

I. PRELIMINARY STATEMENT

As this Court is aware, over the course of the preceding year, the Receiver and his professionals (collectively the “Receivership Team”) have undertaken various tasks to collect and liquidate the assets of the estate of the Receivership Defendant (the “Estate”), and to permit entities that assert they are owed money by the Receivership Defendant and/or have suffered damages arising from the actions of the Receivership Defendant to lodge Claims¹ against the Receivership Defendant through the use of the Claims Process previously approved by this Court. In the course of this process, the Receivership Team faced numerous challenges in seeking to provide the greatest return to the victims of the Ponzi and pyramid scheme.

Many of the challenges that arose in regard to the Claims Process were anticipated and addressed by the Receivership Team through the inclusion of various safeguards in the Claims Process. Those safeguards, however were unable to resolve several additional issues, including, but not limited to: (1) Claimants who failed to provide adequate information to reconcile claims, (2) Claimants who actively sought to mislead the Receivership Team, or (3) issues that were not anticipated by the Receivership Team when the Claims Process was approved.

After a preliminary review of filed Claims, the Receivership Team identified numerous issues that needed further attention, including, without limitation, (1) Claimants who filed Claims with incomplete information or provided false information, (2) Claimants who did not provide a valid username, (3) Claimants who filed Claims on behalf of other Claimants, (4) Claimants who aggregated information across multiple usernames (regardless of whether the usernames they were aggregating were registered to another individual), (5) Claimants who filed multiple Claims for the same username, (6) Claimants who failed to provide adequate

¹ Capitalized terms used, but not defined herein, shall have the meanings ascribed them in the Receiver’s Motion for Order Seeking Approval of (1) Claims Process, (2) Setting of Bar Date, and (3) Certain Notice Procedures and its Exhibits (D.E. 138).

information to readily identify the Claimant in the ZeekRewards database, (7) Claimants that misclassified Claims, (8) Claimants that asserted amounts far in excess of their actual damages, and (9) entities that improperly filed Claims with no obvious relation to the ZeekRewards Ponzi and pyramid scheme.

The Receivership Team requested that certain users provide additional information in order to resolve username-related issues. The majority of the other issues set forth above will be dealt with through the Claims reconciliation process. Unfortunately, the issues caused by the conflicting and unclear information, coupled with the manner in which the ZeekRewards database was maintained, will complicate the Claims reconciliation process.

The Receivership Team has begun the Claims reconciliation process in earnest and will address all Claims that have been properly filed in as timely a fashion as possible. In order to complete the Claims reconciliation process, streamline Court involvement in numerous matters related to time-consuming Claims reconciliation matters, promote efficiency in the administration in this Case, and to establish the methodology for making distributions to eligible holders of allowed Claims, the Receiver hereby seeks the approval of the following relief: (1) procedures for the resolution of certain Claims reconciliation matters, including, but not limited to, granting the Receiver authority to settle Claims asserted against the Receivership Defendant, establishing a procedure for settling Claims filed against the Receivership Defendant, appointing retired Judge Frank W. Bullock, Jr. of the United States District Court for the Middle District of North Carolina, to serve as special master over objections to Claim Determinations that the Receivership Team has been unable to resolve through negotiations with the Claimant, and establishing the method by which a Claimant or the Receiver may appeal an adverse determination of the Special Master (once appointed) to this Court; (2) the establishment of the

priority of distributions to the holders of allowed Claims; (3) the establishment of the rising tide methodology for determining the distributions to be made on account of the allowed Claims held by Affiliate Investors; and (4) the procedures for making distributions, including, but not limited to, the collection of necessary information to make distributions to holders of allowed Claims, and the establishment of the procedures for making distributions.

II. BACKGROUND

The Receivership Defendant is a group of interrelated entities and websites, all of which were either controlled or owned directly or indirectly by Defendants Rex Venture Group, LLC (“RVG”) and Paul Burks (“Burks” and with the Receivership Defendant, the “Defendants”). RVG and Burks operated a penny auction website, www.zeekler.com (“Zeekler”), and a self-described “private, invitation-only, affiliate advertising division” for Zeekler at www.zeekrewards.com (“ZeekRewards Program”).

ZeekRewards had its physical operations in Lexington, North Carolina, and had internet-based affiliates and contacts throughout the United States and internationally. The Zeekler participants were required to pay a non-refundable fee to purchase and place each incremental bid (typically one cent) on merchandise sold via auction. Bidders could acquire those bids by purchasing them directly on zeekler.com, but ZeekRewards and its affiliates purchased the vast majority of the bids that they sold or gave away for free to be used in the penny auctions.

On August 17, 2012, the Securities and Exchange Commission (“SEC”) commenced a civil enforcement action (the “Enforcement Action”) against Burks and the Receivership Defendant. *See* Doc. No. 2, Complaint filed Aug. 17, 2012 (the “SEC Complaint”). The SEC alleges that the Defendants engaged in (1) the unregistered offer and sale of securities in violation of Sections 5(a) and 5(c) of the Securities Act; (2) fraud in the offer or sale of securities

in violation of Section 17(a) of the Securities Act; and (3) fraud in connection with the purchase or sale of securities in violation of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. The SEC sought equitable relief, including injunctions against future violations of the securities laws, disgorgement, prejudgment interest, and civil monetary penalties.

Simultaneous with the filing of the SEC Complaint, the SEC, the Receivership Defendant, and Burks agreed to an order granting emergency relief, including a preliminary injunction, in the form of an order freezing the assets of the Receivership Defendant and appointing a Temporary Receiver over the estate of the Receivership Defendant. *See* Doc. No. 4, Agreed Order Appointing Temporary Receiver And Freezing Assets of Defendant Rex Venture Group, LLC, filed Aug. 17, 2012 (“Initial Receiver Order”). An Amended Order Appointing Temporary Receiver was entered on August 30, 2012 expanding the definition of the Receivership Estate. *See* Doc. No. 21, Order Granting in part and Denying in part Motion to Amend/Correct Order (“Amended Receiver Order”) (collectively with the Initial Receiver Order the “Receiver Orders”).

On March 29, 2013, the Receiver filed his Motion for Order Seeking Approval of (1) Claims Process, (2) Setting of Bar Date, and (3) Certain Notice Procedures (the “Claims Motion”). On May 8, 2013, this Court entered an Order Approving (I) Claims Process, (II) Setting of Bar Date, and (III) Approving Notice Procedures (“Order Approving Claims Process”), which commenced the process for all Claimants of the Receivership Defendant to assert their Claims via the Claims portal (the “Claims Portal”) created pursuant to the Order Approving Claims Process (the “Claims Process”). On May 15, 2013, the Claims Process commenced with the opening of the Claims Portal. The Claims Portal remained open for creditors to assert Claims until 11:59 p.m. (prevailing Eastern time) on September 5, 2013.

On September 26, 2013, the Receiver filed a motion to extend the Claims Bar Date only for (i) Affiliate Investors whose financial institutions pay the Receiver on or after August 1, 2013 for stopped payment cashier's checks, teller's checks, certified checks, and bank money orders and are thereafter charged or debited by their financial institutions for these items, and (ii) financial institutions seeking to file a subrogation claim on behalf of their Affiliate Investors after paying stopped payment instruments to the Receiver on or after August 1, 2013 (the "Extended Claims Motion"). On October 22, 2013, this Court entered an Order granting the Extended Claims Motion, which established December 1, 2013 at 11:59 p.m. (prevailing Eastern time) as the bar date for Claims falling within the categories described in the Extended Claims Motion.

III. RELIEF REQUESTED

A. Claims Related Issues

Shortly after the commencement of the Claims Process, the Receivership Team began reviewing the data provided by Claimants in the Claims Process in order to investigate the quality of data being provided by Claimants. It became readily apparent from the initial review of the Claims data that large amounts of information being provided by some Claimants was not readily comparable to the ZeekRewards database, and that such data likely would require detailed analysis in order to determine the allowability of the Claim being asserted. Indeed, as discussed above, preliminary reviews of Claims data showed, among other things, (1) Claimants who filed Claims with incomplete information or provided false information, (2) Claimants who did not provide a valid username, (3) Claimants who filed Claims on behalf of other Claimants, (4) Claimants who aggregated information across multiple user names (regardless of whether the user names they were aggregating were registered to another individual), (5) Claimants who filed

multiple Claims for the same user name, (6) Claimants who failed to provide adequate information to readily identify the Claimant in the ZeekRewards database, (7) Claimants that misclassified Claims, (8) Claimants that asserted amounts far in excess of their actual damages, and (9) entities that improperly filed Claims with no obvious relation to ZeekRewards Ponzi and pyramid scheme. Moreover, even those Claims asserted by Claimants that were readily identifiable in the ZeekRewards database did not completely match the data provided by such Claimants.

The vast majority of the more than 170,000 Claims that have been filed thus far have been filed by Affiliate Investors. These Affiliate Investors claim to have suffered losses based on the investments they made in the ZeekRewards Ponzi and pyramid scheme. All of these Claims generally arise from similar facts and will be evaluated pursuant to the same applicable law. It is unlikely that reconciliation of these Claims will involve complex legal issues or factual disputes, although each Claim will require detailed analysis. The sheer volume of Claims and the disputes that may arise with respect thereto, however, could inundate this Court. Accordingly, the Receiver proposes the procedures set forth herein to address these potential disputes and conserve judicial resources.

The Order Approving Claims Process contemplated that the Receiver would issue Claim Determinations on all Claims on a rolling basis and resolve any discrepancies through negotiations with Claimants. If those negotiations failed, then this Court would resolve the dispute. Despite the Receivership Team's best efforts, it is likely that many objections to Claim Determinations will require some form of third-party intervention. In order to prevent this Court from being inundated with litigation regarding Claims resolutions, it became clear to the Receiver that, due in large part to the potential number of Claimants that may dispute the amount

asserted by the Receiver, it is necessary to develop an alternate procedure to resolve objections to Claim Determinations where direct negotiation with the Claimants fails or in instances where the Receiver considers the position of the Claimant and decides that it would be in the best interest of the Estate to agree to a number different than that contained in the initial Claim Determination.

1. Appointment of a Special Master

In an effort to alleviate the potential strain that the volume of Claim disputes could have on this Court, the Receiver requests that this Court appoint Judge Bullock as a special master to oversee and, to the extent necessary, issue proposed findings of fact and conclusions of law to this Court for consideration. Rule 53 of the Federal Rules of Civil Procedure (the “Rules”) provides that a master may be appointed only to “(B) hold trial proceedings and make or recommend findings of fact on issues to be decided without a jury if appointment is warranted by: (i) some exceptional condition. . . .” Fed. R. Civ .P. 53(B)(i).

A receivership created upon the appointment of the receiver is a proceeding pursuant to the Court’s equitable jurisdiction. *SEC v. Manor Nursing Centers, Inc.*, 458 F.2d 1082, 1103 (2d Cir. 1973). The Supreme Court established that “the right of trial by jury, considered as an absolute right, does not extend to cases of equity jurisdiction.” *Barton v. Barbour*, 104 U.S. 126, 133-134 (1935); *see also Katchen v. Landy*, 382 U.S. 323, 337 (1966). Thus, the factual issues that arise in regard to the Claims Process are not subject to a jury trial and a special master may be appointed if “some exceptional condition” exists.

An exceptional condition exists in this Case. *See Thomas S. By Brooks v. Flaherty*, 902 F. 2d 250, 255-56 (4th Cir. 1990) (finding exceptional circumstances where a court would be required to review large numbers of cases that each required individualized consideration). As

noted above, there are in excess of 170,000 Claimants in this case. If a negotiated settlement fails, thousands of Claimants may seek to involve this Court in the resolution of their Claims despite there being few complex issues of fact or law. Because of this exceptional condition, this Court should appoint the proposed Special Master.

The Receiver proposes the following terms of appointment for the Special Master in accordance with Rule 53:

- a. The Special Master will file the affidavit required by Rule 53(b)(3)(A), stating that there are no grounds for his disqualification under 28 U.S.C. § 45 within ten (10) days of the filing of this Motion.
- b. The duties and powers of the Special Master shall be limited to those duties and powers described herein and enumerated in the order that approves the appointment of the Special Master. The Special Master shall not have the power to issue any orders or impose any sanctions.
- c. The Special Master will not review any Claims unless and until:
 - (i) (A) the Receiver has issued a Claim Determination regarding the Claim; (B) the Claimant timely objects to the Claim Determination; (C) more than 90 days has passed since the issuance of a Claim Determination or an amended Claim Determination (as the case may be), subject to the Receiver consenting to a shortening of this period; (D) negotiations between the Receiver and the Claimant have commenced and have not resulted in a settlement; and (E) either the Claimant or the Receiver requests that the Special Master review and intervene in the Claim dispute (a “Request for Intervention”); or

(ii) the Receiver reaches a settlement with a Claimant that requires the review of the Special Master as set forth in detail below (a “Settlement Review”).

- d. A Request for Intervention must be made in writing and served via electronic mail to the opposing entity and the Special Master.
- e. The Request for Intervention must include a statement setting forth the Claimant’s or the Receiver’s position, as the case may be, with respect to the amount of the Claim (the “Position Statement”).
- f. The Receivership Team shall, within 30 days of receiving or making the Request for Intervention, provide the Special Master with the data provided by the Claimant when it asserted the Claim (including, but not limited to, the amount the Claimant asserts it funded to ZeekRewards, the amount of payments the Claimant asserts it was paid by ZeekRewards and any backup submitted), the information stored in the ZeekRewards database relating to the Claimant, and any further information regarding the Claim that the Receivership Team may have in its possession (collectively, the “Claim Data”).
- g. The entity that receives the Request for Intervention from the opposing entity shall have 30 days from service of the Request for Intervention, subject to extension by agreement between the Receiver and the Claimant or by consent of the Special Master, to respond to the Position Statement (the “Reply”) in writing via electronic mail to the entity that made the Request for Intervention and the Special Master.
- h. Upon receipt of the Position Statement, the Reply and the Claim Data, the Special Master shall review this information and hold a hearing where the Receivership Team and/or the Claimant may produce evidence regarding the validity and amount of the Claim.

Attendance at such hearing shall not be required. Entities may attend the hearing by telephone or other electronic means.

- i. After the conclusion of such hearing, the Special Master will serve, via electronic mail, a written decision detailing his findings regarding the validity and amount of the Claim (a “Decision”) on the Claimant and the Receivership Team.
- j. Each of the Claimant and the Receivership Team shall have 30 days from the date of service of the Decision via electronic mail to file an appeal of the Decision with this Court (an “Appeal”). Such Appeal shall be filed in the miscellaneous proceeding that shall be commenced by the Receiver (the “MP”). The entity that seeks review by filing a Notice of Appeal in the MP shall pay an appropriate filing fee in an amount equal to the cost to commence a civil action in this Court (\$400.00).
- k. If the Receiver and a Claimant reach a settlement which, as set forth below, would require the approval of the Special Master, the Receiver shall request that the Special Master perform a Settlement Review. The Receiver shall provide the Special Master with the Claim Data and any other information which the Special Master may request. The Special Master shall then render a determination on whether the settlement meets the requirements for his approval or whether the parties need to alter the settlement for it to meet the criteria necessary for approval.
- l. The fairness of imposing the expenses of the Special Master on the Estate also is reasonable pursuant to Rule 53(a)(3). The Receiver believes that the appointment and use of the Special Master will materially advance the claims resolution process, thereby achieving considerable cost-saving to all parties.

- m. Within 30 days of the close of each calendar quarter, the Special Master shall file a report that states the number of Claims he has reviewed and the number of Decisions he has rendered.
- n. The Special Master will engage in *ex parte* communications with the Claimant only for the purposes of discussing scheduling and logistical issues regarding the review of the Claim Data. The Special Master will engage in *ex parte* communications with the Receivership Team only for the purposes of discussing scheduling, logistical issues and administrative matters, including, but not limited to, the payment of the Special Master's fees. The Special Master will be paid \$450 per hour for the work he performs in this matter. The Special Master shall submit his bills to the Receiver for payment.
- o. Notice of seeking the appointment of the Special Master will be made to all parties that filed claims by e-mail service of this Motion.

The Receiver believes it is in the best interest of the Estate to appoint the Special Master to seek to resolve any Claim disputes.

2. Amendment of Claim Determinations

Additionally, after consultation with his advisors, the Receiver believes that it is in the best interest of the Estate to permit the Receiver, in his discretion, to amend and reissue Claim Determinations in instances where the Receivership Team determines that the original Claim Determination did not accurately reflect the proper amount of the claim asserted by the Claimant. For example, because certain Affiliate Investors have actively sought to mislead the Receiver, or misled ZeekRewards prior to the appointment of the Receiver, it is possible that net-winners will have filed Claims using alternate usernames that are not readily traceable to such net-winner.

The Receiver should be permitted to revise Claim Determinations and reissue such amended Claim Determinations in his discretion.

3. Procedures for Settlement of Objections to Claim Determinations

Additionally, the Receiver believes it is in the best interest of the Estate to permit him to settle objections to Claim Determinations. This Court previously approved the Claim Determination Process, under which the Receiver will issue a Claim Determination, a Claimant will have 30 days to object to the Claim Determination, and, should an objection be submitted, a period of negotiation between the Receivership Team and the Claimant commences. In instances when the Receiver and the Claimant reach agreement as to the amount of such Claim, this Court should approve the following procedures for settling such Claims.

The Receiver requests authority to stipulate to the allowance of a Claim against the Receivership Defendant without the approval of this Court so long as the Claim, as allowed, does not exceed an amount that is \$10,000.00 greater than the amount such Claim was maintained in the database of ZeekRewards. In instances where the Receiver has determined that it is in the best interest of the Estate to stipulate to the allowance of a claim that would be in an amount that is in excess of \$10,000.01 greater than the amount that such Claim was maintained in the database of ZeekRewards, but less than \$100,000.00 greater than the amount that was maintained in the database of ZeekRewards, the Receiver shall seek the approval of the allowance of such Claim from the Special Master and the Special Master shall have authority to approve such stipulations. If the Receiver seeks the allowance of a Claim that is in excess of \$100,000.01 greater than the amount that such Claim was maintained in the database of ZeekRewards, the Receiver will file a motion for approval with this Court.²

² The Receiver may seek this Court's approval of multiple settlements in one motion (an "Omnibus Motion"). Any such Omnibus Motion will clearly identify each of the settlements for which the Receiver is seeking approval.

In order to determine whether a settlement of a claim is in the best interest of an estate, courts have found that the compromise proposed must be fair and equitable, reasonable and in the best interests of that estate. *See Protective Comm. For Index. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968). In assessing the adequacy of a proposed settlement, courts have considered (1) the probability of success in the litigation for the estate; (2) the difficulties associated with collection; (3) the complexity of the litigation, (4) the attendant expense, inconvenience, delay; and (5) other factors relevant to a full and fair assessment of the wisdom of the proposed compromise. *See id.*; *see also In re Derivium Capital, LLC*, 380 Bankr. 392, 405 (Bankr. D.S.C. 2007). Because the Special Master and this Court would consider these factors when determining whether to approve a proposed settlement, the Receiver will utilize these principles to determine whether to agree to a settlement.

This settlement protocol will permit the Receiver to efficiently administer the Claims process and resolve matters that would otherwise require intervention by the Court without needlessly involving the Court if a compromise can be reached.

B. Priority of Claims

SEC Receiverships are equitable proceedings that seek to redistribute the proceeds of a fraud to the victims of the underlying entity. Unlike a case arising under title 11 of the United States Code, there is no statutory mandate that prescribes how the assets recovered in a receivership should be distributed. Thus, it is within a receiver's discretion to create a plan of distribution that classifies claims into different classes for treatment of differing payment terms using equitable notions. *See SEC v. Credit Bancorp, Ltd.*, 290 F.3d 80, 91 (2d Cir. 2002); *SEC v. Basic Energy & Affiliated Res., Inc.*, 273 F.3d 657, 668 (6th Cir. 2001); *SEC v. Forex Asset Mgmt. LLC*, 242 F.3d 325, 328 (5th Cir. 2001); *SEC v. Elliott*, 953 F.2d 1560, 1566-67 (11th Cir.

1992); *SEC v. Hardy*, 803 F.2d 1034, 1037-39 (9th Cir. 1986); *see also* Kathy Bazoian Phelps, *Handling Claims in Ponzi Scheme Bankruptcy and Receivership Cases*, 42 Golden Gate U. L. Rev. 567, 572-73 (2012). This Court, therefore, has discretion in approving a distribution plan that provides for varying treatment among different types of creditors.

Pursuant to these broad discretionary powers, courts tasked with overseeing the administration of a receivership for a Ponzi scheme may authorize any distribution protocol for receivership assets on account of allowed claims that is “fair and reasonable” in the overseeing court’s opinion. *CFTC v. Barki, LLC*, 2009 U.S. Dist. LEXIS 112998, *3-4 (W.D.N.C. Nov. 12, 2009) (Mullen, J.); *SEC v. Wealth Mgmt. LLC*, 628 F.3d 323, 332-33 (7th Cir. 2010); *SEC v. Wang*, 944 F.2d 80, 81-5 (2d Cir. 1991); *SEC v. Byers*, 637 F. Supp. 2d 166, 174 (S.D.N.Y. 2009) (citing *Wang*).

After due consideration, the Receiver has determined that it is fair and reasonable to make distributions on account of allowed Claims in the following manner (collectively, the “Distribution Protocol”):

- (1) First, on account of Claims for the actual necessary costs and expenses incurred by the Receiver and the Receivership Team subsequent to the appointment of the Receiver, including, but not limited to, the payment of the fees authorized by this Court, tax obligations that are incurred from activities undertaken subsequent to the appointment of the Receiver (not tax obligations that merely become due subsequent to the appointment of the Receiver), and the fees and costs associated with making distributions of the assets collected by the Receivership Team to holders of allowed Claims in these cases (collectively, “Class 1 Claims”) until such Claims are paid in full. The Receiver believes

that the Receivership Team has collected sufficient assets so that all such Class 1 Claims will be paid in full from the assets of the Estate;

- (2) Second, on account of allowed secured Claims, including, without limitation, the allowed secured Claims of taxing authorities, until such claims are paid in full, but solely from the proceeds of the collateral held by the Estate in which the secured Claim holder holds an interest (collectively, "Class 2 Claims"). The Receiver does not believe there are any allowable secured Claims and does not anticipate locating any such Claims in the Claim reconciliation process or making any distributions on account of any such Claims;
- (3) Third, pro-rata to holders of allowed Claims of Affiliate Investors and subrogees of Affiliate Investors on account of the allowed Claims of Affiliate Investors and subrogees of Affiliate Investors (collectively, "Class 3 Claims") until all such claims are paid in full without interest, costs or fees. The Receiver believes he will be able to make substantial pro-rata distributions on account of allowed Class 3 Claims that are allowed in the Claims reconciliation process, but will be unable to pay such Claims in full without interest, costs or fees;
- (4) Fourth, to the extent not paid in full above and solely to the extent there are remaining funds after payment in full is made on account of all allowed Claims in Classes 1, 2 and 3 in accordance with the treatment set forth above, pro-rata to holders of allowed Claims of taxing authorities and other governmental entities allowed in the reconciliation process (collectively, "Class 4 Claims") until such Claims are paid in full without interest, costs, penalties or fees; and
- (5) Finally, to the extent there are remaining funds after payment in full is made on account of all allowed Claims in Classes 1, 2, 3 and 4 in accordance with the treatment set forth

above, pro-rata to the holders of allowed general unsecured Claims on account of all allowed general unsecured Claims³ (collectively, “Class 5 Claims”) until such Claims are paid in full without interest, costs or fees.

Under no circumstances shall the Receiver be permitted to make any distributions on account of the membership interests of the Receivership Defendant or any distributions to the holders of the membership interests of the Receivership Defendant.

The Receiver has considered various distribution priorities, and after due deliberation, has determined that the Distribution Protocol is the most fair and equitable method to distribute the assets of the Receivership Defendant.

Generally, in receivership proceedings related to securities fraud, courts have found that giving priority to the claims of fraud victims for amounts actually paid into a Ponzi scheme over holders of general unsecured Claims to proceeds traceable to the fraud is fair and reasonable because the funds paid out to victims are the funds they paid into the scheme. *See Quilling v. Trade Partners, Inc.*, 2006 U.S. Dist. LEXIS 90522 (W.D. Mich. 2006). Indeed, in instances where the source of the funds to be used to repay creditors in a receivership are derived almost exclusively from the prior investments made by the investors in the Ponzi scheme, courts have recognized that preferring the investors in the fraud whose funds are the source of the assets being distributed is not only permissible, but even preferred to treating all creditors *pari passu*. *Id.*; Clark, Ralph Ewing, A TREATISE ON THE LAW AND PRACTICE OF RECEIVERS §§ 637, 667 (3d ed. 1959) (setting forth a list of priorities where victim investors receive higher priority than general unsecured creditors); *SEC v. HKW Trading LLC*, 2009 U.S. Dist. LEXIS 77215 (M.D. Fla. 2009) (In determining whether a claimant was entitled to payment as an administrative

³ General unsecured Claims were denoted on the Receiver’s Claim Portal as Trade Creditors, Independent Contractors, Claims of Directors, Officers and Employees, and Claims asserted in the “Other” category.

expense claim, the court stated that “[p]ayment to claimants whose property was unlawfully taken from them is given a higher priority than payment to the general creditors.”); *see also* *CFTC v. Capitalstreet Fin., LLC*, 2010 U.S. Dist. LEXIS 75113 (W.D.N.C. 2010) (Conrad, J.) (approving a distribution and priority scheme that paid claims in the following order: (1) first, to claims for the actual costs and expenses of administration of the receivership estate; (2) second, to the return of investments made by the victim investors in the scheme; and (3) finally, to any general creditors (should any assets remain in the estate)); *w. Bank Wis., N.A. v. Malachi Corp.*, 245 F. App’x 488, 495 (6th Cir. 2007) (affirming partial distribution to one group of unsecured creditors before another group of unsecured creditors); *CFTC v. PrivateFX Global One*, 778 F. Supp 2d 775, 786 (S.D. Tex 2011) (court approved distribution scheme that subordinated unsecured claims to the claims of the defrauded investor claims for amounts such investors invested). The basis for prioritizing the investor victims of the fraud over that of general unsecured Claims is that the funds to be distributed by the receivership estate are directly derived from the funds provided to the Receivership Defendant by these investors. *Quilling v. Trade Partners, Inc.*, 2006 U.S. Dist. LEXIS 90522 (W.D. Mich. 2006).

As detailed in the factual background above and the SEC Complaint, the Receivership Defendant generated little, if any, legitimate revenue over the course of its existence and no actual “profit” from the business it operated. Instead, as noted in the SEC Complaint, in excess of 90% of the entirety of the assets held by the Receivership Defendant were proceeds of the Affiliate Investors’ payments into the Zeekrewards scheme.⁴ The facts in this case make it clear that the assets collected by the Receiver for distribution are the proceeds of the payments made by Affiliate Investors to the Receivership Defendant in the ZeekRewards Ponzi and pyramid

⁴ The Receiver believes that substantially more than 90% of the assets held by the revenue Receivership Defendant were proceeds of the Affiliate Investors’ payments into the Zeekrewards scheme.

scheme – the Class 3 Claims.

The Receiver has also determined that the allowed subrogation claims of financial institutions filed on account of payments made to the Receiver on account of amounts such financial institutions improperly refunded to such Affiliate Investors on account of cashier's checks, teller's checks, certified checks, and bank money orders which the Affiliate Investor submitted a stop payment because the funds at issue are of the same nature as those of affiliate investors. Indeed, absent the refund by the financial institution, the Receiver would likely be allowing the claim for such funds made by the Affiliate Investor that made such payment to the Receiver.

Because the Ponzi scheme created by ZeekRewards was funded almost exclusively by the Affiliate Investors, and the funds provided by the Affiliate Investors are the assets that the Receiver has largely recovered, the Receiver believes that the Distribution Protocol is fair and reasonable in this case. As set forth above, the Distribution Scheme prioritizes the Affiliate Investors' Claims for payments made to ZeekRewards (*i.e.*, the Class 3 Claims) to all other Claims except allowed secured Claims (allowed Class 2 Claims and in that instance, solely with respect to payments made from the direct proceeds of such Claimant's collateral) and those allowed Claims for the actual and necessary costs and expenses incurred by the Receiver and the Receivership Team subsequent to the appointment of the Receiver (the Class 1 Claims, which are the costs incurred for preserving, liquidating and distributing the assets to the Claimants). The Receiver believes that the Distribution Protocol is fair and reasonable and requests that the Court approve the Distribution Protocol.

Additionally, if this Court approves the Distribution Protocol, the Receiver hereby requests that he be permitted to maintain the Claims data filed in regard to Class 4 and Class 5

Claims, but not be required to reconcile such Claims, unless and until the Receiver determines that, subject to adequate reserves, there are adequate assets to pay the Claims in Classes 1, 2 and 3 in full. Requiring the Receiver to reconcile Claims that he will not have sufficient assets to pay will create increased expenses and provide no value to the Estate or the holders of Claims.

C. Calculation of Distributions on Account of Allowed Claims

If this Court approves the Distribution Protocol, the Receiver believes he has sufficient assets to pay all Class 1 Claims and Class 2 Claims (to the extent any Class 2 Claims exist) in full as and when such Claims become due. Subsequent to the payment in full of holders of allowed Claims in Classes 1 and 2, the Receiver will begin to make distributions on account of allowed Class 3 Claims on a pro-rata basis, subject to the requirements set forth herein. The Receiver's proposed methodology for making distributions for Class 3 Claims is described below.

1. Rising Tide Distribution Methodology

In order to make distributions on account of allowed Class 3 Claims, the Receiver has determined that the "rising tide" method of determining distributions is the most fair and reasonable manner to make distributions in this Case.

In general, there are two methods of making distributions in Ponzi scheme cases that have been favored, the "net loss" (sometimes referred to as "net investment") method of establishing amounts to be distributed, and the "rising tide" method. *SEC v. Huber*, 702 F. 3d 903, 905-06 (7th Cir. 2012); *see also CFTC v. Barki, LLC*, 2009 U.S. Dist. LEXIS at *3-4 (in selecting the "net investment" method, this Court noted that there are at least five methods for making distributions in receivership cases).

Under the “net loss” distribution methodology, a receiver seeks to distribute funds to claimants who hold allowed claims arising from investing in the fraud on a pro-rata basis, based on the net remaining loss the claimant was owed by the entity in the receivership on the date that the receivership commenced. In sum, the “net loss” methodology ignores how much the entity in receivership distributed to the creditor in the past (assuming the creditor has not received more than such creditor invested), and, instead, focuses solely on the amount of the net loss of the creditor remaining on the date the receivership commences. Creditors then receive distributions on a pro-rata basis on account of their remaining net loss.

The “rising tide” distribution methodology seeks to make distributions based on the gross amount paid to the entity in receivership by a claimant (essentially treating that amount as such claimant’s gross claim), and treats each payment to the claimant over the life of the relationship with such entity as a distribution on account of that gross claim. Thus, using this method, the receiver will only make a distribution to a claimant in an instance where the overall aggregate amount the receiver has to distribute to claimants on a pro-rata basis is more than the amount such claimant has been distributed in the past. To determine the amount the claimant will receive, the receiver will compute the pro-rata amount such claimant would be paid absent any deductions on account of prior distributions and subtract the amount of such prior distributions. If that difference is positive, the Receiver will pay such claimant based on the amount of that difference, subject to the distribution procedures. If that amount is negative or zero, the claimant will not receive any distribution.

To illustrate both methodologies, the Seventh Circuit provided the following examples:

To understand the difference between the two methods, imagine that three investors lose money in a Ponzi scheme. A invested \$150,000 and withdrew \$60,000 before the scheme collapsed, so his net loss was \$90,000. B invested \$150,000 but withdrew only

\$30,000; his net loss was \$120,000. C invested \$150,000 and withdrew nothing, so lost \$150,000. Suppose the receiver gets hold of \$60,000 in assets of the Ponzi scheme—one-sixth of the total loss of \$360,000 incurred by the three investors (\$90,000 + \$120,000 + \$150,000). We'll call these recovered assets "receivership assets." Under the net loss method each investor would receive a sixth of his loss, so A would receive \$15,000, B \$20,000, and C \$25,000[.]...

Under the rising tide method, withdrawals are considered part of the distribution received by an investor and so are subtracted from the amount of the receivership assets to which he would be entitled had there been no withdrawals. (When there are no withdrawals, rising tide yields the same distribution of receivership assets as net loss.) In our example, the total of withdrawn plus receivership assets is \$150,000 (\$60,000 + \$30,000 + \$0 [the withdrawals] + \$60,000 [the receivership assets]), but there is only the \$60,000 in such assets to distribute. A, having been deemed (as a consequence of the rising tide approach) to have "recovered" \$60,000 before the collapse of the Ponzi scheme, is entitled to nothing from the receiver, as otherwise the remaining sum of withdrawals and receivership assets—a total of \$90,000 (\$30,000 in withdrawals, all by B, and \$60,000 in receiver-ship assets)—would be insufficient to bring the remaining investors up to anywhere near A's level. For remember that under the net loss method each investor would have received the same fraction of receivership assets as his fraction of the loss, and thus A would have received \$15,000, B \$20,000, and C \$25,000. The result, since under the rising tide method withdrawals are treated as compensation, is that A would have been "compensated" to the tune of \$75,000 (\$60,000 withdrawn + \$15,000 in receiver assets), B \$50,000 (\$30,000 + \$20,000), and C \$25,000 (the balance of receiver assets, C having had no withdrawals).

For the "tide" to raise B and C as close to A as possible, B has to receive \$15,000 in receiver assets, for a total "recovery" of \$45,000, and C the remaining receiver assets, giving him \$45,000 too. The division of withdrawals plus receiver assets is then 60–45–45, as shown in the next chart, versus 75–50–25 under the net loss method.

SEC v. Huber, 702 F. 3d at 906.

The rising tide method is the method most commonly used (and judicially approved) for apportioning receivership assets. *Id.* (collecting cases). This method provides the most parity to

victims of a fraud because investors who have received a return of portions of their principal investment from the entity in receivership will not receive further distributions of principal until all other claimants with allowed claims have received an equal percentage of their principal (or more because the “tide” has not yet reached its allowed claim). In sum, the “rising tide” method seeks to provide the same recovery to all victims who invested money in the scheme regardless if it came from the entity in receivership prior to or after the collapse of the scheme.

The ZeekRewards Ponzi and pyramid scheme was relatively short lived—less than 20 months. In that time, there were numerous investors who received payments from the Receivership Defendant, but far more who did not. The Receivership Team’s current estimate is that fewer than 7% of all of the entities that paid money into the ZeekRewards Ponzi and pyramid scheme actually received principal amounts back from the Receivership Defendant. As such, the majority of Claimants who hold allowed Claims have no “tide” to meet—they will receive distributions without the need to account for any prior “distributions” made by the Receivership Defendant. However, some Claimants received large payments from the Receivership Defendant before the collapse of the ZeekRewards’ scheme. Paying such entities on account of the small percentage of their original principal payment that has not been repaid is inequitable to the 93% of entities involved in ZeekRewards that never received any return of their principal. The Receiver, therefore, believes that the fairest and most equitable method for calculating distributions to be made is the “rising tide” method.

In *Barki*, this Court examined the various methodologies and determined that the “net loss” method was the most equitable method for making distributions in that case. *CFTC v. Barki, LLC*, 2009 U.S. Dist. LEXIS at *1. The facts in that case, however, are vastly different than those in this Case. In *Barki*, there were only 79 individuals who invested in the fraudulent

scheme. *Id.* Additionally, using the rising tide method of distributions in that case would have excluded 55% of the victims of the scheme from receiving distributions. *Id.* at *5. This Court, therefore, found that the distribution method that was the most equitable in that case was the “net investment” method. *Id.* at *6. However, in stark contrast to the *Barki* case, more than 177,000 Claims were filed in this Case. Moreover, as many as 93% of the Affiliate Investors will be eligible to receive distributions in this Case using the rising tide methodology. As such, the Receiver contends that the “rising tide” method is the most equitable method of distribution in this Case.

2. Establishing Distribution Reserves

Upon this Court approving the methodology for distributions, the Receiver will make an interim distribution to holders of Claims that have been reconciled and allowed (provided they return all of the appropriate documents to receive a distribution) as quickly as possible.

However, in order to do so, the Receiver will be required to establish reserves to ensure that the Receiver does not distribute funds such that if a Claim is allowed, insufficient funds would be left to pay such Claim. Such reserves will be released by the Receiver to make appropriate distributions to the holder of the Claim (if the Claim is allowed), or to the pool of assets to be distributed to all holders of allowed Claims upon the expiration of the time to file an Appeal of the determination of the Special Master, or the entry of an order that has become final by this Court or an appellate court of competent jurisdiction. In the course of establishing the amount of those reserves, the Receiver will be required to reserve against the possibility of being required to make distributions on all Claims as if they were allowed in the full amount that such Claim was filed, not the amount the Receiver believes should be allowed for the Claim. Establishing such reserves will undoubtedly decrease the amount of funds that are available to be distributed

to holders of Claims on an interim basis. This is a necessary step in order to provide an interim distribution, however, and as Claims are reconciled, the Receiver will be able to release reserves not needed to provide distributions on account of the Claims for which the reserve was established.

D. Distribution Procedures

1. Collection of Certain Data to be Eligible to Receive Distributions

The Receiver has determined that, pursuant to applicable law, he is required to obtain certain information from holders of allowed Claims in order to make distributions to such holders.

Based on the Receivership Team's analysis, the Receiver has determined that he is required to collect certain tax information in order to make distributions pursuant to certain regulations of the Internal Revenue Service (the "IRS") or be required to engage a tax professional in order to maintain and collect backup withholdings for each individual or entity that receives a distribution. This would create a costly and time consuming administrative process that provides no benefit to the Estate and would reduce the distributions that could be paid to all holders of allowed Claims. Therefore, in order to receive a distribution, the Receiver hereby requests that this Court require the holder of an allowed Claim to submit either a W-9 form, if the holder is treated as a United States entity or citizen by the IRS, or a W-8 form, if the holder is treated as a non-U.S. entity or citizen by the IRS. The proposed treatment of the distribution that is allocated to an allowed Claim holder that fails to submit a W-9 form or a W-8 form is set forth in more detail below. If approved by this Court, however, the failure to submit a W-9 or W-8 form would be treated the same as the failure of a holder of an allowed claim to submit the Release (as defined in the Order Approving Claims Process).

The Receivership Team will collect the W-9 forms through a webform included on the online Claims Portal at the same time that a creditor holding an allowed Claim submits the Release previously approved by this Court. The electronic collection of W-9 forms shall be in a manner that is in accordance with the regulations set forth by the IRS for electronic submission of W-9 forms. Those individuals that submitted Claims in a manner other than through the Receiver's Online Claim Portal will be permitted to submit paper copies of W-9 forms in the same manner in which they submitted a Claim.

Due to certain regulations of the IRS and what is likely to be a prohibitive cost, collection of W-8 forms by webform may not be possible. The Receiver is in the process of determining the legal permissibility of obtaining W-8 forms via webform and obtaining an estimate to build an IRS approved W-8 webform. The Receiver will provide a W-8 webform if he is able to do so in a cost-effective manner that complies with applicable regulations or is approved by the IRS. If a webform W-8 is not permissible or is not cost effective, the Receiver will request that a W-8 form be submitted to the Receiver either through submission of an electronic scan of the W-8 form (to the extent permitted by the IRS) or through the submission of a W-8 form via conventional mail.

Additionally many Claims have been filed by individuals or entities located outside of the United States. Subject to limited exceptions not applicable in this matter, any transfer of assets to be made to a foreign entity requires strict compliance with the regulations of the Office of Foreign Asset Control ("OFAC") and other applicable laws, regulations and embargoes on transfers of assets to foreign countries, foreign nationals and organized groups (the "Applicable Regulations"). Violations of the Applicable Regulations are punishable by, among other things, levies, fines, and imprisonment. Due to the large number of distributions to be made to foreign

entities and the liability associated with violations of the Applicable Regulations, the Receivership Team is establishing a compliance program to ensure distributions made to foreign entities will comply with the Applicable Regulations. As part of this compliance program, the Receiver requests that this Court approve the attached compliance certificate (each an “OFAC Certificate”) as a required submission to obtain a distribution in this case. The OFAC Certificate will be a webform that will be submitted at the same time as the Release and will be required from all holders of allowed Claims. The OFAC Certificate will not absolve the Receiver from otherwise complying with the Applicable Regulations, but is an important piece of the overall compliance program that the Receiver will institute, because the OFAC Certificate is the only affirmative statement by a distribution recipient as to whether they are permitted to transact business in the United States, as opposed to relying solely on the information the Receiver has compiled. Therefore, the Receiver requests that this Court require all holders of allowed Claims to submit an OFAC Certificate in order for the holder of an allowed Claim to receive a distribution. The proposed treatment of the distribution that is allocated to an individual or entity that fails to submit an OFAC Certificate is set forth in more detail below. If approved by this Court, however, the failure to submit an OFAC Certificate will be treated the same as the failure to submit the Release.

2. The Making of Distributions

In order to provide for orderly and cost effective distributions, the Receiver hereby requests that this Court approve the following procedures for making distributions to all holders of allowed Claims.

(1) *Delivery of Distributions in General.* The Receiver shall make distributions solely to the holders of allowed Claims without regard to any Claim or interest asserted by any third party in

such distributions. Distributions shall be made to the holders of allowed Claims at the addresses set forth in the Claims asserted by such holders, as amended by such holder on the Claims Portal.

(2) *Payments.* Distributions shall be made to all holders of allowed Claims by checks drawn in United States dollars on a United States domestic bank. The Receiver evaluated many potential methods of making distributions in this case and has determined that the issuance of checks is the only reliable manner that will provide the Receiver with the ability to comply with applicable law and the Applicable Regulations.

(3) *Interest on Claims.* Interest shall not accrue or be paid on any Claim, and no holder of a Claim shall be entitled to interest accruing on any Claim. Interest shall not accrue or be paid upon any Claim in respect of the period from the date the Receiver was appointed to the date this Case is closed.

(4) *No de Minimis Distributions.* The Receiver shall not be required to make a distribution to the holder of an allowed Claim if such distribution is an amount of less than \$100.00. The Receiver has determined that the cost involved in making distributions in amounts of less than \$100.00 would not be cost effective. Any holder of an allowed Claim that does not receive a distribution solely because of this provision will have such distribution reserved until such time as the holder would receive a distribution in the amount of \$100.00 or more.

(5) *Forfeited Distributions.* The holder of a Claim that fails to provide, within 180 days of the Claim Determination becoming final, a (i) Release, (ii) W-9 form or W-8 form (as applicable), or (iii) an OFAC Certificate, shall be deemed to have forfeited any distribution to which they would otherwise be entitled (a “Forfeited Distribution”). Forfeited Distributions shall be deemed forfeited on the 181st day subsequent to such Claimant’s Claim Determination becoming final.

(6) *Unclaimed and Undeliverable Distributions.*

- a. “Unclaimed Property” shall mean distributions (i) that are Forfeited Distributions; (ii) that are returned to the Receiver as undeliverable and no appropriate forwarding address is received within 90 days after such attempted distribution by the Receiver is made to such holder; (iii) for which the check making such distribution is not negotiated within 180 days of its issuance and no request for re-issuance is made within such 180 day period, at which time, such distribution shall be cancelled through a stop payment order or other means; or (iv) remaining after the Final Distribution. The Receiver is under no affirmative obligation to attempt to locate any holder of an allowed Claim.
- b. If the combined total of Unclaimed Property related to allowed Claims totals (i) \$100,000 or more, the Unclaimed Property shall, subject to Section 4 (“No *de Minimis* Distributions”) and other relief approved by this Court in this Motion, be redistributed to the other holders of allowed Claims in Class 3 until the holders of allowed Claims in Class 3 are paid in full on account of their allowed Claims in Class 3, and, thereafter, distributed by the Receiver to other holders of Claims allowed in the order of priority established by this Court, or (ii) if less than \$100,000, the Unclaimed Property shall be donated to a non-denominational charity to be selected at a later date; provided that, all Claims in respect of the Unclaimed Property shall be deemed disallowed, and the holder or successor to such holder of any Claim so disallowed will be forever barred, expunged, estopped and enjoined from asserting any such disallowed Claim in any manner

against the Receiver, the Estate, or their respective property, notwithstanding any federal or state escheat laws to the contrary.

(7) *Interim Distributions.* The Receiver, in his discretion, may make interim distributions to the holders of allowed Claims entitled thereto in accordance with the procedures contained herein.

(8) *Final Distribution.* The Receiver shall make a final distribution to holders of allowed Claims entitled thereto in accordance with the procedures contained herein. Such final distribution shall provide for the distribution of as much of the Estate's assets as is possible without causing a disparity in the pro-rata distribution to be made on allowed Claims. Any remaining Estate Assets shall be treated as Unclaimed Property. Upon making the final distribution, the Receiver shall file a report with this Court.

(9) *Reserves for Claims not Yet Allowed.* For the purpose of making interim distributions, the Receiver shall establish, in his discretion and without further order of this Court, reserves for all Claims that have not been disallowed (whether pursuant to section 6 of these procedures or in the Claim reconciliation process).

(10) *Compliance with Tax Requirements.* In connection with the distributions made in accordance hereto, to the extent applicable, the Receiver shall comply with all tax withholding and reporting requirements imposed by any governmental unit and all distributions shall be subject to such withholding and reporting requirements. The Receiver shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding and reporting requirements.

(11) *Compliance with Applicable Regulations.* If an entity is not permitted to receive a distribution or is required to forfeit any distribution because of any Applicable Regulation, the

Receiver requests that he be able to retain such distribution and treat such distribution as if it were Unclaimed Property unless required to treat such distribution differently by applicable United States law. The Receiver requests that this Court find that he will have no liability to any holder of a Claim whose distribution is treated as Unclaimed Property because the Receiver has acted in accordance with what he believes to be an Applicable Regulation.

The Receiver believes that in light of the circumstances of this Case, the above procedures are fair, reasonable, and in the best interest of the Estate.

IV. CONCLUSION

WHEREFORE, the Receiver hereby requests that the Court enter an order authorizing (1) the procedures for the resolution of certain matters arising in regard to the reconciliation of Claims, including, but not limited to, granting the Receiver authority to settle Claims asserted against the Receivership Defendant, establishing a procedure for settling Claims filed against the Receivership Defendant, appointing the proposed Special Master to preside over objections to Claim Determinations which the Receivership Team has been unable to resolve through negotiations with the Claimant, and establishing the method by which either party may appeal an adverse determination of the Special Master to this Court; (2) the establishment of the priority of allowed Claims for making distributions to the holders of allowed Claims; (3) the establishment of the rising tide methodology for determining the distributions to be made on account of the allowed Claims held by Affiliate Investors or their subrogees; (4) the procedures for the collection of necessary information to make distributions to holders of allowed claims, and the establishment of the procedures for making distributions; and (5) for such further relief as this Court deems just and proper.

This twelfth day of December, 2013.

/s/ Kenneth D. Bell

Kenneth D. Bell, N.C. State Bar No. 10800

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CERTIFICATE OF SERVICE

I hereby certify that on this date, I have electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send copies to counsel of record registered to receive electronic service. Additionally, all entities that have provided E-mail Addresses and fully submitted Claims on the Claim Portal shall be served a copy of this Motion via electronic mail.

This the 12th day of December, 2013.

/s/ Kenneth D. Bell
Kenneth D. Bell

appointed) to this Court; (2) the establishment of the priority of distributions to the holders of allowed Claims; (3) the establishment of the rising tide methodology for determining the distributions to be made on account of the allowed Claims held by Affiliate Investors; and (4) the procedures for making distributions, including, but not limited to, the collection of necessary information to make distributions to holders of allowed Claims, and the establishment of the procedures for making distributions.

This Court held a hearing on the Motion on January __, 2014. This Court having reviewed and considered the Motion, and upon all of the proceedings had before this Court and upon the entire record of the Hearing, and after due deliberation and sufficient cause appearing therefor, the Court hereby GRANTS the Motion in all respects.

IT IS HEREBY FOUND, DETERMINED, ORDERED, ADJUDGED, AND DECREED, AS FOLLOWS:

1. The notice of the Motion that was sent via electronic mail to all entities that fully submitted claims on the Claims Portal via the electronic mail address provided in the Claim submission process by such entity constitutes good and sufficient notice of the Motion and all the relief sought therein, including the appointment of the Special Master.

Appointment of Special Master

2. The holders of Claims against the Receivership Defendant hold no jury trial right in respect to the determination, allowance, disallowance, adjudication, and/or liquidation of such Claims.
3. An exceptional condition warranting a Special Master exists in this Case in regard to the Claims.

4. Retired Judge Frank W. Bullock, Jr. of the United States District Court for the Middle District of North Carolina, is hereby Appointed as the Special Master.
5. The Special Master shall file the affidavit required by Rule 53(b)(3)(A) within ten (10) days after the filing of this Motion.
6. The duties and powers of the Special Master shall be limited to those duties and powers described herein. The Special Master shall not have the power to issue any orders or impose any sanctions.
7. The Special Master shall only review and make determinations regarding Claims if:
 - (i) (A) the Receiver has issued a Claim Determination regarding the Claim; (B) the Claimant timely objects to the Claim Determination; (C) more than 90 days has passed since the issuance of a Claim Determination or an amended Claim Determination (as the case may be), subject to the Receiver consenting to a shortening of this period; (D) negotiations between the Receiver and the Claimant have commenced and have not resulted in a settlement; and (E) either the Claimant or the Receiver has requested that the Special Master review and intervene in the Claim dispute (a "Request for Intervention"); or
 - (ii) the Receiver reaches a settlement with a Claimant that requires the review of the Special Master as set forth in Paragraph 21 hereof (a "Settlement Review").
8. A Request for Intervention must be made in writing and served via electronic mail to the opposing entity and the Special Master.
9. The Request for Intervention must include a statement setting forth the Claimant's or the Receiver's position, as the case may be, with respect to the amount of the Claim (the "Position Statement").

10. The Receivership Team shall, within 30 days after receiving or making the Request for Intervention, provide the Special Master with the data provided by the Claimant when it asserted the Claim (including, but not limited to, the amount the Claimant asserts it funded to ZeekRewards, the amount of payments the Claimant asserts it was paid by ZeekRewards and any backup submitted), the information stored in the ZeekRewards database relating to the Claimant, and any further information regarding the Claim that the Receivership Team may have in its possession (collectively, the “Claim Data”).
11. The entity that receives the Request for Intervention from the opposing entity shall have 30 days from service of the Request for Intervention, subject to extension by agreement between the Receiver and the Claimant or by consent of the Special Master, to respond to the Position Statement (the “Reply”) in writing via electronic mail to the entity that made the Request for Intervention and the Special Master.
12. Upon receipt of the Position Statement, the Reply and the Claim Data, the Special Master shall review this information and hold a hearing where the Receivership Team and/or the Claimant may produce evidence regarding the validity and amount of the Claim. Attendance at such hearing shall not be required. Entities may attend the hearing by telephone or other electronic means.
13. After the conclusion of such hearing, the Special Master will serve, via electronic mail, a written decision detailing his findings regarding the validity and amount of the Claim (a “Decision”) on the Claimant and the Receivership Team.
14. Each of the Claimant and the Receivership Team shall have 30 days from the date of service of the Decision via electronic mail to file an appeal of the Decision with this Court (an “Appeal”). Such Appeal shall be filed in the miscellaneous proceeding that

shall be commenced by the Receiver (the “MP”). The Receiver shall commence the MP within 30 days after the date on which this Order is entered. The entity that seeks review by filing a Notice of Appeal in the MP shall pay an appropriate filing fee in an amount equal to the cost to commence a civil action in this Court (\$400.00).

15. If the Receiver and a Claimant reach a settlement which, as set forth in Paragraph 21 hereof, would require the approval of the Special Master, the Receiver shall request that the Special Master perform a Settlement Review. The Receiver shall provide the Special Master with the Claim Data and any other information which the Special Master may request. The Special Master shall then render a determination on whether the settlement is approved or whether the parties need to alter the settlement for it to be approved.
16. Imposing the expenses of the Special Master on the Estate is fair and reasonable.
17. Within 30 days after the close of each calendar quarter, the Special Master shall file a report that states the number of Claims he has reviewed and the number of Decisions he has rendered.
18. The Special Master shall engage in *ex parte* communications with the Claimant solely for the purposes of discussing scheduling and logistical issues regarding the review of the Claim Data. The Special Master shall engage in *ex parte* communications with the Receivership Team only for the purposes of discussing scheduling, logistical issues and administrative matters, including, but not limited to, the payment of the Special Master’s fees. The Special Master shall be paid \$450 per hour for the work he performs in his capacity as Special Master in this matter. The Special Master shall submit his bills to the Receiver for payment.

Amendment of Claim Determinations

19. The Receiver may, in his discretion, amend and reissue Claim Determinations.
20. The Receiver may stipulate to the allowance of a Claim against the Receivership Defendant without the approval of this Court so long as the Claim, as allowed, does not exceed an amount that is \$10,000.00 greater than the amount such Claim was maintained in the database of ZeekRewards.
21. The Receiver may seek to stipulate to the allowance of a Claim that would be in an amount that is in excess of \$10,000.01 greater than the amount that such Claim was maintained in the database of ZeekRewards, but less than \$100,000.00 greater than the amount that was maintained in the database of ZeekRewards if approved by the Special Master after the Settlement Review or upon an order of this Court.
22. The Special Master shall have authority to approve stipulations of Claims which meet the criteria set forth in Paragraph 21 hereof.
23. The Receiver may seek to stipulate to the allowance of a Claim by filing an application with this Court. The Receiver may seek this Court's approval of multiple settlements in one motion (an "Omnibus Motion"). Any such Omnibus Motion will clearly identify each of the settlements for which the Receiver is seeking approval.

Priority of Claims

24. The Distribution Protocol is fair and equitable and is approved in its entirety.
25. Allowed Claims shall be paid in the following order of priority:
 - a. First, on account of Claims for the actual necessary costs and expenses incurred by the Receiver and the Receivership Team subsequent to the appointment of the Receiver, including, but not limited to, the payment of the fees authorized by this Court, tax obligations that are incurred from activities undertaken subsequent to

the appointment of the Receiver (not tax obligations that merely become due subsequent to the appointment of the Receiver), and the fees and costs associated with making distributions of the assets collected by the Receivership Team to holders of allowed Claims in these cases (collectively, "Class 1 Claims") until such Claims are paid in full. Such Claim may, in the Receiver's discretion, be paid in the ordinary course of business as and when they become due.

- b. Second, on account of allowed secured Claims, to the extent such claims exist, including, without limitation, the allowed secured Claims of taxing authorities, until such claims are paid in full, but solely from the proceeds of the collateral held by the Estate in which the secured Claim holder holds an interest (collectively, "Class 2 Claims");
- c. Third, pro-rata to holders of allowed Claims of Affiliate Investors and subrogees of Affiliate Investors on account of the allowed Claims of Affiliate Investors and subrogees of Affiliate Investors (collectively, "Class 3 Claims") until all such claims are paid in full without interest, costs or fees;
- d. Fourth, to the extent not paid in full above and solely to the extent there are remaining funds after payment in full is made on account of all allowed Claims in Classes 1, 2 and 3 in accordance with the treatment set forth above, pro-rata to holders of allowed Claims of taxing authorities and other governmental entities allowed in the reconciliation process (collectively, "Class 4 Claims") until such Claims are paid in full without interest, costs, penalties or fees; and
- e. Finally, to the extent there are remaining funds after payment in full is made on account of all allowed Claims in Classes 1, 2, 3 and 4 in accordance with the

treatment set forth above, pro-rata to the holders of allowed general unsecured Claims on account of all allowed general unsecured Claims² (collectively, “Class 5 Claims”) until such Claims are paid in full without interest, costs or fees.

26. Under no circumstances shall the Receiver be permitted to make any distributions on account of the membership interests of the Receivership Defendant or any distributions to the holders of the membership interests of the Receivership Defendant absent further Order of this Court.
27. The Receiver shall maintain the Claims data filed in regard to Class 4 and Class 5 Claims, but shall not be required to determine or otherwise reconcile such Class 4 and Class 5 Claims, unless and until the Receiver determines that, subject to adequate reserves, there are adequate assets remaining in the Receivership Defendant’s Estate to pay the Claims in Classes 1, 2 and 3 in full in accordance with the treatment set forth in Paragraph 25 hereof.

Approval of Rising Tide Methodology for Distributions

28. The methodology for distributions set forth in the Motion is fair and equitable and is approved in all respects.
29. ‘The Receiver shall use the Rising Tide methodology to make Distributions on allowed Claims.
30. The Receiver is authorized to establish and release reserves for the holders of allowed Claims in these cases in his discretion.

Distribution Procedures

² General unsecured Claims were denoted on the Receiver’s Claim Portal as Trade Creditors, Independent Contractors, Claims of Directors, Officers and Employees, and Claims asserted in the “Other” category.

31. The Distributions Procedures set forth in the Motion are fair and equitable and are approved in all respects.
32. The Receiver shall collect from all holders of allowed Claims, the (i) Release, (ii) W-9 form or W-8 form (as applicable), and (iii) an OFAC Certificate. Failure to provide any of these documents shall cause the distribution payable on account of such Claim to be forfeited in accordance with Paragraph 37 hereof.
33. *Delivery of Distributions in General.* The Receiver shall make distributions solely to the holders of allowed Claims without regard to any Claim or interest asserted by any third party in such distributions. Distributions shall be made to the holders of allowed Claims at the addresses set forth in the Claims asserted by such holders, as amended by such holder on the Claims Portal.
34. *Payments.* Distributions shall be made to all holders of allowed Claims by checks drawn in United States dollars on a United States domestic bank.
35. *Interest on Claims.* Interest shall not accrue or be paid on any Claim, and no holder of a Claim shall be entitled to interest accruing on any Claim. Interest shall not accrue or be paid upon any Claim in respect of the period from the date the Receiver was appointed to the date this Case is closed.
36. *No de Minimis Distributions.* The Receiver shall not be required to make a distribution to the holder of an allowed Claim if such distribution is an amount of less than \$100.00. The Receiver has determined that the cost involved in making distributions in amounts of less than \$100.00 would not be cost effective. Any holder of an allowed Claim that does not receive a distribution solely because of this provision will have such distribution

reserved until such time as the holder would receive a distribution in the amount of \$100.00 or more.

37. *Forfeited Distributions.* The holder of a Claim that fails to provide, within 180 days of the Claim Determination becoming final, a (i) Release, (ii) W-9 form or W-8 form (as applicable), or (iii) an OFAC Certificate, shall be deemed to have forfeited any distribution to which they would otherwise be entitled (a “Forfeited Distribution”). Forfeited Distributions shall be deemed forfeited on the 181st day subsequent to such Claimant’s Claim Determination becoming final.
38. *Unclaimed and Undeliverable Distributions.*
- a. “Unclaimed Property” shall mean distributions (i) that are Forfeited Distributions; (ii) that are returned to the Receiver as undeliverable and no appropriate forwarding address is received within 90 days after such attempted distribution by the Receiver is made to such holder; (iii) for which the check making such distribution is not negotiated within 180 days of its issuance and no request for re-issuance is made within such 180 day period, at which time, such distribution shall be cancelled through a stop payment order or other means; or (iv) remaining after the Final Distribution. The Receiver is under no affirmative obligation to attempt to locate any holder of an allowed Claim.
 - b. If the combined total of Unclaimed Property related to allowed Claims totals (i) \$100,000 or more, the Unclaimed Property shall, subject to Section 4 (“No *de Minimis* Distributions”) and other relief approved by this Court in this Motion, be redistributed to the other holders of allowed Claims in Class 3 until the holders of allowed Claims in Class 3 are paid in full on account of their allowed Claims in

Class 3, and, thereafter, distributed by the Receiver to other holders of Claims allowed in the order of priority established by this Court, or (ii) if less than \$100,000, the Unclaimed Property shall be donated to a non-denominational charity to be selected at a later date by the Receiver; provided that, all Claims in respect of the Unclaimed Property shall be deemed disallowed, and the holder or successor to such holder of any Claim so disallowed will be forever barred, expunged, estopped and enjoined from asserting any such disallowed Claim in any manner against the Receiver, the Estate, or their respective property, notwithstanding any federal or state escheat laws to the contrary.

39. *Interim Distributions.* The Receiver, in his discretion, may, but is not required to, make interim distributions to the holders of allowed Claims entitled thereto in accordance with the procedures contained herein.
40. *Final Distribution.* The Receiver shall make a final distribution to holders of allowed Claims entitled thereto in accordance with the procedures contained herein. Such final distribution shall provide for the distribution of as much of the Estate's assets as is possible without causing a disparity in the pro-rata distribution to be made on allowed Claims. Any remaining Estate Assets shall be treated as Unclaimed Property. Upon making the final distribution, the Receiver shall file a report with this Court.
41. *Reserves for Claims not Yet Allowed.* For the purpose of making interim distributions, the Receiver shall establish, in his discretion and without further order of this Court, reserves for all Claims that have not been disallowed (whether pursuant to Paragraph 38 hereof or in the Claim reconciliation process).

42. *Compliance with Tax Requirements.* In connection with the distributions made in accordance hereto, to the extent applicable, the Receiver shall comply with all tax withholding and reporting requirements imposed by any governmental unit and all distributions shall be subject to such withholding and reporting requirements. The Receiver shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding and reporting requirements.
43. *Compliance with Applicable Regulations.* If an entity is not permitted to receive a distribution or is required to forfeit any distribution because of any Applicable Regulation, the Receiver shall retain such distribution and treat such distribution as if it were Unclaimed Property unless required to treat such distribution differently by applicable United States law. The Receiver shall have no liability to any holder of a Claim because he has acted in accordance with what he believes is an Applicable Regulation.

Signed this _____ day of _____ 2013.

Graham C. Mullen
United States District Court Judge