

**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 MOTION SEEKING  
APPROVAL OF SALE OF THE RECEIVER ESTATES' CLAIM  
IN THE PEREGRINE FINANCIAL GROUP, INC. BANKRUPTCY**

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 approving the sale of the Receiver Estates’ Claim in the Peregrine Financial Group, Inc. bankruptcy (Bankr. N.D. Ill. 12-27488) to Tangerine Funding, LLC, the highest bidder at the public auction held on September 16, 2014.

**I. BACKGROUND**

**A. Pre-Auction Activities**

On August 12, 2014, this Court entered an order (Case No. 09-cv-3332 - ECF No. 1091; Case No. 09-cv-3333 – ECF No. 1144; Case No. 11-CV-574 – ECF No. 470) (the “**Auction Order**”) authorizing the Receiver to sell the Receiver Estates’ allowed claim (“**Allowed PFG Claim**”) against the estate of Peregrine Financial Group, Inc. (“**PFG**”), a chapter 7 debtor, at an auction to the bidder with the highest or best offer. In the Auction Order, the Court also (a) approved the Terms and Conditions of Auction Sale of the Peregrine Financial Group, Inc. Claim (the “**Terms of Sale**”), (b) authorized the Receiver to sell the Allowed PFG Claim at an auction to be held in September 2014 pursuant to the Terms of Sale (the “**Auction**”), (c) approved the Receiver’s entry into a Stalking Horse Agreement with Tangerine Funding, LLC (the “**Stalking Horse Bidder**”), and

(d) ordered that after the Auction, the Receiver was required to submit a motion seeking approval of the sale of the Allowed PFG Claim (“**Sale Motion**”). Moreover, the Auction Order explicitly provided that the “Receiver is selling the Allowed PFG Claim free and clear of liens, claims, encumbrances, and interests, with such liens, claims, encumbrances, and interests to attach to the proceeds of the sale.”

Following this Court’s entry of the Auction Order, the Receiver began marketing the Allowed PFG Claim to potential purchasers. Declaration of Angela J. Somers (“**Somers Decl.**”), ¶ 8. Specifically, the Receiver posted a notice of the Auction and the Terms of Sale on the Receiver’s website. *Id.* He also advertised the Auction by placing a notice in the *Star Tribune* on August 20 and August 27, 2014. *Id.* On August 20, 2014, the Receiver further advertised the Auction by releasing a notice via PR Newswire’s US1 distribution list and posting the notice on PR Newswire’s public website, [www.prnewswire.com](http://www.prnewswire.com). *Id.* Further, Reid Collins & Tsai LLP (“**Receiver’s Counsel**”) reached out to over fifteen parties believed to be engaged in the claims trading industry and followed-up with the parties that inquired about the claim as a result of the published notices. *Id.*

Prior to the Auction, the Stalking Horse Bidder, Solus LP (“**Solus**”), and Deutsche Bank Securities, Inc. (“**DB**”) submitted executed copies of the Terms of Sale and Receiver’s Counsel determined that they were qualified to bid at the Auction. *Id.*, ¶¶ 4, 9-10.

**B. Auction**

On Tuesday, September 16, 2014, a public auction was held at the offices of Reid Collins & Tsai, LLP. *Id.*, ¶ 11. It began about 1:00 p.m. EDT. *Id.* Three Qualified Bidders attended the Auction: the Stalking Horse Bidder, Solus and DB. *Id.* Angela J. Somers of Receiver's Counsel acted as auctioneer. *Id.*, ¶ 12. Before commencing the bidding, she provided a brief background of the claim and the procedures to be followed at the Auction. *Id.* At the end of her comments, DB stated that it was unable to bid because of its own internal compliance issues. *Id.* Ms. Somers then opened the bidding at \$1,380,000.00 (\$25,000.00 more than the Opening Bid as defined in the Terms of Sale). *Id.* Solus agreed to bid \$1,380,000.00 for the Allowed PFG Claim. *Id.* Following Solus' bid, Ms. Somers asked if anyone was willing to bid \$1,405,000.00 for the Allowed PFG Claim. *Id.* She waited a few minutes but no bidder responded. *Id.* Pursuant to the rules introduced at the beginning of the Auction, bidders were allowed to call "time" if they needed time to consider making an additional bid. *Id.* No time was requested. *Id.* Ms. Somers provided notice of the closing of the Auction by stating "I do not have a bid for \$1.405 million." *Id.* Then she called "going once, going twice... The highest bid that's resulting from the auction will be \$1.380 million." *Id.*

Following the Auction, the Stalking Horse Bidder decided to exercise its Topping Option in the amount of the highest bid plus \$50,000.00. *Id.*, ¶ 13. Therefore, the Stalking Horse Bidder agreed to purchase the Allowed PFG Claim for \$1,430,000.00. *Id.*

Upon receipt of the Stalking Horse Bidder's Memorandum of Bid, Receiver's Counsel emailed all participants in the Auction notifying them of the Stalking Horse

Bidder's decision to exercise its Topping Option and identifying Solus as the Second Highest Bidder with a bid of \$1,380,000.00. *Id.*, ¶ 14. Since there was no third bidder at the Auction, Receiver's Counsel was unable to identify a Third Highest Bidder. *Id.*

On the day following the Auction, the Stalking Horse Bidder remitted a deposit in the amount of \$143,000.00 into the Receiver's bank account in accordance with the Terms of Sale. *Id.*, ¶ 15. To the best of the Receiver's knowledge, the Stalking Horse Bidder is prepared to consummate the Sale by remitting the balance of the purchase price for the Allowed PFG Claim upon entry of the Order by this Court approving the Sale and in accordance with the further time periods provided by the Terms of Sale. *Id.*, ¶ 16.

## **II. ARGUMENT**

Approval of the Sale of the Allowed PFG Claim to the Stalking Horse Bidder is both authorized by law and within the best interests of the defrauded investors.<sup>1</sup>

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

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<sup>1</sup> For additional legal support, please see the Receiver's 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, Case No. 09-cv-03333 – ECF No. 1139 (D. Minn. July 29, 2014).

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).

Pursuant to the Auction Order, this Court authorized the sale of the Allowed PFG Claim to the highest or best bidder at an auction to be held at the offices of Receiver’s Counsel in September 2014. In accordance with the Auction Order, the Auction was held on September 16, 2014 at the offices of Receiver’s Counsel and the Stalking Horse Bidder was determined to be the highest bidder. Somers Decl., ¶ 11, 14. In addition, the Court expressly ordered that, following the Auction, the Receiver was to submit a motion to approve the Sale and that such motion was to include (a) a report of sale, (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. *Id.*, ¶ 6. Along with this Memorandum of Law and in accordance with the Auction Order, the Receiver has submitted the Somers Declaration, a report of sale (attached as an exhibit to the Somers Declaration), and a proposed order. As such, the technical requirements set forth by this Court for approval of the Sale of the Allowed PFG Claim have been satisfied.

Moreover, the sale of the Allowed PFG Claim to the Stalking Horse Bidder will provide a recovery for defrauded investors and satisfies the duties of the Receiver. 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).

After thoughtful and diligent pursuit, settlement, and sale of the Allowed PFG Claim, the Receiver now has almost \$1 million for distribution. Therefore, the Receiver respectfully submits that the sale of the Allowed PFG Claim to the highest bidder at the Auction, the Stalking Horse Bidder, for \$1.430 million satisfies his duty to maximize distributions to defrauded investors.

### **III. CONCLUSION**

The Receiver respectfully requests that the Court approve the Sale of the Allowed PFG Claim free and clear of all liens to the Stalking Horse Bidder. A Proposed Order is submitted herewith.

Dated: October 1, 2014

Respectfully submitted,

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

By his attorneys,

s/ Tara C. Norgard

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