IN THE CIRCUIT COURT OF THE 17th JUDICIAL CIRCUIT, IN AND FOR BROWARD COUNTY, FLORIDA

P & S ASSOCIATES, GENERAL PARTNERSHIP and S & P ASSOCIATES, GENERAL PARTNERSHIP,

Plaintiff,

v.

ROBERTA P. ALVES, ET AL.,

Defendants.
_____/

CASE NO. 12-028324 (07)
Complex Litigation Unit

NOTICE OF FILING EXHIBIT TO AFFIDAVIT OF CONSERVATOR PHILIP VON KAHLE IN SUPPORT OF THE DISTRIBUTION MOTION

Philip J. Von Kahle, as Conservator for P&S, General Partnership and S&P, General Partnership, by and through counsel, hereby gives notice of filing the attached Exhibit to Affidavit of Conservator Philip Von Kahle in Support of the Distribution Motion.

Respectfully submitted this 3rd day of October, 2013.

MESSANA, P.A.
Attorneys for Conservator
Post Office Drawer 2485
Fort Lauderdale, FL 33303
Telephone: 954-712-7400
Facsimile: 954-712-7401
e-mail: tmessana@messana-law.com

By: /s/ Thomas M. Messana_____
Thomas M. Messana
Florida Bar No. 991422
Brett D. Lieberman
Florida Bar No. 69583

Exhibit "A"
To Conservator's Affidavit in Support of the Distribution Motion

IN THE CIRCUIT COURT OF THE 17th JUDICIAL CIRCUIT, IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO. 12-028324 (07)
COMPLEX LITIGATION UNIT

P & S ASSOCIATES, GENERAL PARTNERSHIP and S & P ASSOCIATES, GENERAL PARTNERSHIP,

Plaintiff,

v.

ROBERTA P. ALVES, ET AL.,

Defendants.
_____/

NOTICE OF DEADLINE TO RESPOND (IN SUPPORT OR OPPOSITION) TO THIS MOTION

This Court's *Second Order Resetting Deadlines and Case Management Conference* provides that interested parties shall have until **June 30, 2013** to file any responses and/or objections to this Motion. It is anticipated that the Court will rule on how the funds the Conservator is holding should be distributed. Failure to respond and/or object may result in a waiver of certain rights.

CONSERVATOR'S MOTION FOR SUMMARY JUDGMENT TO: (i) APPROVE DETERMINATION OF CLAIMS, (ii) APPROVE PLAN OF DISTRIBUTION, AND (iii) ESTABLISH OBJECTION PROCEDURE

Philip J. von Kahle (the "Conservator"), as Conservator for P&S Associates, General Partnership ("P&S") and S&P Associates, General Partnership ("S&P) (together, the "Partnerships"), by and through undersigned counsel, pursuant to the Conservator Order (as defined below) hereby files the Conservator's Motion for Summary Judgment to: (i) Approve Determination Claims; (ii) Approve Plan of Distribution, and (iii) Establish Objection Procedure (the "Distribution Motion"), and in support thereof states as follows:

I. BRIEF STATEMENT OF UNDISPUTED FACTS

The Partnerships were each victims in what has become known as the largest fraud in human history, the Bernard L. Madoff Investment Securities LLC ("BLMIS") ponzi scheme (the "Ponzi Scheme"). Most of the Partnerships' many general partners (the "Partners") were, in turn, victims of the Ponzi Scheme.

However, as some Partners received cash distributions and others rolled their paper "profits" back into their investment, the Partners have not borne the Partnerships' losses equally.

Some of the Partners lost their entire investments; others received millions of dollars more than their investments. For this reason and others, the Partners may have different views on how to distribute the Partnerships' remaining assets.[1]

In July of 2012, the Partnerships commenced the instant interpleader action principally seeking judicial oversight and direction as to the appropriate method of distributing the Partnerships' remaining assets (the "Interpleader Action").

In August of 2012, certain Partners filed a lawsuit against the Partnerships' Managing General Partner, Michael Sullivan.[2] This lawsuit alleges, among other things, that Mr. Sullivan diverted millions of Partnership dollars to himself and other insiders.

In the Conservator Suit, the plaintiffs requested, *inter alia*, the appointment of a neutral professional to take over the Partnerships, to pursue the Partnerships' best interests, and to report to this Court and the Partners.

---

[1] Likewise, the Partners may have different views on whether Partners are entitled to keep distributions received in excess of their investments.

[2] *Matthew Carone, et. al. v. Michael D. Sullivan*, Case No. 12-24051 (07) (the "Conservator Suit").

On January 17, 2013, this Court granted the plaintiffs' request and appointed Philip Von Kahle as Conservator of the Partnerships by entering the *Order Appointing Conservator* (the "Conservator Order"). The Conservator Order provides, among other things, that the Conservator's duties include:

> Winding down of the affairs of the Partnerships and distribution of assets of the Partnerships, **including following up on the Interpleader Action filed with the Court in determining how the partnership funds are to be distributed, making all necessary and appropriate applications to the Court in order to effect such wind-down and distributions.**

Conservator Order at 5.(a) (emphasis added).

On May 6, 2013, this Court entered its *Second Order Resetting Deadlines and Case Management Conference* in the Interpleader Action (the "Management Order"). The Management Order requires the Conservator to submit his recommendations with respect to distribution by May 31, 2013. The Management Order allows interested parties to file responses (in support or objection) to the Distribution Report through and until June 30, 2013.

The purpose of this Distribution Motion is to explain the Trustee's proposed method of distribution and the basis for the same, and to describe the objection procedure for parties-in-interest to respond to the proposed distribution plan. To that end, this Distribution Motion: (i) provides the relevant background and the Partnerships' relationship to the Madoff Ponzi; (ii) identifies the Partnership Property; (iii) explains the method of determining whether a Partner is eligible to receive a distribution; (iv) describes distribution methods available to the Conservator; (v) explains why the particular distribution method was selected by the Conservator; and (vi) proposes an equitable and efficient objection procedure.

II. RELEVANT BACKGROUND

Partnerships Invest in the BLMIS Ponzi Scheme

The Partnerships were formed pursuant to written partnership agreements dated December 11, 1992. In 1994 the partnership agreements were amended (the "Partnerships Agreements).[3] The Partnerships' stated purpose was to invest in securities. In practice, the Partnerships invested exclusively in BLMIS.

In late 2008 it was discovered that BLMIS was a ponzi scheme orchestrated by, among others, Bernard Madoff. Thereafter, a liquidation proceeding was commenced in the Southern District of New York to liquidate BLMIS pursuant to the Securities Investment Act ("SIPA") (the "BLMIS Liquidation").

Conservator is Appointed Over the Partnerships

On August 24, 2012, certain of the partners of the Partnerships instituted the Conservator Suit. The Conservator Suit sought, among other things, to enjoin the Managing General Partner of the Partnerships, Michael D. Sullivan ("Sullivan"), from exercising control over the Partnerships, their books and records, and their assets. The plaintiff's in the Conservator Suit also sought the appointment of a receiver over the Partnerships.

As previously discussed, this Court appointed the Conservator over the Partnerships in the Conservator Suit. As part of his duties, this Court tasked the Conservator with advancing the Interpleader Action and with making recommendations with regard to the method of distribution of assets to Partners.

---

[3] Copies of the Restated Partnership Agreement of S&P ("S&P Partnership Agreement") and Restated Partnership Agreement of P&S ("P&S Partnership Agreement", collectively the "Partnerships Agreements") were attached as exhibits to the Amended Complaint in this Interpleader Action.

Consistent with the Conservator Order, this Distribution Motion advances the objective of distributing Partnership Property in a structured and judicious manner.

III. Partnership Property

The principal sources of Partnerships' Property are: (i) the claims asserted by the Partnerships in the BLMIS Liquidation; (ii) funds the Partnerships held in certain bank accounts prior to the discovery of the Ponzi Scheme; and (iii) claims and causes of action the Partnerships have against certain individuals, professionals, and entities.[4]

With respect to the Partnership claims in the BLMIS Liquidation, the Partnerships filed separate claims for the losses they incurred.

S&P filed a claim in the amount of $44,768,253.86 (the "S&P Claim") and P&S filed a claim in the amount of $18,180,533.93 (the "P&S Claim") (together, the "Partnerships' Initial Claims"). Upon information and belief, the figures used in compiling the Partnerships' Initial Claims were based on the (now admittedly false) account statements reflecting both the cash investments and "paper profits".

Initially, the Madoff Trustee denied the Partnerships' Initial Claims outright. In fact, the Madoff Trustee asserted claims against the Partnerships to avoid certain transfers and to recover monies from the Partnerships (the "Partnerships Transfer Suits").

[4] At present, the Partnerships have filed two lawsuits seeking recovery for the Partnerships. The first is against certain insiders and affiliates of insiders of the Partnerships. The second is against certain Partners who received greater distributions from the Partnerships than the contributions they made to the Partnerships (Net Winners).

Ultimately, the Madoff Trustee entered into settlement agreements with each of the Partnerships which resolved, among other things, the Partnerships' Initial Claims and the Partnerships Transfer Suits (the "Settlement Agreements").[5]

Pursuant to the Settlement Agreements, the Madoff Trustee agreed to allow the Partnerships' Initial Claims in amounts which reflected an analysis of the Partners' net investment (total contributions less total distributions) in BLMIS. Upon information and belief, the Madoff Trustee based his analysis on all of the books and records available to him.

The S&P Claim was allowed in the gross amount of $10,131,036.00. The P&S Claim was allowed in the gross amount of $2,406,624.65 (together, the "Partnerships' Allowed Claims").

As of the date of this Distribution Motion, the Conservator has received approximately $4,519,086.93[6] on account of the S&P Allowed Claim (including $175,000.00 as part of the SIPC claim). The Conservator has received approximately $921,183.72[7] on account of the P&S Allowed Claim. Prior to the appointment of the Conservator certain of these funds were held by the law firm Becker & Poliakoff LLP.

Additionally, the Conservator is in possession of certain funds that were held in BB&T bank accounts of the Partnerships. For S&P, such funds were in the amount of

---

[5] Copies of the Settlement Agreements were attached as Exhibit "C" to the Second Amended Complaint in the Interpleader Action.

[6] First Interim Distribution of $466,230.28 plus Second Interim Distribution of $3,399,570.44 plus Third Interim Distribution of $478,286.21 plus $175,000.00.

[7] Comprised of funds from the Second Interim Distribution of $807,566.97 plus Third Interim Distribution of $113,616.75.

$20,602.37. For P&S, such funds were in the amount of $610,750.87 plus $50,606.21 for a total recovery of $661,357.08.

Finally, the Partnerships assert claims or may assert claims against, among others, certain individuals who were insiders or related to insiders of the Partnerships, certain Partners who received greater distributions than they were entitled, and others.

The relevant information is summarized as follows:

	S&P Partnership	P&S Partnership
Partnerships' Initial Claims	$44,768,253.86	$18,180,533.93
Partnerships' Allowed Claims	$10,131,036.00	$2,406,624.65
Total Received on Account of Partnerships' Allowed Claims	$4,344,086.93	$921,183.72
SIPC Claim	$175,000.00	N/A
Monies Received From BB&T	$20,602.37	$661,357.08
Claims and Causes of Action held by the Partnerships	Value To Be Determined	Value to Be Determined
Interest on Funds	$4,235.00	$1,658.20

The Partnership Property may increase in the event the Madoff Trustee authorizes additional distributions on account of the Partnerships' Allowed Claims. While it is as yet uncertain, it is reasonably anticipated that the Partnerships will receive future additional distributions from the Madoff Trustee on account of their Allowed Claims. As such, the Conservator recommends consistent application of the distribution method recommended herein to all further and future distributions.

With respect to the Partnerships' claims and causes of action, the Partnerships commenced certain lawsuits which, if successful, may provide substantial additional recoveries for the Partnerships. The lawsuits are styled: *Margaret Smith as General Partner of P&S Associates, General Partnership and S&P Associates, General Partnership, Plaintiffs v. Janet A. Hooker Charitable Trust, et. al.*, Case No. 12-034121 (07) (the "Net Winner Lawsuit") and *Margaret Smith as General Partner of P&S Associates, General Partnership and S&P Associates, General Partnership, Plaintiffs v. Michael D. Sullivan, et. al.*, Case No. 12-034123 (07) (the "Insider Lawsuit") (together, the "Lawsuits"). The Lawsuits are currently pending in the Complex Litigation Division in the Circuit Court of the Seventeenth Judicial Circuit, in and for Broward County, Florida.

At this time, the funds available for the initial interim distribution, net of holdbacks for administrative costs and other claims, for S&P Partners is approximately $3,900,000.00.

At this time, the funds available for the initial interim distribution, net of holdbacks for administrative costs and other claims, for P&S Partners is approximately $1,000,000.00.

The Conservator's proposed interim distribution is of approximate 69.57% of all funds for P&S and 87.85% for S&P. In the BLMIS Liquidation, the Madoff Trustee has distributed only 53% percent of monies available for distribution and has reserved the remaining funds.[8]

Notwithstanding the standard set by the Madoff Trustee, the Conservator believes that the interim distribution percentages recommended here are appropriate and provide the Partnerships sufficient reserves to fund the costs associated with the administration of the Conservatorship including reserves for contingencies.

---

[8] http://www.madofftrustee.com/recoveries-25.html

IV. PARTNER CLAIMS ANALYSIS/CAPITAL ACCOUNT

A. Overview of the Conservator's Claims Analysis

Shortly after his appointment, the Conservator received certain documents, including the available Partnerships' accounting records from GlassRatner.[9] The Conservator and his professional staff at Michael Moecker and Associates, Inc. have reviewed and analyzed the Partners' interests in the Partnerships and their relative rights in the current assets of the Partnerships' Property.

To accurately determine each individual Partner's capital account, the Conservator and his team was required to recreate each account based on the total cash contributions made by the Partner and total cash distributions received by the Partner from the beginning of the Partnerships. Moreover, as the original Partnership records reflected hundreds and hundreds of transactions accounting for reductions of each Partner's capital account for fees and other costs, adjustments were required to determine each Partner's true 'net' position.

Additionally, during his investigation the Conservator discovered, among other things, (i) that certain Partners received impermissible commissions or referral fees from the Partnerships;[10] and (ii) that certain Partners' accounts were moved from the Partnerships to other entities without permission.

---

[9] Substantially all of the documents received from GlassRatner were in hardcopy form. The Conservator undertook significant efforts to input the relevant information into electronically analyzable format.

[10] The Conservator's analysis and recommendations contemplate withholding distributions from Partners who received commissions and referral fees until a resolution of the Partnerships claims against such Partners is reached.

In connection with such discoveries, the Conservator has issued several requests for additional information from the Partnerships' principals and related entities.

In connection with such requests, the Conservator filed, among other things, motions for contempt against Michael Sullivan and Steve Jacob for failing to comply with the Conservator's demands and Court Orders.

To date, Mr. Jacob has failed and refused to turnover all of the requested materials and has objected to the Conservator's requests for information. Mr. Jacob has also opposed substantially every effort of the Conservator, including by purporting to be Managing General Partner of S&P and sending a 'Call to Action' letter with misleading information to the Partners. Mr. Jacob's actions have had a detrimental effect upon the administration of the Conservatorship and have led to increased costs and expenses for the Partnerships.

Upon information and belief, after entry of Stipulated Protective Order, Mr. Sullivan has made a good faith effort to respond to the Conservator's requests. However, it is unknown whether additional relevant information has been withheld from the Conservator. The Conservator is still in the process of reviewing the tremendous amount of information only recently turned over.[11]

---

[11] The Conservator has also discovered that principals of the Partnerships were associated with and paid commissions and/or referral fees to Frank Avellino and Michael Bienes ("A&B"), defendants in the Insider Lawsuit. In 1992, A&B were investigated by the SEC. "According to the SEC complaint, Avellino & Bienes had apparently been feeding funds to Madoff for years, possibly as long as thirty years, back to 1962. By the late 1980's, A&B actually had its own feeder funds, at least two smaller firms, funneling funds into it … The SEC's primary issue with A&B was the lack of proper securities registration per the 1933 Securities Act … The firm was shut down in 1993, an $875,000 fine was paid, and A&B and the other two feeder funs were required to return the funds to investors." Peter Sander, Madoff – Corruption, Deceit, and the Making of the World's Most Notorious Ponzi Scheme 93 (The Lyons Press 2009). The Conservator has discovered evidence that A&B were business associates with principals of the Partnerships and that certain investors in A&B's 'shut down' Madoff feeder fund were transferred to the Partnerships.

Attached hereto and incorporated by reference herein as **Exhibit "A" (P&S)** and **Exhibit "B" (S&P)** are spreadsheets reflecting the results of the Conservator's analysis (the "Spreadsheets").

Based on the review of the available documents, the Conservator has determined that the Partners generally fall within one of two classes:

1. The first class of Partners is comprised of Partners who contributed more cash to the Partnerships than they received distributions from the Partnerships. On a 'net' basis, these Partners – Net Losers – lost at least some investment dollars that originated outside of the Ponzi Scheme ("Net Loss").
2. The second class of Partners is comprised of Partners who received more distributions from the Partnerships than they made contributions to the Partnerships. On a 'net' basis, these Partners – Net Winners – received 100% of their investment dollars plus at least some amount of money ('fictitious profits') which originated from the Ponzi Scheme ("Net Winnings").

As discussed above, within each class, documents discovered by the Conservator reflect that certain Partners received impermissible commissions and/or referral fees. The Conservator recommends withholding distributions from such Partners until all such issues are fully resolved.

To protect the identities of all of the Partners, the Spreadsheets identify Partners by Investor Account Number.[12]

Each of the Spreadsheets contain: 1) the Partners' Investor Account Number; 2) the amount of Net Loss or Net Winnings; 3) a proposed interim distribution amount; and 4) remarks or footnotes with specific information for certain Partners. Please note, in certain circumstances accounts held by the same investor were combined (consolidated) to reach a total 'net' figure for the particular Partner.[13] For example, if John Doe is a Partner with two accounts: Account #1 which is a Net Winner of $10,000; and Account #2 which is a Net Loser of $15,000, Account #1 and Account #2 were consolidated resulting in John Doe being treated as a Net Loser in the consolidated amount of $5,000.[14]

As is more fully discussed below, the Conservator recommends that the Net Losers be entitled to a claim in the amount of their Net Loss (an "Allowed Claim").

As recommended, each Net Loser shall have a claim against the particular Partnership in which they were a Partner. For clarity, S&P Net Losers will have an

---

[12] If you are a Partner and you do not know your Investor Account Number, please contact the attorneys for the Conservator at the undersigned law firm by calling 954-712-7400. Please have available information to help confirm your identity.

[13] Corporate formalities have been respected such that accounts were not consolidated where an individual Partner is also the owner of an entity Partner. For Example, John Doe is a Partner with Account #1. John Doe is also the owner of Company ABC. Company ABC is a Partner with Account #2. Account #1 and Account #2 were not consolidated.

[14] The right of setoff (also called "offset") allows entities that owe each other money to apply their mutual debts against each other, thereby avoiding "the absurdity of making A pay B when B owes A." *Studley* v. *Boylston Nat. Bank*, 229 U. S. 523, 528 (1913); s*ee also Wiand v. Meeker*, 8:10-CV-166-T-EAK, 2013 WL 298335 at *4 (M.D. Fla. Jan. 25, 2013) (noting that set-off is appropriate in certain instances where investors have multiple accounts).

Allowed Claim equal to their Net Loss against S&P. Likewise, P&S Net Losers will have an Allowed Claim equal to their Net Loss against P&S.

The Conservator proposes to distribute Partnership Property on a *pro rata* basis, to the Net Losers based on their Allowed Claims.

Until the Net Losers are made whole, the Conservator objects to all claims of Net Winners. Furthermore, pursuant to the Net Winner Lawsuit, the Partnerships have asserted claims to recover the Net Winnings paid to the Net Winners.

B. The Partners' Allowed Claims

P&S Net Losers

Based on the Conservator's analysis, there are forty-seven (47) P&S Net Losers. The Conservator recommends allowing the P&S Net Loser's Allowed Claims against P&S in the total amount of approximately $9,742,612.61. *See* Exhibit "A".

The Conservator respectfully requests that this Court permit distributions to the P&S Net Losers on a pro-rata basis, i.e., the P&S Net Losers will share in the distribution based on their relative net losses.

S&P Net Losers

Based on the Conservator's analysis, there are approximately fifty-seven (57) S&P Net Losers. The Conservator recommends allowing the S&P Net Loser's Allowed Claims against S&P in the total amount of approximately $20,791,854.30. *See* Exhibit "B".

The Conservator respectfully requests that this Court permit distributions to the S&P Net Losers on a pro-rata basis, i.e., the S&P Net Losers will share in the distribution based on their relative Net Losses.

Net Winners

At this stage, and absent distributions that would make the Net Losers whole, the Conservator respectfully recommends that this Court disallow all claims of Net Winners. Based upon the review of the Partnerships books and records, the Conservator has identified approximately ninety-seven (97) S&P Net Winners and thirty-one (31) P&S Net Winners that are not entitled to a distributive share of the Partnerships' Property. *See* Exhibits "A" and "B".

C. Partners Requiring Additional Disclosure

Guardian Angel Trust, LLC.

Guardian Angel appears on the books and records of S&P as a Partner.

Based upon, among other things, the Conservator's review of the available books and records of the Partnerships, it appears that certain Partners were unknowingly transferred from being partners in one of the Partnerships to being partners of Guardian Angel Trust, LLC ("Guardian Angel"). Guardian Angel appears to be an entity formed by the insiders of the Partnerships and still appears to be controlled by insiders of the Partnerships.

In fact, certain partners of Guardian Angel have contacted the Conservator in writing and have requested that he oversee the distribution to the partners of Guardian Angel.

Upon information and belief, certain individuals hold accounts in both the S&P or P&S and Guardian Angel. Consistent with the Conservator's methodology of consolidating accounts held by the same individual, the Conservator has requested that

Steve Jacob ("Jacob"), the purported managing member of Guardian Angel, identify the partners of Guardian Angel and their relative interest in Guardian Angel.

To date, Jacob has failed and refused to turn over information relative to Guardian Angel. According to Jacob's May 10, 2013, *Objection Response to Notice of Intent to Issuance of Subpoena Upon Guardian Angel Trust and Incorporated Memorandum of Law and Intent to File for Protective Order*, Guardian Angel ceased operations on December 11, 2008.

Jacob is also a defendant in the Insider Lawsuit which alleges, among other things, that certain insiders of the Partnerships diverted millions of dollars of Partnership funds to themselves and others.

The Conservator recommends that the distribution methodology applied to the Partners of the Partnerships also be applied to the partners of Guardian Angel.

However, absent complete and full disclosure, the Conservator cannot determine the particular partners of Guardian Angel's respective Allowed Claims. Therefore, at this juncture, the Conservator respectfully recommends reserving but withholding all proposed distributions to Guardian Angel.

SPJ Limited Investments, Ltd.

SPJ Limited Investments, Ltd. ("SPJ") appears on the books and records of S&P as a Partner. It appears that SPJ was formed by insiders of the Partnerships to create a conduit for self-directed IRA monies ("IRA Investors") to be invested in the Partnerships.

Like Guardian Angel, SPJ still appears to be controlled by insiders of the Partnerships and Jacob purports to be one of its managing general partners.

Like Guardian Angel, certain partners of SPJ have contacted the Conservator in writing and have requested that he oversee the distribution to the partners of SPJ.

According to Jacob, such IRA Investors were required to go through a qualified custodian to invest in SPJ (a "Custodian"). Notwithstanding the diligent search of the Conservator and requests of Jacob to provide relevant information, the IRA Investors' Custodian(s) have not been identified. To date, Jacob has failed and refused to cooperate with the Conservator. In fact, on May 10, 2013, Jacob filed his *Objection to [the Conservator's] Notice of Intent to Issuance of Subpoena upon SPJ Limited Investments and Incorporated Memorandum of Law* (the "Objection"). Notwithstanding that certain of the investors of SPJ appear to be Net Losers and may be entitled to a distribution, according to Jacob "SPJ ceased operations on December 11, 2008, and is winding down is operations." Objection at 1.

Absent identification of the appropriate Custodian and confirmation that a distribution to such custodian comports with all applicable law, the Conservator recommends reserving but withholding all proposed distributions to SPJ.

V. THE CONSERVATOR'S PROPOSED PLAN OF DISTRIBUTION

A. Distribution Methods Available to the Conservator

The Conservator, with the aid of counsel, has become knowledgeable of the relevant statutory and case law regarding the various methodologies applied in distributing assets to good faith investors in connection with fraudulent schemes such as the Ponzi Scheme. Certain of the methods rely on principles of equity and fairness; while other methods apply concepts of partnership law. Based upon the Conservator's review he has identified the following methods as possible distribution methodologies:

Equitable Methodologies:

1. Net Investment or Cash-In-Cash-Out-Method
2. Rising Tide Method

Partnership Law Methodologies:

1. Partnership Agreement Method
2. Statutory General Partnership Law Method

Based on his analysis of these distribution methodologies, consistent with the methodology employed by the Madoff Trustee, the Conservator respectfully recommends application of the Net Investment Method in this case. Other methodologies are described herein in order to more fully advise the Court and all the Partners of the issues the Conservator considered in reaching his recommendation.

B. Equitable Methods

In any analysis of a partners' interests in a partnership whose only source of profits was from a known ponzi-scheme, it must be admitted that the statement balances are inaccurate and any reference to 'profit' or 'interest' in such statements are falsehoods. *See Focht v. Athens (In re Old Naples Sec., Inc.)*, 311 B.R. 607, 616-617 (M.D. Fla. 2002).

Based on a review of all available records of the Partnerships, the only source of the Partnerships' purported profits was derived from the Ponzi Scheme. Thus, any statement reflecting 'profits' or 'interest' is false.

Any equitable method of distribution therefore must accept the premise that no profits or interest was ever earned by the Partnerships, or their respective Partners.

As such, equitable methods of distribution reject account balances based on statements which include false profits.

Equitable methods seek to allow a professional fiduciary to "unwind, rather than legitimize" a ponzi scheme. *In re Pearlman*, 484 B.R. 241, 243 (Bankr. M.D. Fla. 2012). Additionally, "recognizing returns from an illegal financial scheme is contrary to public policy inasmuch as it legitimizes the proscribed investment scheme." *In re Pearlman*, 484 B.R. 241, 244 (Bankr. M.D. Fla. 2012); *SEC v. Credit Bancroft, Ltd.*, No. 99 Civ. 11395, 2000 WL 1752979, at *40 (S.D. N.Y. Nov. 29, 2000), aff'd 290 F.3d 80 (2d Cir. 2002) ("Since all the funds were obtained by fraud, to allow some investor to stand behind the fiction that [the] the Ponzi scheme had legitimately withdrawn money to pay them 'would be carrying the fiction to a fantastic conclusion."); *Focht v. Athens (In re Old Naples Sec., Inc.)*, 311 B.R. 607, 616-617 (M.D. Fla. 2002) ("permitting claimants to recover not only their initial capital investment but also the phony 'interest' payments they received and rolled in another transaction is illogical. No one disputes that the interest payments were not in fact interest at all, but were merely portions of other victims' capital investments").

Accordingly, the equitable methods do not credit a partner's account for the fictitious profits or interests associated with it. This approach furthers the goal of restoring a defrauded investor's principal before others receive profits and interest. *In re Pearlman*, 484 B.R. 241, 244 (Bankr. M.D. Fla. 2012) ("Where individuals have been similarly defrauded, all should recover their principal before any one of them recovers profits or interest.")

Under the equitable methods approach partners are only credited for dollars actually invested and any withdrawals are treated as a return of capital which reduces the partner's interest for purposes of determining distribution. When determining a

distribution method equity and fairness are the overarching goals and "it is important to remember that each investor's recovery comes at the expense of the others." *S.E.C. v. Byers*, 637 F. Supp. 2d 16, 176 (S.D.N.Y. 2009). Ultimately, even when seeking to provide the fairest result certain partners will be disappointed and the Conservator recognizes that "when funds are limited, hard choices must be made." *Official Comm. of Unsecured Creditors of Worldcom, Inc. v. S.E.C.*, 467 F.3d 73, 84 (2d Cir. 2006).

1. Net Investment Method

Because such statements reflect false profits and interest, certain courts have rejected methodologies based on account statements in ponzi schemes. Instead, they have applied the Net Investment Method. Under the Net Investment Method investor's, "net equity" is calculated by subtracting the amount of cash withdrawn from the amount of cash invested. Once the "net equity" is established for each particular Partner, the Conservator will determine the "total net equity".

Distributions will be based on the proportion of each Partner's "net equity" to the "total net equity", their "loss percentage". The Conservator will then apply each Partner's "loss percentage" to the total distribution to determine each individual Partners distribution.

This method has been applied with Court approval by the Madoff Trustee. *In re Bernard L. Madoff Inv. Sec. LLC*, 654 F.3d 229, 238 (2d Cir. 2011) ("Here, the profits recorded over time on the customer statements were after-the-fact constructs that were based on stock movements that had already taken place, were rigged to reflect a steady and upward trajectory in good times and bad, and were arbitrarily and unequally distributed among customers. These facts provide powerful reasons for the Trustee's rejection of the Last Statement Method for calculating 'net equity'").

The BLMIS court found that the Net Investment Method (or sometimes referred to as the cash-in-cash-out method) raises the "greatest number of investors closest to their positions prior to Madoff's scheme in an effort to make them whole." *In re Bernard L. Madoff Inv. Sec. LLC*, 424 B.R. 122, 142 (Bankr. S.D.N.Y.2010).

The 7th Circuit provides a helpful example of the Net Investment Method:

> 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 . . .

S.E.C. v. Huber, 702 F.3d 903, 904 (7th Cir. 2012)

It appears that the Net Investment Method has become the preferred method for distribution of Ponzi assets. It has been applied by several United States Circuit Courts as well as Florida Federal Courts. *See, e.g., CFTC v. Topworth Int'l, Ltd.*, 205 F.3d 1107, 1115-16 (9th Cir. 2000) (upholding net investment method); *Official Cattle Contract Holders Comm. v. Commons (In re Tedlock Cattle Co.)*, 552 F.2d 1351 (9th Cir. 1977) (per curium) (investors in Ponzi scheme treated *pro rata* on "cash-in-cash-out" basis, following *Abrams v. Eby (In re Young*), 294 F. 1 (4th Cir. 1923) (claimant who received back amount of his initial investment could not share in remaining funds until he had accounted for false profits, which had been paid at expense of other equally innocent investors)); *Focht v. Athens (In re Old Naples Sec., Inc.)*, 311 B.R. 607, 616-17 (M.D. Fla. 2002) (*citing SIPC v. C.J. Wright & Co. (In re C.J. Wright & Co.)*, 162 B.R. 597,

609-10 (Bankr. M.D. Fla. 1993)) (Ponzi scheme participants in SIPA case are entitled to receive amount invested less any payments received, not fictitious profits); *Anderson v. Stephens,* 875 F.2d 76 (4th Cir. 1989) (pro rata distribution based on initial investment); *In re Pearlman*, 484 B.R. 241, 245 (Bankr. M.D. Fla. 2012) (Granting the Trustee's Motion Establishing the Net Investment Method).

Further, the Net Investment Method which does not provide recovery to Net Winners is consistent with the principal that transfers in excess of the actual investment in the ponzi scheme are recoverable. *In re Dreier LLP*, 452 B.R. 391, 440 n. 44 (Bankr. S.D.N.Y. 2011) ("[V]irtually every court to address the question has held unflinchingly that to the extent that investors have received payments in excess of the amounts they have invested, those payments are voidable as fraudulent transfers.") (citation omitted).

For the same "powerful reasons" as applied in the BLMIS case, the Conservator recommends that this Court approve the Net Investment Method for distributions to Partners.

2. Rising Tide Method

Certain courts have adopted an equitable method know as the Rising Tide Method. *S.E.C. v. Huber*, 702 F.3d 903, 904 (7th Cir. 2012). These courts describe the Rising Tide Method as follows:

> [D]istributions under the Rising Tide Method are "calculated according to the following formula: (actual dollars invested x pro rata multiplier) - withdrawals previously received = distribution amount." *Commodities Futures Trading Comm'n v. Equity Fin. Grp., LLC*, No. Civ.04-1512 RBK AMD, 2005 WL 2143975, at *24 (D.N.J. Sept. 2, 2005).

Like the Net Investment Method, the Rising Tide Method disregards the fictitious profits inherent in ponzi schemes, only recognizes the actual capital contributions, and

treats all withdrawals as return of capital. Under both equitable methods, Net Winners do not receive any distributions until all other investors have recouped their principal. *S.E.C. v. Parish*, 2:07-CV-00919-DCN, 2010 WL 5394736 at *3 (Dist. S.C. Feb. 10, 2010) ("Moreover, investors who previously received payments exceeding their pro rata amount of the total distribution will receive no distribution from the receivership estate").

A key distinction in the Rising Tide Method is that not all Net Losers receive a distribution. In fact, Net Losers only receive a distribution to the extent required to make all of the Net Loser's loss percentage the same. This is because the interim distributions the partners received are treated differently.

Unlike the Net Investment Method, prior distributions from the ponzi scheme are viewed the same as distributions planned to be made after discovery of the ponzi scheme. *Parish*, 2010 WL 5394736 at*3. ("Payments received by the investor prior to the scheme's collapse are treated as "distributions" on par with the distributions to be made by the Receiver, so that prior amounts paid by Parish are credited against (i.e., subtracted from) the amount that would otherwise be paid from the receivership estate.")

Accordingly, the Rising Tide Method attempts to equalize the losses for each investor such that their percentage of the losses is the same. The *Parish* Court provided an example which highlights the differences between the Net Investment Method and the

Rising Tide Method:

> The court essentially considered two investors who both invested $100,000 in a case in which the interim distribution would be approximately 30%. One of the investors received payments during the scheme of $50,000, or 50% of his investment, while the other received no payments during the scheme. If Net [Investment] were applied in such a situation, the investor who had already received 50% of his investment would nevertheless receive an additional $15,000 in a distribution from the estate ($50,000 x .30), for total returns of 65% of his investment. The investor who had not received any payments during the course of the scheme, however, would receive a distribution from the estate of $30,000, thereby only recouping 30% of his investment after the estate had been distributed.

Parish, 2010 WL 5394736 at *6. (D.S.C. Feb. 10, 2010).

Ultimately, the Conservator's analysis favors the Net Investment Method over the Rising Tide Method because the greater weight of authority opposes penalizing good faith investors who did not know of the fraudulent scheme for taking interim distributions. *Compare* cases cited infra at p. 19-20 (Net Investment Method, with cases cited infra at p. 21 (Rising Tide Method).

C. Partnership Law Methods

1. The Partnership Agreement Method

Florida has adopted the Revised Uniform Partnership Act in chapter 620 of the Florida statutes ("Florida RUPA"). Florida RUPA applies retroactively to general partnership formed before its adoption. *Horizon/CMS Healthcare Corp. v. S. Oaks Health Care, Inc.*, 732 So. 2d 1156, 1159 n.4 (Fla. 5th Dist. Ct. App. 1999) ("In 1995, Florida enacted the Revised Uniform Partnership Act (RUPA), effective January 1, 1996 for general partnerships formed on or after that date. However, RUPA applies retroactively to all general partnerships, whenever they were initially formed, beginning January 1, 1998. Fla. Stat. § 620.90 (1997)").

Under Florida RUPA, partners are able to create a partnership agreement to govern the partnership rather than following the statutes. Fla. Stat. § 620.8103. However, Florida RUPA provides that certain statutory provisions may not be altered in the partnership agreements. Fla. Stat. §620.8103(1) ("Except as otherwise provided in subsection (2), relations among partners and between partners and a partnership are governed by the partnership agreement. To the extent the partnership agreement does not otherwise provide, this act governs relations among partners and between partners and a partnership.") Settlement of accounts is an area in which the partners may alter the Florida RUPA provisions.

As discussed above, P&S and S&P adopted the Partnerships Agreements. The provisions of the Partnerships Agreements are identical in all material respects. The relevant sections, for the purposes of the distribution analysis, are Article Four ("Capital Contributions"), Article Eleven ("Valuation of Partnership Interests"), Article Five ("Allocations and Distributions"), and Article Twelve ("Termination of The Partnership" and "Distribution of Assets").

Distribution according to the Partnerships Agreements would flow as follows. First, the Partnerships' liabilities must be paid first. (S&P Partnership Agreement Article 12.02); (P&S Partnership Agreement Article 12.02) ("On termination, the Partnership' business shall be wound up as timely as in [sic] practical under the circumstances; the Partnerships assets shall be applied as follows: (i) first to payment of the outstanding Partnership liabilities…").

Second, after payment of the Partnerships' liabilities then Partner's capital shall be returned in accordance with their partnership interests. (S&P Partnership Agreement

Article 12.02 (ii)); (P&S Partnership Agreement Article 12.02 (ii)) ("a return of the Partner's capital in accordance with the Partnership interest").

Accordingly, based on the Partnerships Agreements the Partners would recover a *pro-rata* share in relation to their partnership interest, when funds are inadequate to provide 100% return of capital, because none of the Partners are entitled to priority. (S&P Partnership Agreement Article 4.04); (P&S Partnership Agreement Article 4.04) ("No partner shall have any priority over any other Partner as to allocations of profits, losses, dividends, distributions or returns of capital contributions").

Third, a Partner's partnership interest must be determined so they may receive their *pro rata* share. Valuation of a Partners' partnership interest is addressed in the Partnerships Agreements as:

> The full purchase price of the Partnership interest of a deceased, incompetent, withdrawn or terminated Partner shall be an amount equal to the Partner's capital and income accounts as the [sic] appear on the Partnership books on the date of death, incompetence, withdrawal or termination and adjusted to include the Partner's distribute share of any partnership net profits or losses not previously credited to or charged against the income and capital accounts.

(S&P Partnership Agreement Article 11.01); (P&S Partnership Agreement Article 11.01).

The determination of a Partner's partnership interest requires calculation of a partner's capital account. A capital account is described in the Partnerships Agreements as follows:

> An individual capital account shall be maintained for each Partner. The capital account shall consist of that Partner's initial capital contribution:
>
> a. increased by his or her additional contributions to capital and by his or her share of Partnership profits transferred to capital; and
> b. decreased by his or her share of partnership losses and by distributions to him or her in reduction of his or her capital.

(S&P Partnership Agreement Article 4.05); (P&S Partnership Agreement Article 4.05).

The Partnerships Agreement reference to the amount of the Partner's capital and income accounts as it "appear[s] on the Partnership books" suggests that the last statement received by the partners from the Partnership reflects a partner's partnership interest (the "Last Statement"). Using the last statement from a ponzi entity as the basis for determining a partner's *pro rata* share of a distribution is know as the Last Statement Method. Proponents of the Last Statement Method argue that the use of this method protects the ponzi investor's reasonable reliance on the statements produced by the company (however fraudulent) and accounts for the time value of money lost as a result of the investment. However, as discussed below in the "Equitable Methods" section, the Conservator finds the Last Statement Method inappropriate here because it would essentially treat the ponzi schemes fictitious profits as legitimate and allow certain Partners to recover "paper profit" before other Partners recover their principal contributions. Such a result is contrary to public policy and the Conservator's equitable position and the Partnerships' Agreements themselves.

The Partnerships' Agreements provide that the partnership interest should be "adjusted" to include "net profits or losses not previously credited or charged against the income or capital accounts." (S&P Partnership Agreement Article 11.01); (P&S Partnership Agreement Article 11.01). However, here, the Last Statement provided to the Partners is silent about net losses not previously charged against the income or capital accounts.

Accordingly, the Partner's partnership interests must be reduced to reflect the losses suffered by the Partnerships as a result of their investments in the Ponzi Scheme.

The Internal Revenue Service ("IRS") has indicated that partners of a general partnership that directly invested in a ponzi scheme, such as the Partnerships, should treat these losses as "theft losses". Revenue Ruling 2009-9. The Partnerships' Agreement approach to losses is consistent with the IRS position that theft losses should be passed through to the partners and reflected on the partner's individual returns. IRS PLR 2009-0154 ("Partnerships (or entities that may elect to be taxed as partnerships, such as limited liability companies) that qualify as direct investors may use the safe harbor treatment and pass the loss through to the indirect investor (partner)").

Additionally, the partners' capital accounts should be adjusted to reflect prior distributions as returns of capital. *Perkins v. Haines*, 661 F.3d 623, 627 (11th Cir. 2011) (in ponzi schemes, the general rule is that defrauded investors may receive returns of their principle investment as being for 'value'). To the extent a partner received more in distributions than actual contributions of capital, i.e. Net Winners, these partners will have negative capital accounts. Partners with negative capital accounts are not entitled to any distribution under the Partnerships Agreements until all other partners have received 100% of their capital contributions.

As a final concern with the Partnership Agreement Method here, the Partnerships' Agreements do not explicitly contemplate the present situation, i.e., negative capital accounts at the time of liquidation. Instead, one must look to the Florida RUPA default rules. Fla. Stat. §620.8103(1).

When a partner has a negative capital account at the time for liquidation, FL RUPA provides that, "**a partner shall contribute to the partnership an amount equal**

to any excess of the charges over the credits in the partner's account." Fla. Stat. § 620.8807(2).

Accordingly, a partner with a negative capital account, a Net Winner, owes a debt to the respective partnership and is required to return their capital account to zero upon liquidation by contributing the Partnerships. This result is reflected in Uniform Comment 3 of RUPA § 807 which provides:

> Any partner with a negative account balance must contribute to the partnership an amount equal to the excess of charges over the credits in the account provided the excess relates to an obligation for which the partner is personally liable under Section 306. The partners may, however, agree that a negative account does not reflect a debt to the partnership and need not be repaid in settling the partners' accounts.

RUPA § 807 Cmt. 3.

Other jurisdictions applying RUPA have reached the same conclusion. *Farnsworth v. Deaver*, 147 S.W.3d 662, 664-65 (Tex. App. 2004)(affirming trial court order which entered a judgment against partner with "a negative balance" based on the debt owed to the partnership "to satisfy that negative balance.")[15]

In this case, because certain of the Partners (the Net Winners), received more from the Partnerships than they contributed, they have negative capital accounts.[16]

---

[15] By applying Florida RUPA and interpreting the Partnerships' Agreements, the Partnership Agreement Method may result in substantially similar results as the Net Investment Method. However, while application of the Net Investment method is an entirely objective process, application of Florida RUPA and interpretation of the Partnerships' Agreements requires legal application of contractual terms and may be subject to dispute. Moreover, under the Partnership Agreement Method, each Partner's capital account must be brought into equilibrium prior to making any distribution, i.e., Net Winners would have to give back their Net Winnings. To best serve the Partners and effectuate a timely distribution of the Partnerships Property, the Conservator recommends application of the Net Investment Method.

[16] Recovery of transfers to the Net Winners is the subject of a related case styled: *Margaret Smith as General Partner of P&S Associates, General Partnership and S&P Associates, General Partnership, Plaintiffs v. Janet A. Hooker Charitable Trust, et. al.*, Case No. 12-034121 (21) (the "Net Winners Suit")

Accordingly, the Net Winners are not entitled to distributions of Partnership Property and are required to contribute the amount necessary to bring their capital accounts to zero.

2. General Partnership Law under Florida RUPA

Application of Florida RUPA provides for a similar outcome as the Partnerships Agreement Method.

First, like the Partnerships' Agreements, Florida RUPA requires that the Partnerships' liabilities be paid before distributing to the partners. Fla. Stat. § 620.8807 ("In winding up a partnership's business, the assets of the partnership, including the contributions of the partners required by this section, must be applied to discharge the partnership's obligations to creditors").

Second, like the Partnerships' Agreements, after creditors are paid the remainder of the partnership property is liquidated and partners receive cash payments. Fla. Stat. § 620.8807(1) ("Any surplus must be applied to pay in cash the net amount distributable to partners in accordance with their right to distributions under subsection (2)").

Florida RUPA provides, "in settling accounts among the partners, profits and losses that result from the liquidation of the partnership assets must be credited and charged to the partners' accounts. The partnership shall make a distribution to a partner in an amount equal to any excess of the credits over the charges in the partner's account but excluding from the calculation charges attributable to an obligation for which the partner is not personally liable under s. 620.8306." Fla. Stat. §620.8807(2).

---

presently pending in the Complex Litigation Division in the Circuit Court of the Seventeenth Judicial Circuit, in and for Broward County, Florida.

Accordingly, where there are insufficient funds partners to return 100% of a partner's capital, partners are entitled to a *pro rata* share of the distribution based upon their capital accounts. Further, as addressed by the IRS, the fictitious profits should be excluded from the capital account total and prior distributions should be treated as returns of capital which reduce the balance. These losses should be passed through to the individual partners.

As addressed above, because certain of the Partners (the Net Winners), received more from the Partnerships than they contributed, they have negative capital accounts. Accordingly, the Net Winners are not entitled to distributions of Partnerships Property until all other parties have received 100% of their actual contribution. Further, pursuant to Florida RUPA Net Winners are required to contribute the amount necessary to bring their capital accounts to zero. Fla. Stat. §620.8807(2) ("A partner shall contribute to the partnership an amount equal to any excess of the charges over the credits in the partner's account.")

After review of the Partnership Agreements, Florida RUPA, and the Equitable Distribution Methodologies, the Conservator has determined that the Net Investment Method most completely accounts for the losses suffered by the Partners, its application is objective in nature and is not influenced by subjective considerations, and it can be applied quickly and efficiently. For these reasons and others, the Net Investment Method ought to be applied in this matter.

VI. OBJECTION PROCEDURE

To fairly and efficiently administer the Partnership Property, this Court established a procedure for Partners to respond to the recommendations contained herein.

The Management Order provides any interested party must file a response and/or objection to this Distribution Motion no later than June 30, 2013.

To provide interested parties with notice, within three (3) business days of the date of this Distribution Motion, the Conservator will post this Distribution Motion on his website, www.FloridaConservator.com (the "Conservator Website").[17]

Failure to properly and timely serve a response and/or objection to this Motion should be deemed acceptance of the Conservator's recommendations and determination of any particular Partner's Allowed Claim.

Further, by filing and serving an objection, any objecting partner shall be deemed to have submitted to the jurisdiction of this Court irrespective of whether such Partner was served with a copy of the Summons or Complaint in the Interpleader Action. A person filing and serving an objection to the Conservator's Claim Determination or plan of distribution, shall be entitled to notice, but only as it relates to adjudication of the particular objection and the claim to which the objection is directed.

The Conservator may attempt to settle and compromise any claim or objection subject to the Court's final approval.

WHEREFORE, the Conservator respectfully requests that this Court enter an Order: (i) Approving the Conservator's determination of Allowed Claims as set forth in herein and in attached **Exhibits "A" and "B"**; (ii) Approving the Net Investment Method as set forth herein and in the attached **Exhibits "A" and "B"** as the proper method for determining the Partners'

[17] Previously, this Court authorized the Conservator to provide partners with notice by posting on the Conservator Website in the Conservator Case. Specifically, the Conservator Order provided that "any posting on the website will be deemed adequate notice to all Partners unless a Partner specifically request information to be mailed to him/her." Conservator Order at ¶13.

Allowed Claims; (iii) Approving the amount of initial distributions to Net Losers as proposed herein and pursuant to **Exhibits "A" and "B"**; (iv) Approving withholding distributions to certain Partners as proposed herein and identified on **Exhibits "A" and "B"**; (v) Authorizing the Conservator to make the interim distributions to the Partners as proposed herein pursuant to **Exhibits "A" and "B"** within a reasonable time of the entry of an Final Non-Appealable Order granting this Distribution Motion; (vi) Approving the Objection Procedure proposed herein; and (vii) for any further relief that this Court deems necessary and appropriate.

Dated: May 31, 2013

MESSANA, P.A.
Attorneys for Conservator
401 East Las Olas Boulevard, Suite 1400
Ft. Lauderdale, FL 33301
Telephone: (954) 712-7400
Facsimile: (954) 712-7401
By: /s/ Thomas M. Messana
Thomas M. Messana, Esq.
Florida Bar No. 991422
Brett D. Lieberman, Esq.
Florida Bar No. 69583
Thomas Zeichman
Florida Bar No. 99239

Exhibit “A”

P&S Spreadsheet

P&S Investors with Account Number - Net Winners and Net Losers

Investor Account Number			Net Loser
PS A071-AB			$ 100,000.00
PS A071			$ 100,000.00
PS B21-1	$	53,423.39	
PS B21-2	$	(68,000.00)	
PS B021-3	$	1,133.51	
combined total for PS B21-1, PS B21-2, & PS B021-3	$	(13,443.10)	
PS B01			
PS C058-AB			$ 245,000.00
PS C28-AB			$ 294,986.00
PS C054-AB			$ 388,000.00
PS C055-AB			$ 440,000.00
PS C41-AB			$ 75,486.00
PS C30	$	1,629.23	
PS H63	$	(3,467.98)	
combined total for PS C30 & PS H63	$	(1,838.75)	
PS C002-1	$	(130,085.95)	
PS C28-2	$	176,463.64	
combined total for PS C002-1 & PS C28-2	$	46,377.69	$ 46,377.69
PS C29			
PS C033			
PS C03			
PS D-064			
PS D040			$ 4,827.36
PS D067			$ 200,000.00
PS F062			$ 216,000.00
PS F04			$ 78,785.70
PS F031			$ 500,000.00
PS G039			$ 285,018.00
PS G073			$ 200,000.00
PS H05			
PS H030			$ -
PS H030			
PS H036			
PS-060			$ 325,000.00
PS-H070			$ 50,000.00
PS H06			$ 115,510.17
PS H07			
PS H08			
PS H29			
PS H25			$ 106,000.00
PS H062			$ 105,167.12
PS J0707			$ 50,000.00
PS J042			$ 400,000.00
PS K26			
PS K10			$ 10,079.45
PS K11			$ 30,236.75
PS k029-K-1			$ -

PS K034-K-2		
PS K035		$ 270,000.00
PS K09		
PS L24		
PS L037		$ 41,127.45
PS L-49-R		$ 574,697.83
PS W059		
PS M12		
PS M13		
PS M14		
PS M16		
PS M15		$ 125,435.78
PS M67		$ 483,101.28
PS M52		$ 1,183,000.00
PS N30		$ 76,224.09
PS N17-N		
PS O18		
PS K033		
PS P038		$ 459,517.09
PS 053		$ 132,000.00
PS 066		$ 446,000.00
PS P27		$ 210,000.00
PS P26		
PS R19-R		$ 182,078.57
PS S028		$ 65,993.00
PS S27		$ 31,560.97
PS 068		$ 30,000.00
PS S22		
PS U50		
PS W032-B		$ 397,151.00
PS W43		
PS W060		$ 32,500.00
PS W44		$ 5,000.00
PS W45		$ 21,000.00
PS W48		$ 3,951.31
PS W23		
PS W056		$ 5,000.00
PS S065		$ 22,800.00
PS W067		
PS Z058-AB		$ 578,000.00
	Total	$ 9,742,612.61

Net Winner	Proposed Interim Distribution (10.264%)
	$ 10,264.00
	$ 10,264.00
	$ -
	$ -
	$ -
$ (13,443.10)	$ -
$ (10,414.31)	$ -
	$ 25,146.80
	$ 30,277.36
	$ 39,824.32
	$ 45,161.60
	$ 7,747.88
	$ -
	$ -
$ (1,838.75)	$ -
	$ -
	$ -
	$ 4,760.21
$ (182,532.35)	$ -
$ (33,490.39)	$ -
$ (61,065.80)	$ -
$ (10,320.00)	$ -
	$ 495.48
	$ 20,528.00
	$ 22,170.24
	$ 8,086.56
	$ 51,320.00
	$ 29,254.25
	$ 20,528.00
$ (262,843.58)	$ -
$ -	$ -
$ (127,286.32)	$ -
$ (472,624.27)	$ -
	$ 33,358.00
	$ 5,132.00
	$ 11,855.96
$ (157,550.48)	$ -
$ (116,455.13)	$ -
$ (28,045.98)	$ -
	$ 10,879.84
	$ 10,794.35
	$ 5,132.00
	$ 41,056.00
$ (742.32)	$ -
	see footnote 1.
	see footnote 1.
$ -	$ -

$ (40,463.20)	$ -
	$ 27,712.80
$ (6,130.19)	$ -
$ (6,681.64)	$ -
	$ 4,221.32
	$ 58,986.99
$ (2,058.41)	$ -
$ (5,948.83)	$ -
$ (51,828.46)	$ -
$ (116,343.91)	$ -
$ (68,077.39)	$ -
	$ 12,874.73
	see footnote 2.
	see footnote 2.
	$ 7,823.64
$ (79,647.61)	$ -
$ (15,858.42)	$ -
$ (1,948,756.02)	$ -
	$ 47,164.83
	$ 13,548.48
	$ 45,777.44
	$ 21,554.40
$ (20,629.68)	$ -
	see footnote 3.
	$ 6,773.52
	$ 3,239.42
	$ 3,079.20
$ (2,600.18)	$ -
$ (92,946.21)	$ -
	$ 40,763.58
$ (4,000.00)	$ -
	$ 3,335.80
	$ 513.20
	$ 2,155.44
	$ 405.56
$ (12,736.39)	$ -
	$ 513.20
	see footnote 4.
$ (13,700.00)	$ -
	$ 59,325.92

$ (3,967,059.32)

P & S FOOTNOTES
Proposed Interim Distribution

1. The Partnerships have asserted or may assert claims against the holder(S) of account number PS K10 and PS K11 for, among other things, receiving commissions and/or referral fees from the Partnerships. Therefore, the Conservator recommends reserving and withholding all interim distributions to the holder(s) of account PS K10 and PS K11 until all claims are resolved or until further order of the Court.
2. The Partnerships have asserted or may assert claims against the holder(s) of account number PS M67 and PS M52 for, among other things, receiving commissions and/or referral fees from the Partnerships. Therefore, the Conservator recommends reserving and withholding all interim distributions to the holder(s) of account PS M67 and PS M52 for until all claims are resolved or until further order of the Court.
3. The Partnerships have asserted or may assert claims against the holder of account number PS R19-R for, among other things, receiving commissions and/or referral fees from the Partnerships. Therefore, the Conservator recommends reserving and withholding all interim distributions to the holder(s) of account PS R19-R until all claims are resolved or until further order of the Court.
4. The Partnerships have asserted or may assert claims against the holder of account number PS S065 for, among other things, receiving commissions and/or referral fees from the Partnerships. Therefore, the Conservator recommends reserving and withholding all interim distributions to the holder(s) of account PS S065 until all claims are resolved or until further order of the Court.

Exhibit “B”

S&P Spreadsheet

S&P Investors with Account Number - Net Winners and Net Losers

Investor Account Number		Net Loser	Net Winner
SP A143			$ (1,838.93)
SP A01-AB			$ (15,000.00)
SP A124			$ (9,000.00)
SP A41		$ 78,466.12	
SP B139		$ 10,000.00	
SP B137		$ 1,696,000.00	
SP B143			$ (86,195.71)
SP B67-B			$ (25,499.61)
SP B53-N		$ 3,567.49	
SP B142	$ (38,407.94)		
SP B155	$ 49,249.13		
combined accounts SP B142 & SP B155	$ 10,841.19	$ 10,841.19	
SP B113-IRA			$ (23,593.47)
SP B119-J		$ -	$ -
SP B37-H			$ (58,612.99)
SP B74			$ (40,458.71)
SP B98		$ -	$ -
SP-B131-H			$ (15,720.18)
SP B38-H			$ (27,269.78)
SP B125-J		$ -	$ -
SP C31			$ (26,870.16)
SP C115-C	$ (18,131.23)		
SP C15 (IRA) -C	$ 1,915.00		
combined accounts SP C115-C & SP C15(IRA)-C	$ (16,216.23)		$ (16,216.23)
SP C29N			$ (25,977.53)
SP C02			$ (2,715.97)
SP C132			$ (382.99)
SP C25			$ (12,323.78)
SP C105			$ (5,257.47)
SP C103-IRA		$ -	$ -
SP W82-W		$ 15,100.00	
SP C03			$ (176,761.03)
SP C136			$ (1,705.08)
SP C-69-B		$ 10,000.00	
SP C146			$ (29,761.70)
SP D70-N			$ (44,375.61)
SP D145-1	$ (14,736.38)		
SP D145-2	$ (279,121.29)		
combined accounts SP D145-1 & SP D145-2	$ (293,857.67)		$ (293,857.67)
SP D68-B			$ (4,210.00)
SP D04			$ (18,119.29)
SP D71-DRG			$ (31,322.30)
SP E155	$ (31,228.24)		
SP E154	$ 593,368.00		
combined accounts SP E155 & SP E154	$ 562,139.76	$ 562,139.76	
SP E111-H			$ (287,454.40)
SP F140		$ 22,742.30	

SP F57		$ -	$ -
SP F58			$ (48,786.66)
SP F147		$ 5,343,298.44	
SP F60-F		$ -	$ -
SP F61-F		$ -	$ -
SP F65-F		$ -	$ -
SP 130-F		$ 47,053.57	
SP F146-F		$ 160,522.43	
SP F05		$ 58,127.47	
SP G91-H		$ 129,137.86	
SP G06			$ (159,349.71)
SP G45			$ (768.48)
SP G44			$ (768.48)
SP G86-H-IRA		$ -	$ -
SP G85-H-IRA		$ -	$ -
SP G81-B			$ (71,294.81)
SP G133N			$ (62,180.21)
SP G145-J		$ 3,897,207.97	
SP G148		$ 33,352.30	
SP H50			$ (15,569.04)
SP H126		$ 25,000.00	
SP H144		$ 6,000.00	
SP H08	$ (2,447.89)		
SP H09	$ 11,834.82		
combined accounts SP H08 & SP H09	$ 9,386.93	$ 9,386.93	
SP H108		$ 9,600.00	
SP H52			$ (29,345.16)
SP H101-H		$ 148,418.06	
SP H117-H		$ 10,128.07	
SP H97-H			$ (17,736.95)
SP H34H			$ (45,405.47)
SP H153		$ 90,000.00	
SP H66-WH		$ 45,100.00	
SP H110-IRA		$ -	$ -
SP H109-IRA		$ -	$ -
SP H144-AB			$ (859,880.41)
SP H127(IRA)B		$ -	$ -
SP H129(IRA)		$ -	$ -
SP H07H		$ -	$ -
SP H35H		$ -	$ -
SP H36H		$ -	$ -
SP I43			$ (132,428.58)
SP I42-1		$ -	$ -
SP I42-2		$ -	$ -
AP I118			$ (12,864.83)
SP 131		$ 100,000.00	
SP I148		$ 95,000.00	
SP J30N			$ (18,115.47)
SP J142-N		$ 6,774.95	
SP J147-A&B			$ (80,000.00)
SP J129-J			$ (26,508.25)
SP J86-H			$ (20,569.28)

SP J75-1			$ (5,215.08)
SP J90-2			$ (7,644.13)
SP K89			$ (5,959.17)
SP K107-IRA		$ -	$ -
SP L141-B			$ (26,152.98)
SP L104			$ (7,240.80)
SP L150			$ (87,788.57)
SP L18			$ (13,500.00)
SP L10			$ (45,213.83)
SP L11		$ 12,070.73	
SP W39		$ 1,237.79	
SP L151		$ 102,250.00	
SP M134	$ (16,223.36)		
SP M123	$ 50,000.00		
combined accounts SP M134 & SP M123	$ 33,776.64	$ 33,776.64	
SP O128-B		$ 125,000.00	
SP M12			$ (72,144.10)
SP M138			$ (9,545.90)
SP M73			$ (487.18)
SP M78-F			$ (2,673.99)
SP M87-F			$ (16,362.72)
SP M83-M			$ (6,188.33)
SP M130-J		$ -	$ -
SP Mc093-F		$ 4,968.35	
SP Mc123-F			$ (13,137.87)
SP Mc092-F			$ (7,991.44)
SP Mc013-1			$ (55,193.70)
SP M64-2		$ -	$ -
SP M96-M		$ 25,000.00	
SP M22		$ 155,687.63	
SP N99-N		$ 10,000.00	
SP O88			$ (14,659.63)
SP O90		$ 45,000.00	
SP P129-B		$ 50,000.00	
SP P88			$ (5,500.00)
SP P131A		$ 114,000.00	
SP P131		$ 78,807.98	
SP P14			$ (17,094.66)
SP P16		$ 70,221.61	
SP P133		$ 10,000.00	
SP P77			$ (36,292.40)
SP P94(IRA)		$ -	$ -
SP P76			$ (7,151.94)
SP P15			$ (9,944.84)
SP P116-J			$ (112,538.76)
SP P112-J		$ -	$ -
SP R141			$ (9,015.93)
SP R23R			$ (114,956.18)
SP R128R			$ (51,142.13)
SP R27N			$ (12,418.09)
SP R48H			$ (5,628.73)
SP R40		$ 47,946.36	

SP R149-R	$	54,000.00	
SP R59-W			$ (2,000.00)
SP R72-B			$ (37,678.82)
SP R100-R			$ (48,500.00)
SP S46			$ (13,054.14)
SP S56			$ (3,500.00)
SP S47	$	553.66	
SP S122			$ (3,916.69)
SP S85	$	130,000.00	
SP S139	$	5,397,729.32	
SP S033	$	33,729.66	
SP S20	$	76,874.24	
SP S26-1	$	-	$ -
SP S26-2			$ (47,373.20)
SP S140			$ (705.18)
SP S28N			$ (37,670.45)
SP S55-N			$ (3,205.43)
SP 017			$ (1,757.24)
SP S130			$ (5,803.89)
SP S63-F			$ (155,572.02)
SP S138			$ (853.09)
SP T21			$ (8,382.49)
SP T108	$	-	$ -
SP T147-F	$	59,943.84	
SP W120	$	54,706.00	
SP W62	$	1,039,500.00	
SP W95			$ (84,974.47)
SP W152			$ (20,558.62)
SP W150	$	171,071.16	
SP W149	$	82,814.42	
SP W49-W	$	-	$ -
SP W80-W			$ (16,398.28)
SP W149	$	45,000.00	
SP W79	$	37,000.00	
SP W51			$ (85,032.70)
SP W106-IRA			$ (17,105.35)
SP W151			$ (20,732.67)
SP W32			$ (12,772.76)
SP W19	$	-	$ -
SP W102-H	$	-	$ -
SP W114-J			$ (47,061.40)
SP W89-F			$ (30,917.88)
SP W120(IRA)	$	-	$ -
SP Y135-Y	$	100,000.00	
SP Z87			$ (6,851.64)
Total	$	20,791,854.30	$ (4,373,233.87)

Proposed Interim Distribution (18.757%)
$ -
$ -
$ -
$ 14,717.89
$ 1,875.70
$ 318,118.72
$ -
$ -
$ 669.15
$ -
$ -
$ 2,033.48
$ -
$ -
$ -
$ -
$ -
$ -
$ -
$ -
$ -
$ -
$ -
$ -
$ -
$ -
$ -
$ -
$ -
$ 2,832.31
$ -
$ -
$ 1,875.70
$ -
$ -
$ -
$ -
$ -
$ -
$ -
$ -
$ -
$ -
$ -
$ 105,440.55
$ -
$ 4,265.77

$	-
$	-
$	1,002,242.49
$	-
$	-
$	-
see footnote 1.	
$	30,109.19
see footnote 1.	
$	24,222.39
$	-
$	-
$	-
$	-
$	-
$	-
$	-
see footnote 2.	
$	6,255.89
$	-
$	4,689.25
$	1,125.42
$	-
$	-
$	1,760.71
$	1,800.67
$	-
$	27,838.78
$	1,899.72
$	-
$	-
$	16,881.30
$	8,459.41
$	-
$	-
$	-
$	-
$	-
$	-
$	-
$	-
$	-
$	-
$	-
$	18,757.00
$	17,819.15
$	-
$	1,270.78
$	-
$	-
$	-

$	-
$	-
$	-
$	-
$	-
$	-
$	-
$	-
$	-
$	2,264.11
$	232.17
$	19,179.03
$	-
$	-
$	6,335.48
$	23,446.25
$	-
$	-
$	-
$	-
$	-
$	-
$	-
$	931.91
$	-
$	-
$	-
$	-
$	4,689.25
$	29,202.33
$	1,875.70
$	-
$	8,440.65
$	9,378.50
$	-
$	21,382.98
$	14,782.01
$	-
$	13,171.47
$	1,875.70
$	-
$	-
$	-
$	-
$	-
$	-
$	-
$	-
$	-
$	-
$	-
$	8,993.30

$	10,128.78
$	-
$	-
$	-
$	-
$	-
$	103.85
$	-
$	24,384.10
	see footnote 3.
	see footnote 4.
	see footnote 5.
$	-
$	-
$	-
$	-
$	-
$	-
$	-
$	-
$	-
$	-
$	-
$	11,243.67
$	10,261.20
$	194,979.02
$	-
$	-
$	32,087.82
$	15,533.50
$	-
$	-
$	8,440.65
$	6,940.09
$	-
$	-
$	-
$	-
$	-
$	-
$	-
$	-
$	-
	see footnote 6.
$	-

S & P FOOTNOTES
Proposed Interim Distribution

1. The Partnerships have asserted or may assert claims against the holder(S) of account number SP 130-F and SP F05 for, among other things, receiving commissions and/or referral fees from the Partnerships. Therefore, the Conservator recommends reserving and withholding all interim distributions to the holder(s) of account SP 130-F and SP F05 until all claims are resolved or until further order of the Court.
2. The Partnerships have asserted or may assert claims against the holder(S) of account number SP G145-J for, among other things, receiving commissions and/or referral fees from the Partnerships. The Conservator has also been unable to identify the members of SP G145-J for purposes of determining appropriate distributions. Therefore, the Conservator recommends reserving and withholding all interim distributions to the holder(s) of account SP G145-J until all claims are resolved or until further order of the Court.
3. The Conservator has been unable to identify an appropriate Custodian for purposes of distribution, until the Conservator can identify an appropriate Custodian, the Conservator recommends reserving and withholding all interim distributions to the holder(s) of account SP S139.
4. The Partnerships have asserted or may assert claims against the holder(S) of account number SP S033 for, among other things, receiving commissions and/or referral fees from the Partnerships. Therefore, the Conservator recommends reserving and withholding all interim distributions to the holder(s) of account SP S033 until all claims are resolved or until further order of the Court.
5. The Partnerships have asserted or may assert claims against the holder(S) of account number SP S20 for, among other things, receiving commissions and/or referral fees from the Partnerships. Therefore, the Conservator recommends reserving and withholding all interim distributions to the holder(s) of account SP S20 until all claims are resolved or until further order of the Court.
6. The Partnerships have asserted or may assert claims against the holder(S) of account number SP Y135-Y for, among other things, receiving commissions and/or referral fees from the Partnerships. Therefore, the Conservator recommends reserving and withholding all interim distributions to the holder(s) of account SP Y135-Y until all claims are resolved or until further order of the Court.