IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

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<tr><td>SECURITIES AND EXCHANGE COMMISSION,<br><br>Plaintiff,<br>vs.<br><br>TRAVIS E. CORRELL, individually and doing business as Horizon Establishment; et al.<br><br>Defendants,<br>and<br><br>BANNER SHIELD, LLC; et al.<br><br>Defendants Solely for Purposes of Equitable Relief.</td><td>Lead Case<br><br>Case No.: 4:05-CV-472 RAS<br><br><br>Consolidated Case<br><br>Case No.:4:07-cv-346 RAS</td></tr>
<tr><td>SECURITIES AND EXCHANGE COMMISSION,<br><br>Plaintiff,<br>vs.<br><br>GLOBAL FINANCE & INVESTMENTS, INC.; et al.<br><br>Defendants,<br><br>and<br><br>USASSET & FUNDING CORP.; et al.<br><br>Defendants Solely for Purposes of Equitable Relief.</td><td>RECEIVER'S BRIEF IN SUPPORT OF MOTION TO APPROVE PLAN FOR CLAIMS ADMINISTRATION AND DISTRIBUTION OF PROCEEDS<br><br>(IN CONSOLIDATED CASE GLOBAL FINANCE)</td></tr>
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S. Gregory Hays, Receiver, files this Brief in Support of the Motion to Approve Plan for Claims Administration and Distribution of Proceeds showing this Court as follows:

## FACTUAL BACKGROUND

The Securities and Exchange Commission ("SEC") filed the above-styled civil enforcement action (the "Enforcement Action") on July 18, 2007. In an Order dated July 30, 2007, this case was consolidated with the previously filed enforcement action against Travis E. Correll and others (the "Correll Action"). Similar to the Correll Action, in an Order dated September 24, 2007, (Doc. No. 253), S. Gregory Hays was appointed as Receiver for Defendants Global Finance & Investments, Inc.; Charles R. Davis; Lucre Fund, LLC; JTA Enterprises, Inc.; William Clark; Sterling Meridian, LLC; and, Relief Defendant Wells Ventures, LLC, (collectively, the "Receiver Defendants" and together with their assets are collectively referred to as the "Receiver Estate"). The September 24 Order amended this Court's previous Order dated December 7, 2005 (Doc. No. 7), (collectively referred to as the "Receivership Orders"). However, the actual receiverships have been administered separately.

Among the Receiver's responsibilities is the analysis of the liabilities of the Receiver Estate – including amounts owed to investors in the subject investment offering – and to develop a plan for distributing the available assets of the Receiver Estate to those who are owed money. To this end, the Receiver has developed a claims submission and review process that is designed to: identify investors and other creditors; determine the proper amount of each claim against the Receiver Estate; and, ultimately, make payment to legitimate claimants in a way that is appropriate under the circumstances of this case.

Unfortunately, there will not be assets sufficient to pay the claims of investors and unsecured creditors in full. As the Receiver has reported from the outset of this case, investors'

monies were used for various purposes, and the remaining assets (including recoveries from third-parties) fall far short of the amount required to satisfy all liabilities.

For numerous reasons, it is imperative that the claims process be conducted in an orderly, efficient and fair manner. Accordingly, the Receiver has developed a Plan for Claims Administration and Distribution of Proceeds ("the Plan") that will, upon approval by this Court, govern the process and be binding on all interested parties, including investors and other creditors of the Receiver Estate. As more fully set forth below, the Plan is appropriate under the facts and circumstances of this receivership and is consistent with the principles applicable to receiverships, generally. Hence, the Plan should be approved.

**The Offering**

This case concerns a fraudulent "high yield" or "prime bank" investment offering that, in reality, operated as a Ponzi scheme. In short, investors were promised incredibly high returns on their investments, which were to be paid monthly. Between September 2005 and April 2006, approximately $12.9 million was raised from over 100 investors located throughout the United States. Approximately $10.9 million in proceeds were ultimately "invested" with Defendant Global Finance & Investments, Inc. ("Global Finance"). The balance – *i.e.*, $2 million – was "invested" with Wells Ventures, LLC. Monthly payments were made to investors using their own and/or other investors' principal investments. No "returns" were generated from any investing activities. The Receiver has recovered approximately $7.2 million from Global Finance, Wells Ventures and others. If the Plan is approved, these funds will be administered as a common fund, with all investors and unsecured creditors receiving a pro rata payment of the monies available for distribution.

**The Facilitators**

The vast majority of the money obtained from individual investors was raised by two groups of "facilitators," who, in turn, made the investments in Global Finance and Wells Ventures. Some, but not all, of these facilitators had been involved in the similar investment offering that is the subject of the Correll Action.[1]

**William Clark, et. al.**

The largest facilitator group was directed by Defendant William H. Clark ("Clark"), who operated two entities: JTA Enterprises, Inc. ("JTA") and Lucre Fund, LLC ("Lucre Fund"). Clark did not engage in "retail sales" efforts directed at individual investors. Rather, he used JTA and Lucre Fund to "pool" funds raised by two other facilitators: Sterling Meridian LLC ("Sterling Meridian") operated by Ron Linn and Glenn Maske; and KGS Group, LLC ("KGS") operated by Kerry Sitton. Sterling Meridian raised more than $5.2 million from more than 30 investors for Clark's offering, $3 million of which was turned over to Clark. Sitton raised approximately $3 million the KGS from approximately 35 investors, all of which was turned over to Clark. In all, Clark received approximately $6 million.[2]

Based on representations made by Clark and their prior experience in the Correll offering, Sterling Meridian and KGS Group, LLC each enticed investors to participate in the offering by

[1] This investment offering was first discovered by the Receiver and the SEC during the course of discovery and investigation in the Correll Action. Clark, Linn, Maske, Sitton and Rogers, along with some of their affiliated entities, were involved in the Correll offering. In fact, money raised through Sterling Meridian was placed in entities in both Receiverships. Investments made with Sterling Meridian prior to or on September 14, 2005 are part of the Correll Receivership and those made after that date are part of the Global Finance Receivership.

[2] Sterling Meridian and KGS Group, LLC actually transferred these funds to Clark's entities: JTA and Lucre Fund. Sterling Meridian used funds not transferred to Clark to make $1.5 million in interest (Ponzi) payments to investors in the offering that is the subject Correll Action. It appears that the balance was used to fund Sterling Meridian's business operations and/or to fund personal expenses of Linn and Maske.

describing Clark as a "trader," who had access to "trading programs" that would pay very high monthly returns – up to 25% per month. These representations were not true. All payments made to investors were funded from investors' monies, not earnings from the purported (and fictitious) trades.

Of the $6 million he collected from Sterling Meridian and KGS Group, LLC, Clark sent $4 million to Global Finance and $2 million to Wells Ventures. Clark made these two investment decisions without regard to which investors' monies were used for each. In effect, all of the investors' monies were commingled and invested by Clark in his sole discretion.

**Kelly Rogers and Level Par Investments, LLC**

Kelly G. Rogers ("Rogers") raised money from individual investors through Level Par Investments, LLC ("Level Par"). Clark introduced Rogers to Global Finance and its principal, Charles R. Davis ("Davis"). Rogers was the managing member of Level Par and its sole contact with Global Finance.

Based on what he was told by Davis, Rogers raised money from investors telling them that the underlying investment was a "totally secure" high yield program involving the purchase and sale of bank debentures. The investors' funds would be safely deposited in an attorney's trust account and would not be withdrawn until an actual transaction commenced or an instrument was purchased. Rogers promised monthly returns to investors ranging from 3% to 10%. These representations were false.

Through Level Par, Rogers raised a total of $4.7 million from approximately 35 investors. All of these monies were transferred to Global Finance in February and March 2006.

**Charles R. Davis/Global Finance**

In addition to the $4 million received from Clark and the $4.7 received from Rogers, Global Finance received money directly from two investors: $1.2 million from Schliemann, Ltd. in October 2005 and $1 million from Doorknob LLC in December 2005. As the principal of Global Finance, Davis told the facilitators and other investors that Global Finance's investment program was "totally secure" and could earn returns ranging from 25% per month to 90% per week. Davis also claimed that the funds were safe because they would be deposited into an escrow account maintained by his attorney, William F. Dippolito. These representations were false.

**How Investors' Money Was Actually Used**

From the $10.9 million turned over to or raised by Global Finance, Davis transferred $6 million to USAsset & Funding Corp. ("USAsset"), in exchange for a purported $100 million "proof of funds," which Davis intended to use as collateral for prime bank investments. None of the prime bank investments materialized, and USAsset retained the $6 million as an ostensible "service fee" for providing the proof of funds. This investment appears to be yet another sham. Of the remaining $4.9 million in investor funds, Global Finance returned $2.225 million to Clark, Rogers and others as purported payments to investors (but which, in fact, were simply Ponzi payments). The balance, $2.675 million, was used by Davis to fund Global Finance, purchase other "investments," and/or fund his personal expenses.

Wells Ventures, the recipient of $2 million in investor proceeds from Clark, also appears to be a sham. Clark, along with three other individuals, formed Wells Ventures to invest in an alleged European private placement. Apparently, the four original members of Wells Ventures contributed a total of $10 million, including the $2 million of investors' monies received from

Clark. When the private placement failed to go forward, one of the members withdrew its investment of $5 million. Clark and the other Wells Ventures' members agreed to invest the $5 million in a "bank guarantee program" with a Singapore bank in which the purported returns would be as much as 25% per month.

**Recoveries**

The Receiver has recovered approximately $7.2 million of the money raised from investors. The most significant recoveries are as follows:

| Hillsboro Financial Associates | $250,000.00 |
| --- | --- |
| Wells Ventures | $1,119,000.00 |
| Nevada Sentry Corp | $2,500,000.00 |
| US Assets & Funding Corp | $3,000,000.00 |
| CMR | $175,000.00 |
| Sterling Meridian Bank Account | $146,194.01 |

It is unlikely that there will be any future recoveries from third-parties, though the Receiver Team continues to analyze a few transactions to which Global Finance was a party. Moreover, there were no significant tangible assets (*e.g.*, real estate, automobiles, etc.). Hence, the Receiver will soon be in a position to make a distribution to the aggrieved investors and other creditors.

**SUMMARY OF THE PLAN**

The Plan is straightforward. Investors and other creditors have submitted information to the Receiver supporting the amounts of their claimed losses. The Receiver Team will review and analyze each of these claims, in conjunction with other available information, in an effort to determine the principal amount owed to each investor and creditor. For investors, losses will be

calculated on a cash basis – *i.e.*, the loss equals the amount invested by an investor minus the amounts paid to the investor. The illusory returns purportedly earned, but not paid to an investor, will not affect this calculation.

Once the review is completed, the Receiver will provide written notice to each investor and creditor regarding the Receiver's determination of the amount of the loss incurred by (or other debt owed to) that investor or creditor. At the same time, the Receiver will identify any other issues that may be important to the resolution of the investor's or creditor's claim. Any investor or creditor who disagrees with the Receiver's determination will then have the opportunity to dispute the Receiver's decision by filing a written objection with the Receiver. The Receiver will endeavor to resolve these disputes by agreement. Any disputes that cannot be resolved will be submitted to this Court for adjudication in a summary proceeding.

When all disputes have been resolved (or earlier, if appropriate), the Receiver will make payment to investors and creditors from the funds available for distribution.[3] Each investor and creditor having a claim that is "approved" by this Court, will be paid a pro rata portion of the amount available for distribution. Absent unforeseen issues that require significant expenditures of time and money by the Receiver Team or unexpected claims that have priority, the Receiver estimates that approximately $7 million will be available for distribution. Based on the claims analysis performed to date, the Receiver anticipates that each investor and creditor will receive a payment from the Receiver Estate that is at least 60% of that investor's/creditor's "approved" claim.

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[3] Professional and other administrative fees, secured creditors and taxing authorities have priority over investors and creditors subject to the claims administration process.

## ARGUMENT AND CITATION OF AUTHORITY

In overseeing and administering an equitable receivership such as the instant case, this Court's discretion in approving the Plan is given great deference and may be disturbed on appeal only upon the showing of an abuse of discretion. See SEC v. Elliot, 953 F.2d 1560, 1567 (11th Cir. 1992). The Plan proposed by the Receiver is consistent with plans approved in other cases. There are no unusual or difficult issues. Even so, the following aspects of the Plan may be of special interest to the Court and/or investors and creditors:

### I. It is appropriate to determine the amount of investors' losses on a cash basis, without regard to the unpaid illusory/fictitious returns.

As noted above, the Plan provides that the amount of an investor's loss will be calculated on a "cash-in – cash out" basis – *i.e.*, the amount of principal invested less any returns, referral fees, or other funds received by the investor. Investors' claims will not be increased by any "earned," but unpaid returns. Conversely, any payments actually made to or on behalf of an investor will be credited so as to reduce the amount of cash loss. Not only is this the most efficient method of calculating loss, it is the most fair. When confronted with similar situations and challenges to this method of establishing the loss amount, courts have upheld this method of determining a loss amount as fair and reasonable. See SEC v. Basic Energy & Affiliated Res., Inc., 273 F.3d 657, 660 (6th Cir. 2001); SEC v. Forex Asset Mgmt. LLC, 242 F.3d 325, 331 (5th Cir. 2001) (affirming the trial court's approval of plan that calculated each investor's allowed claim as a percentage of their loss as measured against the losses of all of the unpaid claimants as "fair and equitable"); SEC v. Certain Unknown Purchasers of Common Stock etc., 817 F.2d 1018, 1020 (2nd Cir. 1987) (affirming the district court's approval of a plan based on "actual out-of-pocket losses"); SEC v. Capital Consultants, Inc., 2002 U.S. Dist. LEXIS 27399 (D. Or. Dec. 4, 2002) (upholding a Receiver's calculation of amount for distribution on a money-

in/money-out basis and a pro- rata distribution). Hence, the Plan's methodology for determining each investor's loss is appropriate.

## II. It is appropriate to treat all of the monies recovered as a "common fund" from which payment to all investors and creditors will be made.

The Receiver's Plan aggregates all available money into a single fund. No effort has been made to trace any specific investor's funds. From the earliest Ponzi scheme cases, courts have made clear that this is almost always the most equitable way to treat investors. As the Supreme Court noted in the original Ponzi case, receiverships involving Ponzi schemes "call strongly for the principle that equality is equity." Cunningham v. Brown, 265 U.S. 1, 13 (1924); SEC v. Forex Asset Mgmt. LLC, 242 F.3d 325, 331 (5th Cir. 2001) (holding that the district court did not abuse its discretion when it determined that, despite the fact that some of the funds available for distribution were segregated and traceable to one investor, allowing one investor to trace its funds and avoid a pro-rata distribution among all of the investors would be an inequitable remedy); See also, Basic Energy & Affiliated Res., Inc., 273 F.3d at 660-61, 670-71 (upholding the district court's approval of a plan of distribution from a common pool of assets despite the fact that a group of objecting investors could trace invested funds to a segregated account because all investors were victims of the same fraudulent scheme and the common fund approach "fair and equitable").

## III. It is appropriate to use summary proceedings to resolve disputes regarding the amount owed to an investor or creditor and other related issues.

The Receiver anticipates that most disputes regarding claims will be resolved without the intervention of the Court. However, in the event disputed claims cannot be resolved by agreement, they will be submitted to the Court for determination. The Plan sets forth procedures for summary proceedings that are intended to be expeditious and cost efficient, while affording

objecting investors and creditors with due process. While the process must be fair, it must also be as speedy as possible. In all likelihood, no payments will be made until all disputes are resolved.

The use of summary proceedings to determine appropriate relief is within the jurisdiction of this Court. SEC v. Basic Energy and Affiliated Res., Inc., 273 F.3d 657, 668 (6th Cir. 2001); Elliot, 953 F.2d at 1566. The use of summary proceedings furthers the Receivership's primary purpose to promote the orderly and efficient administration of the estate for the benefit of investors and other creditors. See, e.g., SEC v. Hardy, 803 F.2d 1034, 1037-40 (9th Cir. 1986). Summary proceedings enable a receiver to avoid the formalities of plenary proceedings that would slow down the resolution of disputes. Id. Moreover, summary proceedings reduce litigation costs, and in turn, preserve a greater amount of the receivership assets for distribution. Id.

The summary proceedings set forth in the Plan provide parties with notice and a meaningful opportunity to be heard, but require an evidentiary hearing only if there are disputed issues of fact. See Elliot, 953 F.2d at 1566-67 (citing Codd v. Velger, 429 U.S. 624 (1977) (*per curiam*); SEC v. Blavin, 760 F.2d 706, 713 (6th Cir. 1985). Such proceedings are appropriate in receiverships and may be used to allow or disallow the claims of investors and creditors. See Hardy, 803 F.2d at 1040.

Summary proceedings are particularly appropriate in this case because there is little likelihood of complex factual disputes in the claims administration process. The Receiver anticipates that disputes over claims, if any, will involve simple fact questions regarding the date that particular investments were made or the net loss of particular investors, and that most of these disputes will be resolved without Court intervention. The summary process set forth in the

Plan will permit the Court to adjudicate any such dispute quickly and fairly.

**CONCLUSION**

The proposed Plan is consistent with the prevailing principles of equity and comports with plans approved in other receiverships. It provides a fair and efficient process for administering claims, resolving disputes and, ultimately, distributing money to investors and other creditors. Accordingly, the Receiver requests that his motion seeking approval of the Plan be approved and that the Plan be adopted as an order of this Court.

This 14th day of November, 2008.

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**CERTIFICATE OF SERVICE**

I do hereby certify that, November 14, 2008, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following:

Timothy S. McCole
Scott R. Baker

I further certify that, on November 14, 2008, the foregoing has been served to the following non-CM/ECF participants by United States Mail, postage pre-paid:

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/s/ Merle R. Arnold III
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