

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

U.S. COMMODITY FUTURES  
TRADING COMMISSION,  
Plaintiff,

v.

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

TREVOR COOK et al.,  
Defendants,

R.J. ZAYED,  
Receiver.

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UNITED STATES SECURITIES  
AND EXCHANGE COMMISSION,  
Plaintiff,

v.

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

TREVOR G. COOK, et al.,  
Defendants,

R.J. ZAYED,  
Receiver.

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UNITED STATES SECURITIES  
AND EXCHANGE COMMISSION,  
Plaintiff,

v.

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

JASON BO-ALAN BECKMAN, et al.,  
Defendants,

R.J. ZAYED,  
Receiver.

**MEMORANDUM IN SUPPORT OF MOTION FOR ORDER APPROVING  
SETTLEMENT AGREEMENT AND BARRING THE FILING AND  
PROSECUTION OF RELEASED CLAIMS AGAINST WESTERN  
INTERNATIONAL SECURITIES, INC.**

**I. INTRODUCTION**

R.J. Zayed, Receiver in the cases of *CFTC v. Cook, et al.*, 09-cv-3332 (D. Minn. 2009), *SEC v. Cook, et al.*, 09-cv-3333 (D. Minn. 2009), and *SEC v. Beckman, et al.*, 11-cv-574 (D. Minn. 2011), respectfully moves this Court for entry of an Order approving the Settlement Agreement between the Receiver and Western International Securities, Inc. (“Western”) and barring the filing and prosecution of released claims against Western. The Settlement Agreement executed by the parties is attached hereto as Exhibit A.

The Receiver’s previously-stated concerns about Western’s finite assets, limited ability to pay a settlement or judgment, and the depletion of Western’s limited assets by the FINRA Claimants’ prior settlement have been realized. *See Receiver’s Memorandum in Support of Motion to Enjoin Distribution of Settlement Proceeds to the FINRA Claimants*, No. 09-cv-3333, Doc. 776, at 13-16 (D. Minn. Apr. 29, 2011). Western’s financial records show that, having paid out \$495,500 to the FINRA Claimants earlier this year, Western had an excess net capital as of November 30, 2011 of only approximately \$553,000. As a result, the Receiver’s ability to collect from Western for his claims was necessarily limited by the prior Western payout.

The Settlement Agreement confirms that the Receiver has claims against Western for damages. Western is willing to pay the considerations identified below (including

roughly 74% of its net capital) for the Receiver to release his claims against Western. The Receiver's claims have value and constitute an asset of the Receiver Estates.

## **II. FACTUAL BACKGROUND RELEVANT TO THE SETTLEMENT AGREEMENT**

R.J. Zayed was appointed Receiver for the estates of Trevor G. Cook ("Cook"), Patrick J. Kiley ("Kiley"), Jason Bo-Alan Beckman ("Beckman"), The Oxford Private Client Group, LLC ("PCG"), Oxford Global Advisors, LLC ("OGA"), Oxford Global Partners, LLC ("OGP") and various other entities controlled by them (the "Receivership Entities"), by the United States District Court for the District of Minnesota, Chief Judge Michael J. Davis presiding, on November 23, 2009 in the cases of *SEC v. Cook, et al.*, 09-cv-3333 (D. Minn. 2009), and *CFTC v. Cook, et al.*, 09-cv-3332 (D. Minn. 2009), and on March 8, 2011 in the case of *SEC v. Beckman, et al.*, 11-cv-574 (D. Minn. 2011). *Order Appointing Receiver*, No. 09-cv-3333, Doc. 13 (D. Minn. Nov. 23, 2009); *Ex Parte Statutory Restraining Order*, No. 09-cv-3332, Doc. 21 (D. Minn. Nov. 23, 2009); *Second Amended Order Appointing Receiver*, No. 09-cv-3333, Doc. 68 (D. Minn. Dec. 11, 2009); *Order Continuing Appointment of the Temporary Receiver*, No. 09-cv-3332, Doc. 96 (D. Minn. Dec. 11, 2009); *Order Appointing Receiver*, No. 11-cv-574, Doc. 10 (D. Minn. Mar. 8, 2011) (collectively "Receivership Orders").

PCG, OGA and OGP are included among the Receivership Entities, along with "every other corporation, partnership, trust and/or entity (regardless of form) which is directly or indirectly owned by or under the direct or indirect control of Cook or Kiley, or any individual working in concert with any of the Defendants . . . ." *Second Amended*

*Order Appointing Receiver*, No. 09-cv-3333, Doc. 68, at 2 (D. Minn. Dec. 11, 2009); Complaint, No. 09-cv-3333, Doc. 1, at 1 (D. Minn. Nov. 23, 2009); *see also Ex Parte Statutory Restraining Order*, No. 09-cv-3332, Doc. 21, at 7 (D. Minn. Nov. 23, 2009). The Receivership Entities further include, “every other corporation, company, partnership, trust and/or other entity (regardless of form) which is directly or indirectly owned by or under the direct or indirect control of Defendant Beckman . . . or Relief Defendant Hollie Beckman . . . .” *Order Appointing Receiver*, No. 11-cv-574, Doc. 10, at 2 (D. Minn. Mar. 8, 2011).

Pursuant to the Receivership Orders, the Receiver stands in the place of the Receivership Entities and is authorized to pursue all suits which may be brought by the Receivership Entities. *Second Amended Order Appointing Receiver*, No. 09-cv-3333, Doc. 68 at 3 (D. Minn. Dec. 11, 2009); *Order Continuing Appointment of the Temporary Receiver*, No. 09-cv-3332, Doc. 96, at 4 (D. Minn. Dec. 11, 2009); *Order Appointing Receiver*, No. 11-cv-574, Doc. 10, at 3 (D. Minn. Mar. 8, 2011). Each and all persons and entities that have or will submit a valid proof of claim to the Receiver concerning any of the Receivership Entities are referred to herein, individually and collectively, as “Receivership Claimants.”

Beckman was an independent contractor registered representative for Western from March 2008 through May 2009 and, in such capacity, solicited investors and traded investment products on behalf of clients holding accounts at Western. The Receiver contends that Beckman, while acting in the capacity as a principal of Receivership Entities including at least PCG, OGA, and OGP, and while an independent contractor registered

representative for Western, participated in operating one of the largest Ponzi schemes in Minnesota's history. The Receiver further contends that several of the Receivership Entities, including PCG, OGA, and OGP, have legally cognizable claims against Western arising out of Western's acts and/or omissions in providing substantial assistance to Beckman in his proliferation and operation of the Ponzi scheme, including, but not limited to, claims of aiding and abetting breach of fiduciary duty, aiding and abetting fraud, respondeat superior, breach of fiduciary duty, and negligence.

Western expressly denies that the Receivership Entities, or any of them, or any the Receivership Claimants or investors or claimants of Beckman or the Receivership Entities, have any legally cognizable claims against Western, and Western is prepared to vigorously defend against the Receiver's claims or claims that any investor has or may assert against Western.

The Receiver delivered a draft complaint to Western on November 16, 2011 (the "Draft Complaint") as an initial attempt to resolve its claims against Western and to facilitate settlement discussion.

Western represents that it had excess net capital as of November 30, 2011 of approximately \$553,000 and that its net capital position has not changed substantially since then. Western previously entered into a settlement with several individual investors (the "Quiggle/Woodbeck/Olson Claimants") pursuant to which Western agreed to pay, and did pay, the sum of \$495,500, which amount is being held in escrow pending this Court's further order ("Escrow Funds"). Western is an insured under a \$1 million insurance policy through Everest Indemnity Insurance Company ("Everest"), Policy No. FL5 EE00006-091

(the “Everest Policy”), and Western is not aware of any other insurance policy which may be available to provide any insurance coverage to Western relating to any acts, errors or omissions of Beckman or any entity owned or controlled by Beckman.

Western entered into the Settlement Agreement (attached as Exhibit A) for the purpose of resolving, to the greatest extent possible, all claims the Receiver, and any claimant or investor of Beckman or the Receivership Entities, has or may assert against Western so that Western may avoid further costs of defense in defending such claims.

The Receiver desires to distribute the consideration paid by Western pursuant to the Settlement Agreement to the Receivership Claimants, with the intent that any Receivership Claimant who willingly and knowingly accepts any proceeds from the Settlement Agreement will be barred from bringing any collateral claims by the [Proposed] Order Approving Settlement Agreement and Barring the Filing and Prosecution of Released Claims Against Western International Securities, Inc. (the “Order”) submitted to the Court with this motion.

### **III. MATERIAL TERMS OF THE SETTLEMENT AGREEMENT**

Pursuant to the terms of the Settlement Agreement, and pending approval by this Court, Western agrees to contribute \$1,500,000 to settle all claims described in the Settlement Agreement and shall have no responsibility for payment of any portion other than as set forth in Paragraph 4(a)-(d) of the Settlement Agreement. Western’s responsibilities for payment, subject to further clarification as provided in Paragraph 4(a)-(d) in the Settlement Agreement, are as follows:

- Pursuant to Paragraph 4(a), Western agrees to pay the Receiver the sum of \$410,000 (Four Hundred and Ten Thousand Dollars and No Cents) in cash on or before the seventh (7) day after the Effective Date of this Agreement.
- Pursuant to Paragraph 4(b), Western, for good and valuable consideration received, assigns, transfers, and sets over to the Receiver all of its right, title and interest, if any, in the Escrow Funds.<sup>1</sup>
- Pursuant to Paragraph 4(c), Western, for good and valuable consideration received, assigns, transfers and sets over to the Receiver all of Western's right, title and interest, if any, in and to the claims and causes of actions arising out of, the Everest Policy, together with all of the payments, proceeds, and compensation and any and all monies due to Western in connection with or pursuant to the above, including all payments, proceeds, compensation and any and all monies which Western, in any way or manner, is or will be entitled to receive under and pursuant thereto.
- Pursuant to Paragraph 4(d), Western, for good and valuable consideration received, assigns, transfers and sets over to the Receiver any and all of its rights, including any and all claims and causes of action arising under law or equity, against NRP Financial, Inc., and each of its owners, directors, officers, control persons, employees, registered representatives, agents, successors, assigns (if any), attorneys, insurers, agents, heirs, and estates.

For the consideration provided by Western (and expressed in Paragraph 4(a)-(d) of the Settlement Agreement), the Receiver agrees to a full release of any and all claims against Western (as expressed in Paragraph 6 of the Settlement Agreement). The Receiver further agrees that all checks distributed to

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<sup>1</sup> The Receiver heeded the Court's comments from the January 6, 2012 hearing regarding the benefits of reaching an amenable resolution with the FINRA Claimants concerning the Escrow Funds. The Receiver and FINRA Claimants are currently discussing and working towards a potential resolution of those funds. With respect to the instant motion, the FINRA Claimants have informed the Receiver that, because they have not reviewed the Settlement Agreement as of today, they reserve the right to object to it.

Receivership Claimants that consist in whole or in part of funds received from the Settlement Agreement shall include the following legend in conspicuous text on the check: "CASHING RELEASES WESTERN," and further be accompanied by a transmittal letter stating the following: "BY CASHING THIS CHECK YOU ARE AGREEING TO RELEASE ANY CLAIMS YOU MAY HAVE AGAINST WESTERN INTERNATIONAL SECURITIES, INC. THE FULL TERMS OF THE RELEASE ARE AT WWW.COOKKILEYRECEIVER.COM."

The Receiver agrees to distribute the net proceeds of the funds paid pursuant to the Settlement Agreement to all Receivership Claimants as soon as reasonably practicable following the Effective Date as defined in Paragraph 2 of the Settlement Agreement. The Receiver further agrees to request that the Court enter the Order, with the intended effect that any Receivership Claimant who willingly and knowingly accepts any proceeds from this Settlement Agreement be barred from bring any collateral claims against Western.

#### **IV. CONCLUSION**

For the foregoing reasons, the Receiver requests that the settlement be allowed and the Order be entered.

Dated: January 13, 2012

s/ R.J. Zayed  
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