

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

U.S. COMMODITY FUTURES
TRADING COMMISSION,

Plaintiff,

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

v.

TREVOR COOK et al.,
Defendants,

R.J. ZAYED,
Receiver.

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.

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.

**DECLARATION OF WILLIAM T. REID, IV IN SUPPORT OF
RECEIVER'S SALE OF THE RECEIVER ESTATES' CLAIM IN THE
PEREGRINE FINANCIAL GROUP, INC. BANKRUPTCY AT AN AUCTION
TO THE BIDDER WITH THE HIGHEST OR BEST OFFER**

The undersigned, William T. Reid, IV, makes this declaration pursuant to 28 U.S.C. § 1746 under penalty of perjury and states as follows:

1. I am a Partner in the law firm of Reid Collins & Tsai LLP (“**RCT**”), counsel to 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**”).

2. I was admitted *pro hac vice* to this Court on February 9, 2012. My offices are located at One Penn Plaza, 49th floor, New York, New York 10119 and 1301 S. Capital of Texas Hwy, Building C, Suite 300, Austin, Texas 78746.

3. This declaration is submitted in support of the 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 (the “**Motion**”).

4. In its Motion, the Receiver seeks to sell the Allowed PFG Claim (defined below) free and clear of liens, claims and encumbrances, and interests with liens to attach to the sale proceeds (the “**Sale**”). A proposed order approving the relief requested in the Motion is attached hereto as **Exhibit A**.

Background

5. PFG was a futures commission merchant and forex dealer based in Chicago and Iowa. 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. 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 (“**Minnesota PFG Action**”). A copy of the Complaint in the Minnesota PFG Action is attached hereto as **Exhibit B**.

6. 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. 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.

7. On June 22, 2012, this Court issued a Memorandum Opinion and Order denying PFG’s motion to transfer venue. RCT immediately pressed PFG for an aggressive discovery schedule that included early 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.

8. 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. Within hours, the National Futures Association issued an emergency order freezing PFG's operations, after discovering that a PFG account at U.S. Bank that was supposed to be a customer-segregated account with a balance of \$225 million held only \$5 million.¹

9. 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, 2011), 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**").

10. 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.

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

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

12. From 2013 to early 2014, I engaged in detailed and extended dialogue with the PFG Bankruptcy Trustee about the merits of the Receiver's claims, along with other members of RCT's legal team. 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**"). 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. All other claims filed by the Receiver in the PFG Bankruptcy would be disallowed. This agreement was set forth in the Stipulation and Agreed Order Resolving Claim Nos. 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. A copy of the Stipulation is attached hereto as **Exhibit C**.

13. After the Receiver obtained the Allowed PFG Claim, the Receiver weighed the options for monetizing the Allowed PFG Claim for the benefit of the victims of the Cook Ponzi scheme. Essentially, the Receiver's options were (i) wait and see what

distributions he eventually received from the PFG Bankruptcy for the Allowed PFG Claim or (ii) sell the Allowed PFG Claim. RCT provided advice and counsel to the Receiver concerning both of these options.

14. After due and careful deliberation, the Receiver determined that it is in the best interest of the Receivership to monetize the Allowed PFG Claim via sale at public auction.

The Proposed Auction Sale

15. 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 2014 in New York City, where most of the likely buyers reside, at RCT's New York office, located in midtown Manhattan at One Penn Plaza, 49th Floor, New York, New York 10119. ("**Auction Sale**"). To maximize access to and participation in the auction, bidders may participate by agent or telephonically, subject to determination by the Receiver.

16. The proposed terms and conditions governing the auction and sale ("**Terms of Sale**") are attached hereto as **Exhibit "D"**, along with the following exhibits:

- **Exhibit "D-1": Stalking Horse Agreement**
- **Exhibit "D-2": Memorandum of Bid**
- **Exhibit "D-3": Transfer of Allowed Claim**
- **Exhibit "D-4": Receiver's Certificate.**

17. Over the course of the last several months, I engaged in many communications with my contacts in the bankruptcy and claims trading fields to identify and reach out to parties that might be interested in purchasing the Allowed PFG Claim. As a result of RCT's efforts to pre-market the Allowed PFG Claim in advance of the public sale, the Receiver has entered into a Stalking Horse Agreement with a party that has agreed to

open bidding and pay a minimum of \$1.355 million for the Allowed PFG Claim, subject to higher and/or better bids at the Auction Sale (“**Stalking Horse Bidder**”). The agreement between the Receiver and the Stalking Horse Bidder is memorialized in the executed Stalking Horse Agreement (attached here as **Exhibit E**).

18. As a consequence of the Stalking Horse Agreement, the bidding at the Auction Sale will open at \$1.355 million. Thereafter, competing bids must be in increments of \$25,000.00.

19. In advance of the Auction Sale, RCT will continue to assist the Receiver in marketing the Allowed PFG Claim for fourteen (14) days from the date of entry of an order by the District Court approving the Motion (the “**Marketing Period**”). Our efforts during the Marketing Period will include: (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 Star Tribune, a local Minneapolis paper, pursuant to 28 U.S.C. §§ 2001-2004, 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.

20. Following the Auction Sale and prior to the Closing (as defined in the Terms of Sale), the Receiver shall file with this 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 hereto 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, substantially in the form attached hereto as **Exhibit G** (the "**Sale Order**").

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed in Austin, Texas on this 28th day of July 2014.



William T. Reid, IV, Esq.