



Interim Distribution Date, (iii) setting the First Interim Distribution Date, and (iv) establishing Subsequent Record Dates and Subsequent Distribution Dates for making the First Interim Distribution to Class 3 Claimants whose Claims are allowed prior to a Subsequent Record Date. For the reasons discussed below and in the best interests of the Receivership Estate, the Receiver respectfully submits that the Motion should be granted.

### **Preliminary Statement**

With this Motion, the Receiver seeks to pay holders of Class 3 Allowed Claims an amount that will provide such holders a total recovery in regard to their investment into the ZeekRewards Scheme of at least 40% of the amount of their Class 3 Allowed Claim. In accordance with the Distribution Plan, if a holder of a Class 3 Claim received money from ZeekRewards on account of its investment into ZeekRewards, the amount paid by ZeekRewards to such Claim holder will be deducted from the 40% recovery that would otherwise be paid to the holder of such Allowed Claim. If a holder of a Class 3 Allowed Claim previously received in excess of his/her 40% distribution, the holder of that Claim will not receive a distribution pursuant to the relief requested in this Motion.

### **Relevant Facts**

Approximately 175,000 Claims were timely asserted through the Claims Process. These Claims assert damages in excess of \$650 million against the Receivership Defendant. As of the date of the filing of this Motion, the Receiver holds approximately \$320 million in Receivership Assets that will be used to pay Claimants and administrative fees in this case. Additionally, the Receiver continues to seek recovery of additional Receivership Assets by pursuing causes of action against third parties, primarily net-winners and others who benefited from or improperly facilitated the ZeekRewards Scheme.

After filing the Distribution Plan Motion, the Receivership Team began issuing Claim Determinations. As of the date of this Motion, approximately 150,000 Claim Determinations have been issued by the Receivership Team for Claims in Class 3. Approximately 25,000 Claims in Class 3 remain under review. Claim Determinations for many remaining Class 3 Claims will be forthcoming next month. Pursuant to the Distribution Plan, no Claims in classes other than Class 3 are required to be reconciled by the Receivership Team at this time.

Each Class 3 Claimant (defined below) is allowed 30 days from the issuance of its Claim Determination to accept or object to the Claim Determination. If a Class 3 Claimant failed to timely accept or object to the Claim Determination, the Class 3 Claimant was deemed to have accepted the Claim Determination.

Upon a Class 3 Claimant accepting or being deemed to accept their Claim Determination, a Class 3 Claimant is required to provide the Court-approved Release and OFAC Certification in order for its Class 3 Claim to be allowed against the Receivership Defendant (a “Consensual Allowed Claim”). If the Claimant timely objects to the Claim Determination, the Claim Determination will be allowed upon the resolution of such objection (whether consensual or through litigation in accordance with the Distribution Plan) and the submission of the Release and the OFAC Certification (the “Resolved Allowed Claims,” together with the Consensual Allowed Claims, are hereafter referred to as the “Allowed Claims”). As of the date of the filing of this Motion, fewer than 500 people have objected to their Claim Determinations. Those objections are under review or have been consensually resolved.

Of the approximately 150,000 Class 3 Claimants that have been issued Claim Determinations, only approximately 83,000 have provided the required Release and OFAC Certification. These 83,000 Allowed Claims represent the aggregate sum of approximately \$305

million paid into the ZeekRewards Scheme. The other 67,000 Class 3 Claimants that have not provided Releases and OFAC Certifications paid approximately \$157 million into the ZeekRewards Scheme. These Class 3 Claims will become Allowed Claims if the Class 3 Claimants that hold those Claims agree to the Claim Determination, or fail to timely object, and submit the required Release and OFAC Certification. In sum, once these 150,000 Class 3 Claims become Allowed Claims, they will represent an aggregate sum of approximately \$464 million in funds invested into the ZeekRewards Scheme. That sum will increase after reconciliation is completed and Claims Determinations are issued for the remaining 25,000 Class 3 Claims under review.

### **Argument**

The Receivership Team has worked diligently to return as much of the money lost by the victims of the ZeekRewards Ponzi and pyramid scheme (the “ZeekRewards Scheme”) as quickly and efficiently as possible. Towards that end, this Court previously entered the Order Approving Distribution Procedures and Certain Other Related Relief (the “Distribution Plan”) [ECF No. 199].

The Distribution Plan created the framework for returning funds gathered by the Receiver to the holders of Claims in this case. This Motion seeks approval of certain procedural matters to implement the Distribution Plan. These procedures are necessary to make an interim payment to holders of Class 3 Allowed Claims.

Because of the volume of Claims and the uncertainty regarding the amounts paid into and out by the ZeekRewards Scheme, the Receivership Team was required to reconcile a large number of pending claims prior to making any distribution in this Case. The Receivership Team has now completed a sufficient portion of the Claims reconciliation process to make a partial

distribution to holders of Allowed Claims in Class 3 (the “Class 3 Claimants”). Accordingly, the Receiver seeks to distribute (or reserve for future distribution) the majority of the funds he has recovered to Class 3 Claimants on account of their Class 3 Claims pursuant to the Distribution Plan. If approved, this interim Distribution would result in all holders of Class 3 Allowed Claims receiving (whether from the Receiver or from ZeekRewards prior to the Receiver’s appointment) at least 40% of the amount such persons directly invested in the ZeekRewards Scheme.

The Receiver anticipates that future recoveries will allow for further distributions to holders of Class 3 Allowed Claims, but it remains unlikely that there will be sufficient funds to pay all Allowed Claims in full. Consequently, there will be no distribution to, nor (in accordance with the Distribution Plan) will any reserve be established for, Class 2,<sup>3</sup> 4<sup>4</sup> or 5<sup>5</sup> Claims or Class 3 Claims that have been disallowed.

#### Distribution Approval

This Court previously authorized the Distribution Plan to marshal the assets of the Receivership Defendant. The Receiver believes that he is now in a position to make the First Interim Distribution in accordance with the Distribution Plan to the Class 3 Claimants who hold Allowed Claims. The Receiver requests that this Court approve the payment of the First Interim Distribution directly to the holders of Class 3 Allowed Claims in accordance with the Distribution Plan.

<sup>3</sup> Class 2 Claims are Claims asserted by Claimants who contend that their claims are secured by collateral as classified in accordance with the Distribution Plan.

<sup>4</sup> Class 4 Claims are Claims asserted by taxing authorities and other governmental entities as classified in accordance with the Distribution Plan.

<sup>5</sup> Class 5 Claims are Claims asserted by general unsecured creditors of the Receivership Defendant as classified in accordance with the Distribution Plan.

### Establishing Record and Distribution Dates

In order to establish the universe of Class 3 Claimants who are eligible to receive the First Interim Distribution on the First Interim Distribution Date and to efficiently and cost-effectively make the First Interim Distribution, the Receiver has determined that he needs to establish the First Interim Distribution Record Date and Subsequent Record Dates. Establishing the First Interim Distribution Record Date is necessary: (i) to establish the date by which a Claim must be an Allowed Claim to be eligible to participate on the First Interim Distribution Date; (ii) to provide adequate time to allocate the assets the Receivership Team holds into various pools (e.g., assets needed for the First Interim Distribution on the First Interim Distribution Date, assets to be reserved for the First Interim Distribution on Subsequent Distribution Dates, and assets to be used for future distributions, administrative costs and Class 1 Claims<sup>6</sup>); and (iii) to ensure that, among other things, each Class 3 Claim that later becomes an Allowed Claim will receive equal treatment from the Receivership Estate.

The Receiver requests that the First Interim Distribution Record Date be set as August 15, 2014. That date would allow sufficient time to hear this Motion while also providing more time to approximately 67,000 Class 3 Claimants to submit the required Releases and OFAC Certifications to have their Claims become Allowed Claims (thereby allowing their participation in the First Interim Distribution on the First Interim Distribution Date).

The Receiver further proposes that the Court set the First Interim Distribution Date as September 30, 2014 for all Class 3 Claims that are Allowed Claims on or prior to the First Interim Distribution Record Date. The Receiver believes that this will provide the Receivership Team the time needed to prepare the more than 83,000 (and as many as 150,000) distribution

<sup>6</sup> Class 1 Claims are Claims for the actual necessary costs and expenses incurred by the Receiver and the Receivership Team subsequent to the appointment of the Receiver, as classified in accordance with the Distribution Plan.

checks that are to be made on the First Interim Distribution Date and to confirm that the Receivership Team properly reserves sufficient funds to pay those Class 3 Claims that later become Allowed Claims.

Additionally, the Receiver also requests that this Court establish subsequent record dates for determining a Class 3 Claimant's eligibility to receive its First Interim Distribution. The Receiver requests that the Court establish (i) the first Subsequent Record Date as December 31, 2014, and (ii) additional Subsequent Record Dates on the last business day of each calendar quarter subsequent to the first Subsequent Record Date. The Receiver also requests that this Court establish Subsequent Distribution Dates for the First Interim Distribution on the last business day of the calendar month that directly follows a Subsequent Record Date.

The Receiver believes that establishing these dates is in the best interest of the Receivership Estate and the holders of Claims against the Receivership Defendant because they will promote efficiency by permitting the Receiver to issue checks in groups (as opposed to every time a Claim becomes an Allowed Claim), provide certainty to Class 3 Claimants regarding when they will receive payment on account of their Allowed Claims, and provide the Receivership Team adequate time to make the distributions.

The Receiver will, in the future, move this Court for approval to make distributions to Class 3 Creditors in addition to the First Interim Distribution.

#### Reserves

Additionally, the Receiver seeks to establish reserves in order to ensure that there are funds remaining in the Receivership Estate that are sufficient to pay Class 3 Claims when they become Allowed Claims, and to pay the costs, fees and expenses incurred by the Receivership Estate in accordance with Orders of this Court. The Receiver anticipates setting the reserves for

all Class 3 Claimants as the aggregate amount of the First Interim Distribution Amount that would be necessary to pay each such Class 3 Claimant if the Class 3 Claimant held an Allowed Claim in the amount that the Class 3 Claimant asserted in the Claim Process. If a Class 3 Claim is disallowed, the reserve created on account of that particular Claim will be released to the pool of assets of the Receivership Estate to be held for future distribution in accordance with the Distribution Plan. If a Class 3 Claim is allowed at an amount that is less than the amount on which the reserve for that Claim was established, the reserve shall be reduced by a proportional amount. The difference between the total reserves and the aggregate amount of the newly established aggregate First Interim Distribution Amount shall be released to the pool of assets of the Receivership Estate to be held for future distribution in accordance with the Distribution Plan. In the unlikely event that the amount that is reserved for payment of the First Interim Distribution Amount for a given Class 3 Allowed Claim is insufficient to pay the First Interim Distribution Amount for such Class 3 Allowed Claim, the additional funds necessary to pay the First Interim Distribution Amount shall be withdrawn from the pool of assets of the Receivership Estate that was to be used for subsequent distribution on Claims.

Finally, in accordance with the Distribution Plan, no reserve will be established for any Class 2, 4, or 5 Claims, or for the Class 3 Claims that have been disallowed by order of this Court. Pursuant to the Distribution Plan, the Receivership Team does not believe that there will be any funds available to pay Class 2, 4 or 5 Claims.

Moreover, notwithstanding unfounded contentions by certain Claimants, no Claimant who has sought to have his or her Claim classified in Class 2 holds a valid secured claim. Pursuant to the Freeze Order, all Claimants were required to turn over any collateral that they held for the Receivership Defendant. To the extent that a Claimant did not turn over such funds,

he or she was and remains in contempt of the Freeze Order. Therefore, the Receiver urges the Court to deny any assertions by a Claimant that any Claim should be afforded treatment in Class 2 pursuant to the Distribution Plan. Instead, the Receiver requests that he be authorized to treat these Claimants' Claims as Class 3, 4 or 5 Claims, as applicable, in accordance with such Claimant's initial filings and applicable law.

### **Conclusion**

For all of the foregoing reasons, the Receiver requests that this Court enter an order (i) approving the Motion, (ii) authorizing the First Interim Distribution, (iii) establishing the First Interim Distribution Record Date, (iv) setting the First Interim Distribution Date, (v) establishing Subsequent Record Dates and Subsequent Distribution Dates, and (vi) granting whatever further relief this Court deems just and proper.

Dated: May 28, 2014

Respectfully submitted,

/s/ Irving M. Brenner

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have electronically filed the foregoing **RECEIVER'S MOTION TO AUTHORIZE FIRST INTERIM DISTRIBUTION, ESTABLISH RECORD DATES AND SET FIRST INTERIM DISTRIBUTION DATE** with the Clerk of Court using the CM/ECF system, which will send electronic copies to counsel of record registered to receive electronic service.

Dated: May 28, 2014

*/s/ Matthew E. Orso* \_\_\_\_\_