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

          Plaintiffs,

v.

ROBERTA P. ALVES, ET AL,

          Defendants.

CASE NO.: 12-028324(07)
COMPLEX LITIGATION UNIT
Circuit Judge Jeffrey D. Streitfeld

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OBJECTION OF DEFENDANT CALLA GUTTER TO CONSERVATOR'S DISTRIBUTION MOTION

Defendant, CALLA GUTTER ("Gutter"), by and through the undersigned counsel, hereby files an Objection to Philip J. Von Kahle (the "Conservator") for P&S Associates General Partnership ("P&S"), and S&P Associates, General Partnership ("S&P"), and P&S and S&P collectively the "Partnerships".

The Conservator is proposing that the "net investment method" (also shown as the net loss method) be used in calculating interim distribution amounts payable to Claimants. Based on the facts and circumstances of this case, the "rising tide method" is the only fair and equitable method. Under both methods, if there have been no prior distributions, the results are the same. Under the rising tide method, however, distributions previously received by investors are considered in the method. To understand the difference between the two methods, the following examples set forth in *SEC v. Huber*, 702 F.3d 903, 904 (7th Cir.2012) is helpful.

For 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,....."

In contrast, under the rising tide method:

"In our example, the total of withdrawn plus receivership assets is $150,000 ($60,000 + $30,000 + $0 [the withdrawals] + $60,000 [the receivership assets]), but there is only the $60,000 in such assets to distribute. *A*, having been deemed (as a consequence of the rising tide approach) to have "recovered" $60,000 before the collapse of the Ponzi scheme, is entitled to nothing from the receiver, as otherwise the remaining sum of withdrawals and receivership assets - total of $90,000 ($30,000 in withdrawals, all by *B*, and $60,000 in receivership assets) - would be insufficient to bring the remaining investors up to anywhere near *A*'s level. For remember that under the net loss method each investor would have received the same fraction of the receivership assets as his fraction of the loss, and thus *A* would receive $15,000, *B* $20,000, and *C* $25,000. The result, since under the rising tide method withdrawals are treated as compensation, is that *A* would have been "compensated" to the tune of $75,000 ($60,000 withdrawn + $15,000 in receiver assets), *B* $50,000 ($30,000 + $20,000), and *C* $25,000 (the balance of receiver assets, *C* having had no withdrawals). For the "tide" to raise *B* and *C* as close to *A* as possible, *B* had to receive $15,000 in receiver assets, for a total "recovery" of $45,000, and *C* the remaining receiver assets giving him $45,000 too. The division of withdrawals plus receiver assets is then 60-45-45, as shown in the next chart [a copy of the chart depicting this hypothetical example of the application

of the rising tide method is attached hereto and incorporated herein by reference as Exhibit B], versus 75-50-25 under the net loss method."

In a case where the Partnerships and/or the Conservator have made an attempt to clawback prior distributions, the net investment method is a fair and equitable method, although it may not necessarily be the same as the result in the rising tide method. In the case, however, since the Partnerships and/or Conservators have made no or limited attempts to clawback prior distributions from the Partners on behalf of the Partnership, the net investment method is inequitable. The only equitable method in these circumstances is the rising tide method which, in effect, takes into account those prior distributions (many of which arguably should or could have been clawed back) in the mathematical computation. To utilize the net investment method in these circumstances provides an inequitable windfall to persons who have received distributions effectively with the "stolen" funds of other Partners, including Gutter.

Based on the foregoing, Gutter respectfully requests that this Court order that the approved plan of distribution utilize the rising tide method in formulating a distribution plan rather than the net investment method insofar as the rising tide method is more fair and equitable to those claimants such as Gutter who received little or no return of principal and that the amounts proposed to be distributed to Gutter be increased accordingly and for all other and further relief as this Court deems appropriate.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above Objection was sent via electronic mail to: Carl F. Schoeppl, Schoeppl & burke, P.A. (Carl@schoepplburke.com), 4651 N. Federal Highway, Boca

Raton, FL 33431; and Thomas M. Messana, Esq. Messana, P.A. (tmessana@messana-law.com),

401 E. Las Olas Blvd., Suite 1400, Fort Lauderdale, FL 33301 on this 27th day of August, 2013.

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BY: /s/ Robert A. Chaves
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