

RECEIVER, DEBORAH D. WILLIAMSON'S MOTION FOR ORDER APPROVING DISTRIBUTION PLAN AND INTERIM AND/OR FINAL DISTRIBUTION

Receiver, Deborah D. Williamson (the "Receiver"), respectfully files this *Motion for Order Approving Distribution Plan and Interim and/or Final Distribution* (the "Motion")¹, requesting entry of the proposed order (the "Proposed Order") attached hereto as **Exhibit A**, granting the Motion and approving the Net Investment or Net Loss distribution method for any interim and/or final distribution on allowed claims in this Case. In support of this Motion, the Receiver states as follows:

I. HEARING REQUEST

1. The Receiver respectfully requests that the Court set this Motion for hearing on **June 4, 2024**, or as soon thereafter as the Court's schedule may allow.² The Receiver further requests that the Court set a 21-day response deadline on the Motion from the date of filing in accordance with Local Rule 7.1 of the Local Civil Rules of the United States District Court for the Northern District of Texas.

II. INTRODUCTION

A. The Case and the Receiver's Liquidation Efforts.

2. This Case stems from an oil and gas offering fraud conducted over three years as alleged in the *Complaint* [ECF No. 1] of Plaintiff, U.S. Securities and Exchange Commission (the "Commission"). *Complaint*, ¶ 1. Over approximately \$122,000,000.00 was obtained from victims, often the elderly who "invested" substantial portions of their life savings. *Id.*

¹ Capitalized terms utilized but not otherwise defined herein shall have the meaning ascribed in the Receivership Order, the Claims Procedure Motion, or the Claims Procedure Order, as applicable.

² Contemporaneously herewith, the Receiver anticipates filing the *Receiver's Omnibus Objection to Claim Submissions Pursuant to Court-Approved Claims Procedure* (the "Objection") for this Court's consideration. If this Court's schedule permits, this Motion and the Objection can be set for hearing on the same date and time.

3. On December 1, 2021, the Commission filed its *Complaint* and its *Emergency Motion for a Temporary Restraining Order and Emergency Ancillary Relief* [ECF No. 3], which included an application for the appointment of a receiver for the Receivership Parties.

4. On December 2, 2021, this Court determined that entry of an order appointing a receiver over the Receivership Parties was both necessary and appropriate to marshal, conserve, hold, and operate all of the Receivership Parties' assets pending further order of this Court. Accordingly, the Court entered the Receivership Order on December 2, 2021, appointing Deborah D. Williamson as the Receiver over the Receivership Estates in this Case. The Receivership Order directed the Receiver to take possession and control over all funds, property, and other assets in the possession of or under the control of the Receivership Parties. Receivership Order, ¶ 8.

5. Nearly all of the Defendants have agreed to entry of consent judgments in this Case that established liability on the causes of action asserted by the Commission, including violations of certain sections of the Securities Act of 1933 and certain sections of the Securities Exchange Act of 1934 and aiding and abetting both of the same.

6. Since her appointment, the Receiver has obtained Court approval to liquidate substantially all of the Receivership Assets that were owned or held in the name of Receivership Parties, and the Receiver will continue to seek authority to liquidate any recoverable and/or remaining Receivership Assets. The Receivership Estates have netted approximately \$10 million in cash since the inception of the Case from sale proceeds of Receivership Assets. The Receiver continues to pursue Receivership Estates' causes of action and Recoverable Assets.

7. There is uncertainty regarding any Receivership tax liabilities for various Receivership Parties. As such, the Receiver seeks approval to hold back a portion of the cash on hand to address any such Receivership tax and similar liabilities.

8. The Receiver's efforts will result in one or more distributions to defrauded investors and other creditors of the Receivership Parties pending further order of this Court.

9. Potential Claimants in this Case fall into at least one of the following categories in the Claims Procedure: (i) Known Investors (as defined in the Claims Procedure Motion); (ii) Unknown Creditors (as defined in the Claims Procedure Motion); (iii) Other Creditors (as defined in the Claims Procedure Motion); and (iv) Non-Receivership Party Relief Defendants (as defined in the Claims Procedure Motion). **Based on current information, the Receiver does not believe that the ultimate recovery in this Case will be sufficient to return the full amount of principal contributions to the Known Investors and pay in full all claims of Other Creditors of the Receivership Estates.**

10. Since the Receiver was appointed, she has undertaken significant efforts to identify the assets of the Receivership Parties, including cash, accounts, vehicles, equipment, real estate, art, collectibles, jewelry, and aircraft.

11. Throughout the course of the Case and pursuant to approval from this Court, the Receiver has diligently worked to market and sell the assets of the Receivership Parties with the goal of maximizing the cash available for distribution to those who have claims against the Receivership Parties.

12. With the exception of the Overriding Royalty Interest ("ORRI")³ related to certain properties in Val Verde and Crockett Counties, all oil and gas properties have been sold or

³ The ORRI was approved without objection in the Court's December 22, 2022 *Order* [ECF No. 304].

abandoned. Prior to the appointment of the Receiver, ownership of the interests in Val Verde and Crockett Counties was 51% to one or more Sahota-related Receivership Parties, and 49% to one or more Heartland-related Receivership Parties. The ORRI is of very uncertain value at this time. The terms of the ORRI provide that all costs attributable to the ORRI will be “carried” by the new operator until the earlier of December 2024 or such costs equal \$5 million. On information and belief, the current operator has incurred over hundreds of thousands of dollars in costs but has achieved very little production. In fact, production to date is less than accumulated royalty and transportation costs. Further, again on information and belief, vendors have asserted claims and liens arising from lack of payment. Absent a significant increase in production, the Receiver does not intend to risk limited funds on further investments or payment of costs in Val Verde or Crockett Counties.

13. The Receiver has liquidated nearly all of the physical assets of the Receivership Parties. The Receiver may also seek to recover additional assets and to investigate and evaluate whether to pursue claims and litigation against third parties, which could increase the assets available for distribution.

14. As of April 30, 2024, the Receivership Estates had \$9,628,871.52 in cash. *See* ECF No. 496, ¶ 3.

B. The Claims Procedure.

15. On September 11, 2023, the Receiver filed a *Motion for Order Setting Claims Bar Date, Establishing Claims Procedure, and Approving Notification Process* to provide a process through which claims could be asserted against the Receivership Estates (the “Claims Procedure Motion”). *See* ECF No. 408. On October 16, 2023, the Court entered its *Order* recommending that the Claims Procedure Motion be granted [ECF No. 422]. On November 6, 2023, the *Order Accepting Findings, Conclusions and Recommendations of the United States Magistrate Judge*

(the “Claims Procedure Order”) was entered. *See* ECF No. 431. Pursuant to the Claims Procedure, any Known Investors, Relief Defendants, Other Creditors, Unknown Creditors, and Unknown Investor Creditors were directed to submit any claims they had against any of the Receivership Parties by February 5, 2024 (the “Claims Bar Date”).⁴ *See id.* The Claims Procedure provided a process through which the Receiver could contest any claim and allowed the Claimant to subsequently supplement the claim. The Claims Procedure similarly provided a procedure through which the Court could resolve any disputed claims. *See id.*

16. Pursuant to the Claims Procedure, the Receiver provided each Known Investor with a transaction schedule which summarized all payments made to and by a Heartland Receivership Party (each, a “Net Transaction Schedule”). Filing of a proof of claim was required only if a Known Investor disagreed with the Net Transaction Amount. Approximately 487 of Known Investors accepted the “Net Transaction Amount” and didn’t file a proof of claim.

17. The Claims Bar Date has now passed, and the Receiver has been working diligently to resolve disputed claims. No claims were submitted by Non-Receivership Party Relief Defendants. To date, the Receiver has allowed 712 **investor** claims totaling **\$94,286,329.57**. The Receiver disputes 29 **investor** claim submissions, which total **\$7,405,964.19**. The total potential liability of **investor** claims is **\$101,692,293.76**. The Receiver has allowed 36 **non-investor** claims totaling **\$8,601,718.94**. The Receiver disputes 6 non-investor claims totaling **\$234,140.10**, including 2 unliquidated claims.⁵ The total potential liability of **non-investor** claims is **\$8,835,859.04**, not including the Unliquidated Claims. The combined potential liability

⁴ The Claims Bar Date was ninety days (90) after entry of the Claims Procedure Order.

⁵ The Sabine Royalty Trust and John Rogers both submitted claims which did not include any fixed or an estimated claim amount (collectively, the “Unliquidated Claims”).

(excluding any amount for the 2 Unliquidated Claims) of investor and non-investor claim submissions is **\$110,528,152.80**.

18. There were \$8,820,840.38 in claims asserted against one or more of the Operators,⁶ including the claim⁷ of the Railroad Commission of Texas totaling \$7,871,365.45. There were two Unliquidated Claims asserted against one or more of the Operators. The Other Creditor remaining claims asserted against a Heartland Receivership Party total \$207,458.00. There was only one claim for \$87,340.44 asserted solely against Receivership Party Barron Energy Corporation (“Barron Energy”) and only one claim for \$142.00 asserted against Receivership Party Sahota Capital, LLC (“Sahota Capital”),⁸ each of which have no assets.

III. REQUESTED RELIEF

19. The Receiver has liquidated the majority of the Receivership Assets, and the amount of the claims to be asserted against the Receivership Parties is substantially certain. The Receiver believes it is ripe to move the Court to enter an order approving a distribution plan and approving an interim and/or final distribution to certain Claimants. As detailed below, the Receiver’s proposed distribution plan contains or provides for the following: (1) nine classes of Claimants based on their relationship to the Receivership Estates and the subordination of insider (Class 9) claims; (2) netting of investments and recoveries from third parties; (3) a “Net Investment” or “Net Loss” Distribution methodology for Class 4 Claimants; (4) separate classification of claims against one or more of the Operators; (5) a separate classification of claims

⁶ The five Operators are Receivership Parties Arcooil Corp., Barron Petroleum LLC, Dodson Prairie Oil & Gas LLC, Panther City Energy LLC, and Leading Edge Energy LLC.

⁷ Judge O’Connor entered the *Order Approving Stipulation Between Deborah D. Williamson, Receiver and Railroad Commission of Texas* [ECF No. 498] on May 3, 2024, approving an allowed non-investor claim for the Railroad Commission of Texas in the amount of \$7,871,365.45 as detailed therein.

⁸ John Rogers also asserted an unliquidated personal injury claim against Receivership Party Sahota Capital LLC.

against Barron Energy and Sahota Capital (collectively, the “No Asset Entities”); (6) a separate classification of claims against Receivership Party 1178137 B.C. Ltd.; and (7) the pooling of assets of the certain other Receivership Parties⁹ for distribution. After reserving sufficient funds to pay Claimants in Classes 1-3 and for potential tax claims, the Receivership Estates hold approximately \$6 million. By this Motion, the Receiver seeks to make an interim distribution to Class 4 Claimants and a potentially final distribution to Class 5 Claimants as described below. Distribution payments to Claimants whose Class 4 and 5 Claims remain in dispute will be held in reserve pending Court resolution and, to the extent allowed or otherwise agreed to by the Receiver, then paid to the disputing Claimant or included in subsequent distributions to allowed Claimants, as appropriate.

20. The Receiver also seeks approval to distribute the net proceeds from the Settlement¹⁰ to Heartland Receivership Party investors in Class 4a. The net amount for distribution to the Heartland Receivership Party investors is approximately \$9,375,000 (the “Net Settlement Proceeds”).

A. Legal Standard.

21. A “district court has broad powers and wide discretion to determine the appropriate relief in an equity receivership.” *SEC v. Hardy*, 803 F.2d 1034, 1037 (9th Cir. 1986) (internal quotations omitted). “A district court has wide latitude when it exercises its inherent equitable power in approving a distribution plan of receivership funds.” *SEC v. Amerifirst Funding, Inc.*, No. 3:07-CV-1188-D, 2008 U.S. Dist. LEXIS 20044, at *8 (N.D. Tex. Mar. 13, 2008) (citing *SEC*

⁹ The Heartland Group Ventures, LLC, Heartland Production and Recovery LLC, Heartland Production and Recovery Fund LLC, Heartland Production and Recovery Fund II, LLC, The Heartland Group Fund III, LLC, Carson Oil Field Development Fund II, LP, and Dallas Resources, Inc.

¹⁰ On April 25, 2024, the *Findings, Conclusions and Recommendation of the United States Magistrate Judge* [ECF No. 492] (the “FCR”) was entered recommending approval of the *Receiver’s Motion (I) to Approve Proposed Settlement with Former Counsel to Certain Heartland-Related Receivership Parties, (II) to Enter a Bar Order, and (III) to Approve Payment of Fees and Expenses of Reid, Collins & Tsai LLP Litigation Counsel to the Receiver* [ECF No. 464] (the “Settlement Motion”).

v. Forex Asset Mgmt. LLC, 242 F.3d 325, 331 (5th Cir. 2001)). Its selection of a distribution plan is reviewed for an abuse of discretion, and appellate scrutiny is narrow given the district court’s broad equitable powers. *SEC v. Quan*, 870 F.3d 754, 761 (8th Cir. 2017) (internal citations omitted). “[T]he primary job of the district court is to ensure that the proposed plan of distribution is fair and reasonable.” *Id.* (quoting *SEC v. Wealth Mgmt. LLC*, 628 F.3d 323, 332 (7th Cir. 2010)); *see also SEC v. Torchia*, 922 F.3d 1307, 1311 (11th Cir. 2019) (“The goal of such receiverships is to grant fair relief to as many investors as possible.” (citation omitted)); *SEC v. Parish*, No. 2:07-cv-00919-DCN, 2010 U.S. Dist. LEXIS 11757, at *17 (D.S.C. Feb. 10, 2010) (“The court has power to approve any plan so long as it is fair and reasonable.”) (internal quotations omitted).

B. Classes of Claimants and Subordination of Insider Claims.

22. The Receiver proposes dividing Claimants into nine different classes.

The proposed classes are:

- Class 1: Administrative Professional Fees and Claims: to be paid in full up to the allowed amount of the claims.
- Class 2: Priority Claims: to be paid in full up to the allowed amount of the claims.
- Class 3: Secured Claims: to be paid in full to the extent of the value of the collateral, with any deficiency to be paid as a Class 4b general unsecured claim.
- Class 4a: Heartland Receivership Party Investor Claims:¹¹ to be paid their:
 - (i) *pro rata* share of the Net Settlement Proceeds pursuant to the Net Investment methodology plus,
 - (ii) after Classes 1, 2, and 3 are paid in full or after sufficient assets are reserved for payment in full of Class 1, 2, and 3 Claimants, their *pro rata* share of any distribution to Class 4a and 4b, pursuant to the Net Investment methodology.

¹¹ Class 4a Claims shall not include any claim not attributable to actual receipt of investments funds by a Receivership Party.

- Class 4b: General Unsecured Claims against Receivership Parties other than the Operators and the No Asset Entities: to be paid along with Class 4a after Classes 1, 2, and 3 are paid in full or after sufficient assets are reserved for payment in full of Class 1, 2, and 3 Claimants.
- Class 5: Claims Against an Operator: to be paid their *pro rata* share of \$650,000.
- Class 6: Claims solely against a No Asset Entity will not be paid anything, as there were no assets against which a claim could be asserted.¹²
- Class 7: Claims against 1178137 B.C. Ltd. will not be paid anything, as any assets which may have been titled in the name of 1178137 B.C. Ltd. were obtained without any consideration.¹³
- Class 8: Claims arising or related to Texas International Energy Production, Inc. (“TIEP”) will not be paid anything, as such claims related to funds paid to TIEP and not to a Receivership Party.
- Class 9: Insider Claims: to be paid *pro rata* after Classes 1, 2, 3, 4, and 5 are paid in full.

23. The Receiver proposes that allowed Class 1 Claimants recover the full amount of their claims upon approval of interim and final fee applications by the Court, as applicable. Among the professionals who fall into Class 1 are: (1) the Receiver; (2) the Receiver’s attorneys; and (3) professionals the Receiver has employed pursuant to the terms of the Receivership Order and other Orders entered by the Court, including Bankruptcy Management Solutions, Inc. d/b/a Stretto, Ahuja & Clark, PLLC n/k/a Ahuja & Consultants, Inc. (“A&C”), and Vicki Palmour Consulting, LLC (“Palmour”).¹⁴ Upon application by the Receiver, input from the Commission, and Order of the Court, Class 1 Claimants have been paid their post-Receivership claims periodically throughout the course of the Case from the proceeds of the sale of the Receivership Assets, settlement of litigation, or from the cash on hand with the Receiver. Class 1 Claimants

¹² Based on the claims filed to date, there is one creditor holding an allowed claim for \$142 against Sahota Capital.

¹³ Based on the claims filed to date, there are no creditors in this Class.

¹⁴ Palmour also has an allowed Class 5 Claim in the amount of \$8,965.99.

will continue to seek payment by this process and be paid upon Court order. The Receiver is not proposing any change to the procedure for the payment of Class 1 Claimants.

24. The Receiver proposes that allowed Class 2 Claimants be paid in full. Class 2 Claimants include tax liabilities of the Receivership Estates at the federal and state level, if any. The Receiver believes she has filed all required tax returns due for periods prior to the filing of this Motion and/or paid all related taxes.¹⁵ However, there are potential tax liabilities for 2024 tax year and subsequent years. There is also the potential for a taxing authority to assert claims for additional taxes for both earlier and subsequent years.

25. The Receiver proposes that allowed Class 3 Claimants, if any, shall be paid in full up to the value of their respective collateral. The Receiver believes that all Class 3 Claimants with valid secured claims have been paid in full.

26. The Receiver proposes that Class 4a Claimants includes Heartland Receivership Party Investors with Allowed Claims. As discussed in more detail below, the Receiver proposes that allowed Class 4a Claimants, along with allowed Class 4b Claimants, be paid pursuant to the Net Investment methodology. At this time, the Receiver does not believe that allowed Class 4a Claimants will be paid the full amount of their claims.

27. The Receiver proposes that Class 4b Claimants shall include general unsecured creditors that are (i) not Known Investors and (ii) not holding claims against one or more of the Operators. The general unsecured creditors in Class 4b shall include individuals or entities who have claims against a Receivership Party that have been reduced to a judgment or are the subject of pending litigation to the extent the claim has been allowed by the Court, amounts owed pursuant

¹⁵ The Receiver has received a notice from the Internal Revenue Service (the “IRS”) demanding the payment of approximately \$70,000.00 allegedly owed by Receivership Party Barron Petroleum LLC relating to pre-Receivership payroll taxes. The Receiver anticipates filing a motion relating to payroll taxes and seeking a final determination of such amounts for all Receivership Parties.

to a contract, or other debts owed by a Receivership Party other than an Operator. As discussed in more detail below, the Receiver proposes that allowed Class 4b Claimants be paid with allowed Class 4a Claimants. At this time, the Receiver does not believe that allowed Class 4b Claimants will be paid the full amount of their claim.

28. The Receiver proposes that Class 5 Claimants shall include general unsecured creditors with claims against one or more of the Operators. As discussed in more detail below, the Receiver proposes that Class 5 Claimants be paid their *pro rata* share of \$650,000.00. Allowed Class 5 Claimants will not be paid the full amount of their claims.

29. The Receiver proposes that Class 6 shall include creditors, if any, with a claim asserted against Barron Energy and Sahota Capital, the No Asset Entities. Creditors in Class 6 shall be paid nothing, as there were no assets identified by the Receiver attributable to those No Asset Entities.

30. The Receiver proposes that Class 7 shall include creditors, if any, with a claim against Receivership Party 1178137 B.C. Ltd. Creditors in Class 7 shall be paid nothing, as any assets which may have been titled in the name of Receivership Party 1178137 B.C. Ltd. were obtained without any consideration.¹⁶

31. The Receiver proposes that Class 8 shall include all parties who assert a claim arising out of or related in any way to TIEP and that such parties shall be paid nothing. Such parties originally advanced or loaned funds to TIEP and no monies were ever paid or delivered to any Receivership Party.

¹⁶ Based on the claims filed to date, there are no creditors with allowed claims in this Class.

32. The Receiver finally proposes that a Class 9 be created that includes any insiders¹⁷ of the Receivership Parties who have submitted claims against the Receivership Estates, provided, however no Defendant or Relief Defendant in this Case will qualify as a Class 9 Insider Claimant or otherwise be eligible to receive a distribution. “Insiders” shall include family members, employees, officers, directors, shareholders, members, or owners of any Receivership Party along with the spouses, children, or relatives of any such person, and any entity, individual, or their spouse who received a commission, finder’s fee(s), or other compensation from a Receivership Party.¹⁸ The Receiver proposes that any individual or entity falling within this category who has submitted a claim that is allowed by the Receiver be paid *pro rata* only after Class 1, 2, 3, 4, 5, 6, and 7 Claimants have been paid in full. At this time, the Receiver does not anticipate having sufficient funds to make any payments to Class 9 Claimants.

33. The Receiver believes subordination of Class 9 Claimants is fair and reasonable. First, only one potential Class 9 Claimant filed a claim in the amount of \$107,458.00. Further, in equitable receiverships, Courts have subordinated the claims of insiders or outright denied their right to a distribution on the grounds they are not similarly situated to other investors or victims. *See SEC v. Byers*, 637 F. Supp. 2d 166, 184 (S.D.N.Y. 2009). As equity is equity, it is inequitable to allow employees or others who participated in the Ponzi scheme or should have been aware of the fraudulent conduct at issue to recover a distribution. *Id.*

C. Netting of Investments is Appropriate.

34. The Receiver’s recommended distribution plan (the “Plan”) also requests the Court allow the Receiver to net investments where a person invested with a Receivership Party in

¹⁷ Based on the claims filed to date, no creditors filed claims in this Class.

¹⁸ Except to the extent of actual receipt of investment funds by a Heartland Receivership Party.

multiple capacities. For example, there are some individuals who invested directly with a Receivership Party and also through a pooled fund which invested with a Receivership Party. A person may have incurred a loss on their investment individually but received a profit based on their investment in the pooled fund. In addition, there may be individuals who received a profit on their direct investment with a Receivership Party but incurred a loss based on their investment in a pooled fund. Thus, the Receiver requests this Court's allowance of netting of investments.

D. Settlement.

35. On April 2, 2024, the Receiver filed the Settlement Motion. The Settlement Motion sought authority to distribute the Settlement Net Proceeds to Investors as a return of capital, subject to approval of this Court. On April 25, 2024, this Court entered the FCR. The Receiver awaits a Court order on the FCR.

36. The Receiver seeks to distribute approximately \$9,375,000.00 in Net Settlement Proceeds to Claimants in Class 4a. The recovery will be approximately 9 % of the Class 4a Claims.

E. A \$650,000 Distribution to Class 5 Claimants is Appropriate.

37. The Receiver's advisors have calculated that approximately \$650,000.00 is attributable as net proceeds from the operation of oil and gas properties, sale of equipment and other assets, and/or royalty payments (the "Oil and Gas Net Proceeds"). The Oil and Gas Net Proceeds amount was calculated after payment of all post-Receivership direct expenses arising from oil and gas operations, allocation of indirect expenses, payment of royalty claims,¹⁹ and payment of related taxes.

38. The Receiver proposes a one-time *pro rata* distribution to holders of claims against any Operator. The claims against Operators (including disputed amounts) total approximately

¹⁹ Including amounts which have been escheated to a state.

\$8,820,840.38, not including the two Unliquidated Claims. If the Unliquidated Claims are not allowed, the distribution will be approximately 7.36 % of the allowed claims (the “Operator Distribution”).

39. Further, to the extent that the Receiver is able to obtain value attributable to the ORRI, the Class 5 Claimants will receive 51% of any direct and allocated net proceeds received by the Receiver and which remain after payment in full of all related costs and expenses, including the costs of distribution.

F. Proposed Distributions.

40. After distribution of the Net Settlement Proceeds, the Operator Distribution, reserves for payment of taxes and future Court-approved expenses, including preparation of various tax filings, the Receiver will have available cash of approximately \$6,500,000. Specifically, the Receiver requests authority to pay or reserve funds as follows:

- a. Class 4 Claimants: The Receiver requests authority to make an interim distribution of \$5,000,000 to allowed Class 4a and 4b Claimants at this time. The Receiver believes an interim distribution of \$5,000,000 to allowed Class 4 Claimants in accordance with the plan set forth above is fair and reasonable and appropriate at this time.
- b. Distribution payments to Claimants whose Class 4 Claim remains in dispute will be escrowed pending Court resolution, and then paid to the disputing Claimant or included in subsequent distributions, as appropriate. *See generally* Receiver’s Objection.

41. If and when the Receiver collects additional funds and/or the Receivership closes, the Receiver will propose to the Court another interim, or a final, distribution.

G. The Court should Adopt the Net Investment or Net Loss Distribution Method for Class 4 Claimants.

i. Distribution Methods.

42. There are three distribution methods that are often considered in equitable receiverships. These are: (i) Rising Tide; (ii) Net Investment or Net Loss; and (iii) Last Statement Method. The Court must determine which method is equitable given the facts and circumstances of the Case. The Receiver has concluded, as more fully detailed below, that the Net Loss or Net Investment method is the most equitable and efficient method in this Case, as it provides the greatest recoveries for the largest number of Claimants. The Receiver therefore requests the Court approve its use here.

ii. Net Investment or Net Loss Method.

43. Under the Net Loss or Net Investment method, recoveries are considered as an offset to the claim amount, and Claimants receive a *pro rata* distribution based on their allowed claim amount compared to the total amount of all allowed claims in the Case. In other words, a pre-receivership withdrawal would only reduce an investor's claim amount, not their eligibility to receive a distribution as is the case under the Rising Tide method. This methodology would pay all Class 4 Claimants on a *pro rata* basis based on the dollar amount of their allowed claim compared to the total dollar amount of all Claimants. The Net Investment method was considered superior in *Amerifirst Funding*. 2008 U.S. Dist. LEXIS 20044, at *18.

44. In *United States CFTC v. Barki, LLC*, the U.S. District Court of the Western District of North Carolina ultimately rejected the receiver's request to use the Rising Tide approach and instead directed the receiver to distribute the funds using the Net Investment method. *See United States CFTC v. Barki, LLC*, No. 3:09CV106-MU, 2009 U.S. Dist. LEXIS 112998, *6 (W.D.N.C. Nov. 12, 2009). Siding with the Net Investment method, the court found that it was "more

equitable to compensate all the Investors rather than a fraction of them,” as only 55% would receive a distribution under Rising Tide. *Id.* at *5. In *Byers*, the court rejected the Rising Tide method since 45% of the investors would receive no additional compensation. *Byers*, 637F. Supp. 2d at 182.

iii. Rising Tide Method.

45. Under the Rising Tide method, an investor’s pre-receivership withdrawals are considered a part of the overall distributions received by an investor. As such, the investor’s pre-receivership withdrawals are credited dollar-for-dollar from the principal amount they invested with the Receivership Parties. *SEC v. Huber*, 702 F.3d 903, 906–09 (7th Cir. 2012). For non-investor claims (*i.e.*, Class 4b general unsecured claims), and assuming there has been no payment on such claim prior to the appointment of the Receiver, the claim is treated as a 100% loss so that general unsecured claims are paid *pro rata* with investor Claimants who lost 100% of their principal investment. The Rising Tide method was approved in *Huber*. 702 F.3d at 909.

iv. Last Statement Method.

46. Under the Last Statement method, an investor’s claim amount is determined by taking the value of their investment as of the last investor statement. *Diana Melton Tr. v. Picard (In re Bernard L. Madoff Invs. Secs., LLC)*, No. 15-CV-01151, 2016 U.S. Dist. LEXIS 4655, *63 (S.D.N.Y. Jan. 14, 2016). In this Case, Investor statements do not reflect any actual gains or losses but allegedly accrued interest.

v. *Rising Tide versus Net Loss.*

47. The Receiver has identified 650 Investor claimants with amounts still owed as of the appointment of the Receiver. Total investments among those claimants comprise \$119,189,106²⁰ with a net loss amount of \$98,796,170.

48. Given that the distribution amount has not been finalized, the following example sets forth a hypothetical planned distribution of \$12,000,000 to compare the outcomes of each approach's calculation.

Based on Hypothetical Planned Distribution of \$12,000,000 (12.1% of Total Net Loss)

	Net Investment Method	Rising Tide Method
Average Distribution Amount:	\$16,348.77	\$22,263.45
Median Distribution Amount:	\$8,968.16	\$11,917.78
# of Investor Claimants Receiving Payout:	650	539
# Investor Claimants Receiving Payout / Total # Investor Claimants:	100%	83%
Average Receivership Recovery % (excludes claimants with 100% recovery prior to distribution):	22.9%	23.9%
Range of Final Recovery	12.1% - 88.3%	20.1% - 86.6%

49. As illustrated above, 17% more Investor claimants would be entitled to a distribution payment under the Net Investment method as opposed to the Rising Tide method. Furthermore, 111 Investor claimants would receive no distribution payment under the Rising Tide method due to previously received withdrawals exceeding their *pro rata* amount of the total distribution (this figure excludes the 84 Investors who have already recovered 100%).²¹

50. In the case of this Receivership, the majority of Investors (600) lost 50% or more of the principal investment with 158 Investors losing 100%. Under the Rising Tide method,

²⁰ Eighty-four investors received a full return of their investment prior to the appointment of the Receiver.

²¹ Approximately \$126.4 million was received from Investors and only \$27.6 million was returned to Investors prior to the appointment of the Receiver.

539 Investor claimants would receive a distribution increasing the lowest recovery from 12.1% to 20.1%. Under the Rising Tide method, 111 Investor claimants (27%) would not receive a distribution as they already recovered at least 20.1% of their principal investment.

51. If the Court were to adopt the Net Investment or Net Loss method, all Investors who suffered a net loss in any capacity (650) would receive a distribution. In other words, distribution under the Net Investment method is more equitable to a larger number of interests.

vi. The Receiver believes the Net Investment method is the most equitable distribution method for the Class 4 Claimants in this Case.

52. The Investor claimants are not corporate entities. Many are elderly individuals who are desperately hoping for some payment to help with basic bills. Telling 111 of them that years ago they received a payment for reasons beyond their control means that they may never receive any payment will not deliver equity today. Accordingly, the Receiver recommends the Court adopt the Net Investment or Net Loss method because it equalizes the lowest percentage return to victims to recover on their investment and allows more Claimants to receive a distribution than using Rising Tide method.

H. Other Requested Relief.

53. To be eligible for a distribution payment, the Receiver requests the Court enter an order that the allowed Claimant be required to provide the Receiver with a completed and signed W-9 on the most recent form, which will be mailed and/or emailed to each allowed Claimant and is also available online. The Receiver will cause a check²² to be issued to the allowed Claimant by the 15th day of the month following sixty (60)²³ days after the Receiver's receipt of the properly

²² As detailed in the Settlement Motion, distribution checks "sent to Claimants pursuant to the distribution of Net Settlement Proceeds, above where the endorser will sign" shall contain specific release language.

²³ The Net Settlement Proceeds won't be received until 20 days after an order approving the Settlement becomes final—or 50 days after entry of such order.

completed W-9 and the Court's entry of an order authorizing the distribution. **To be clear, the Receiver will not issue any Investor distribution check to a feeder fund, financial advisor, custodian, or other such entity or individual; rather, it will be issued directly to the allowed Claimant.**

54. The Receiver further proposes that the allowed Claimant have ninety (90) days from the date the check is issued to negotiate the payment. To the extent the distribution is not negotiated within ninety (90) days from the date of the check, then such check and distribution shall be canceled, and the underlying funds will remain in the Receivership Estates for distribution to other allowed Claimants in this Case pursuant to the priority established by the Plan or as otherwise ordered by this Court. No further payments will be issued for the benefit of such Claimant.

IV. TAX CONSIDERATIONS

55. Certain of the Receivership Parties are classified as partnerships for federal income tax purposes.²⁴ With respect to those Receivership Parties classified as partnerships (each, a "Receivership Partnership"), the Receiver is responsible for preparing IRS Form 1065, U.S. Return of Partnership Income (a "Partnership Return") and delivering Schedule K-1s to the partners. Any net gain or loss for such Receivership Partnership, along with other items of income, gain, loss, and credits, is passed through to the partners. However, under the centralized partnership audit regime enacted by the Bipartisan Budget Act of 2015, if a Partnership Return is audited by the IRS, any adjustments to partnership-related items for such tax year (the "Reviewed Year") resulting in an imputed underpayment of tax, along with applicable penalties and interest (collectively, an "Imputed Underpayment"), becomes a liability of the partnership under

²⁴ Currently including Receivership Parties Carson Oil Field Development Fund II, LP, Heartland Drilling Fund I, LP, The Heartland Group Fund III, LLC, The Heartland Group Ventures, LLC, and Sahota Capital LLC.

Section 6225 of the Internal Revenue Code of 1986, as amended (the “Code”). Under Code Section 6226(a)(1), the person designated as the “Partnership Representative” (as defined in Code Section 6223) has the authority to make a push-out election with respect to the Imputed Underpayment (a “Push Out Election”), in which case, the liability for the applicable Imputed Underpayment will be transferred to the partners who owned an interest in the partnership during the Reviewed Year. Given that the IRS has the ability to audit a Partnership Return for three years following the filing of the Partnership Return, it is uncertain whether the Receiver will have the authority or otherwise be able to make the Push Out Election for Partnership Returns filed, or caused to be filed, by the Receiver (each, a “Receiver Partnership Return”). As a result, if an Imputed Underpayment is assessed to a Receivership Partnership with respect to a Receiver Partnership Return, the Receiver requests that Court order that at such time the Partnership Representative shall make on a timely basis, a Push Out Election, and any corresponding elections applicable for state and local tax purposes, to treat a “partnership adjustment” as an adjustment to be taken into account by each partner of each Receivership Partnership in accordance with Section 6226(b) of the Code and that each respective Receivership Partnership be required to pay no amount pursuant to Section 6225 of the Code.

V. CONCLUSION

The Receiver, Deborah D. Williamson, respectfully requests that the Court grant this Motion and enter the Proposed Order, approving the distribution plan as outlined above, authorizing the distributions outlined above to allowed Class 4 and 5 Claimants, granting the additional relief requested in this Motion, and for any other further relief which the Court deems proper and just.

Dated: May 9, 2024

Respectfully submitted,

By: /s/ Danielle Rushing Behrends

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COUNSEL TO RECEIVER

CERTIFICATE OF CONFERENCE

The Receiver, through the undersigned counsel, conferred with counsel for Plaintiff, Securities and Exchange Commission (the "Commission") on May 7, 2024, regarding the relief requested in the Objection. The Commission consents to the relief requested in the Motion.

/s/ Danielle Rushing Behrends
Danielle Rushing Behrends

CERTIFICATE OF SERVICE

I hereby certify that on May 9, 2024, the foregoing document was served via CM/ECF on all parties appearing in this case, including Plaintiff, Securities and Exchange Commission, and via email on the following unrepresented parties on this Court's docket:

James Ikey
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bridydikey@gmail.com

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Manjit Singh (aka Roger) Sahota
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rogersahota207@gmail.com

Sunny Sahota
sunnysanangelo@gmail.com

I further certify that the foregoing Motion will be served via first-class U.S. mail and/or email, as applicable, by Stretto, on behalf of the Receiver. I will file a supplemental certificate of service upon completion of service by Stretto.

/s/ Danielle Rushing Behrends
Danielle Rushing Behrends

EXHIBIT A

**ORDER GRANTING RECEIVER, DEBORAH D. WILLIAMSON'S
MOTION FOR ORDER APPROVING DISTRIBUTION PLAN
AND INTERIM AND/OR FINAL DISTRIBUTION**

This matter is before the Court on the *Receiver's Motion for Order Approving Distribution Plan and Interim and/or Final Distribution* (the "Motion"). The Court, having considered the Motion and the information submitted in support, responses or objections, if any, the arguments of counsel, and the pleadings on file find that the Motion should be, and hereby is, **GRANTED**.

IT IS THEREFORE ORDERED that:

1. The Motion is **GRANTED** in its entirety.
2. The Court finds the distribution plan (the "Plan") set forth in the Motion is fair and reasonable and is approved, including, without limitation:
 - a. The division of those who submitted claims to the Receiver ("Claimants") into nine classes based on their relationship to the Receivership Estates;
 - b. The pooling of Receivership Estates assets for distribution;
 - c. The subordination of Class 9 Claimants such that allowed Class 9 Claimants shall not receive any distribution until allowed Class 1, 2, 3, 4, 5, 6 and 7 Claimants are paid in full;
 - d. The netting of Claimant investments and Claimant recoveries based on their losses; and
 - e. The use of the Net Investment or Net Loss methodology to calculate distributions to allowed Class 4 Claimants.
3. The Receiver shall reserve sufficient assets to ensure the payment of allowed Class 1, 2, and 3 Claimants and protection of assets in dispute.
4. Subject to paragraph 6 below, the Receiver is authorized to make an interim distribution of \$5,000,000.00 to allowed Class 4 Claimants in accordance with the Plan, withholding and reserving from the distribution the amount sought on disputed claims.

5. Subject to paragraph 6 below, the Receiver is authorized to make a final distribution of \$650,000.00 to allowed Class 5 Claimants in accordance with the Plan, withholding and reserving from the distribution the amount sought on disputed claims.

6. To be eligible for the distribution payment, each allowed Class 4 and 5 Claimant must provide the Receiver with a completed and signed W-9 on the most recent form W-9, found online through the Internal Revenue Service website. The Receiver shall only issue distribution checks directly to the allowed Claimant. The allowed Claimant shall have ninety (90) days from the date the distribution check is issued to negotiate the payment. To the extent the distribution payment is not negotiated within ninety (90) days from the date of the check, such check shall be canceled, and the underlying funds will remain to the Receivership Estates for distribution to other allowed Claimants in this Case pursuant to the priority established by the Plan or as otherwise ordered by this Court. No other distribution will be made to or for the benefit of such Claimant.

7. Certain of the Receivership Parties are classified as partnerships for federal income tax purposes.²⁵ With respect to those Receivership Parties classified as partnerships (each, a “Receivership Partnership”), the Receiver is responsible for preparing IRS Form 1065, U.S. Return of Partnership Income (a “Partnership Return”) and delivering Schedule K-1s to the partners. Any net gain or loss for such Receivership Partnership, along with other items of income, gain, loss, and credits, is passed through to the partners. However, under the centralized partnership audit regime enacted by the Bipartisan Budget Act of 2015, if a Partnership Return is audited by the IRS, any adjustments to partnership-related items for such tax year (the “Reviewed Year”) resulting in an imputed underpayment of tax, along with applicable penalties and interest

²⁵ Currently including Receivership Parties Carson Oil Field Development Fund II, LP, Heartland Drilling Fund I, LP, The Heartland Group Fund III, LLC, The Heartland Group Ventures, LLC, and Sahota Capital LLC.

(collectively, an “Imputed Underpayment”), becomes a liability of the partnership under Section 6225 of the Internal Revenue Code of 1986, as amended (the “Code”). Under Code Section 6226(a)(1), the person designated as the “Partnership Representative” (as defined in Code Section 6223) has the authority to make a push-out election with respect to the Imputed Underpayment (a “Push Out Election”), in which case, the liability for the applicable Imputed Underpayment will be transferred to the partners who owned an interest in the partnership during the Reviewed Year. Given that the IRS has the ability to audit a Partnership Return for three years following the filing of the Partnership Return, the Receiver shall have the authority or otherwise be able to make the Push Out Election for any Receiver Partnership Return. As a result, if an Imputed Underpayment is assessed to a Receivership Partnership with respect to a Receiver Partnership Return, this Court orders that at such time the Partnership Representative shall make on a timely basis, a Push Out Election, and any corresponding elections applicable for state and local tax purposes, to treat a “partnership adjustment” as an adjustment to be taken into account by each partner of each Receivership Partnership in accordance with Section 6226(b) of the Code and that each respective Receivership Partnership be required to pay no amount pursuant to Section 6225 of the Code.

SO ORDERED.

[_____], 2024.

HAL R. RAY, JR.
UNITED STATES MAGISTRATE JUDGE

Prepared and submitted by:

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