any order or decree of any court of the United States shall be sold in accordance with section 2001 of this title, unless the court orders otherwise.” The language of Section 2004 expressly permits the Court wide latitude to determine the best method of sale and liquidation of assets to maximize value for the receivership estate. *See, e.g., Tanzer v. Huffines*, 412 F.2d 221, 222 (3d Cir.1969) (court permitted receiver to sell stock in corporation); *see also SEC v. Safety Fin. Serv.*, 674 F.2d 369, 371 (5th Cir. 1982) (holding that the court overseeing the receivership is given “wide discretionary power” to determine the appropriate relief in an equity receivership, including liquidation of receivership assets); *SEC v. Wencke*, 783 F.2d 829, 837 n.9 (9th Cir. 1986); *SEC. v. Lincoln Thrift Association*, 577 F.2d 600, 606 (9th Cir. 1978).

In addition, the Court, as a court of equity presiding over a federal receiver, has the power to authorize the sale of the Allowed PFG Claim free and clear of liens and to have such liens attach to the proceeds of the sale. *See, e.g., Regions Bank v. Egyptian Concrete Co.*, 2009 WL 4431133, \*7 (E.D. Mo. Dec. 1, 2009) (citing law review articles and *Mellen v. Moline Malleable Iron Works*, 131 U.S. 352, 357 (1889) ('the removal of alleged liens or incumbrances upon property, the closing up of affairs of insolvent corporations, and the administration and distribution of trust funds, are subjects over which courts of equity have general jurisdiction.')). *S.E.C. v. Behrens*, No. 8:08CV13, 2009 WL 262100, \*1 (D. Ne. Feb. 2, 2009).

**B. The Proposed Sale of the Allowed PFG Claim Will Fulfill this Court's Orders and is in the Best Interest of the Victims of this Ponzi Scheme**

The purpose of the Receiver Estates is to marshal, preserve, account for, and liquidate the assets of the Receivership for the benefit of the defrauded investors. *Ex Parte Statutory Restraining Order* at 7, No. 09-cv-3332 (D. Minn. Nov. 23, 2009), ECF No. 12. One of the Receiver's primary duties is to maximize distributions to defrauded investors and other claimants. *See Scholes v. Lehmann*, 56 F.3d 750, 755 (7th Cir. 1995) (receiver's "object is to maximize the value of the [Receivership assets] for the benefit of their investors and any creditors"); *SEC v. TLC Invs. & Trade Co.*, 147 F. Supp. 2d 1031, 1042 (C.D. Cal. 2001); *SEC v. Kings Real Estate Inv. Trust*, 222 F.R.D. 660, 669 (D. Kan. 2004). In furtherance of these purposes, this Court has previously approved the Receiver's sale of personal assets of the Receiver Estates for the benefit of the Receivership. *See, e.g., Order Granting Receiver's Motion for Sale of Certain Personal*

*Property in His Possession*, No. 09-cv-3333 (D. Minn.), ECF Nos. 121 (Jan. 13, 2010), 314 (May 6, 2010), 503 (Sept. 17, 2010), 652 (Jan. 7, 2011), and 710 (Mar. 15, 2011); *Order Granting Receiver's Motion for Sale of Certain Personal Property in His Possession*, 11-cv-574 (D. Minn. June 23, 2011), ECF No. 124.

After full consideration of his duties to marshal, preserve, account for, and liquidate the property of the Receiver Estates, the Receiver respectfully submits that the proposed sale of the Allowed PFG Claim, upon the terms and conditions set forth in the Terms of Sale, fulfills the Receiver's mandate to maximize distributions to the defrauded investors in a manner that is fully consistent with the law.

### **CONCLUSION**

The Receiver respectfully requests that the Court authorize the Receiver to sell the Allowed PFG Claim free and clear of all liens to the Stalking Horse Bidder, or to such bidder that submits a higher and/or better offer for the purchase of the Allowed PFG Claim at the Auction Sale in accordance with the Terms of Sale. A Proposed Order is submitted herewith.

Dated: July 29, 2014

Respectfully submitted,

R.J. ZAYED, IN HIS CAPACITY AS  
RECEIVER,

By his attorneys,

s/Tara C. Norgard

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