

I. INTRODUCTION

1. Consistent with the responsibilities of the Receiver to administer the assets of the Receiver Estate (as defined in the Appointment Order), the Receiver has administered the assets of the Receiver Estate and developed a process for the analysis and administration of the claims of investors and other unsecured creditors of Lighthouse, along with a plan for the distribution of the funds from the Receiver Estate. This is a sensitive and complicated task for which there are no set rules. The ultimate objective is to provide a fair and equitable allocation of the proceeds of the assets of Lighthouse to those who were damaged as a result of the conduct that led to the filing of this case (the “Receivership”). While this process has been ongoing since the early days of this Receivership, the proposed, streamlined process has now been formalized and is delineated in this Motion and Plan.

A. Status

2. The assets of the Receiver Estate have been liquidated, certain liabilities of the Receiver Estate have been resolved, and the Receiver is seeking approval of the distribution of funds maintained in the Receiver Estate now that the Receivership has been administered other than with regard to a few outstanding tasks related to closing the Receiver Estate.

3. Despite the best efforts of the Receiver and the professionals engaged by the Receiver, the most significant and final claims of the Receiver Estate were dismissed in litigation initiated by the Receiver and the Receiver Estate has exhausted all appropriate appeals related to such litigation.
4. Under the current circumstances, the funds currently available in the Receiver Estate in the amount of \$420,565.50, which includes a reserve in the amount of \$200,000 (the "Reserve") for costs, expenses, and fees related to litigation that has been concluded and closing the Receiver Estate; as of the date of this Motion, the available funds are not sufficient to pay all outstanding administrative expenses and make full restitution to all damaged investors and other unsecured creditors of Lighthouse.
5. In conjunction with this Motion, the Receiver has filed a Ninth and Final Application for Approval and Payment of Fees and Reimbursement of Costs seeking authority to pay certain unpaid administrative expenses and final approval and allowance of all fees and expenses paid or to be paid by the Receiver (the "Final Fee Application").
6. The Receiver and the professionals of the Receiver have agreed to accept significantly less than full payment of outstanding fees and expenses in anticipation of implementing a one-time *pro rata* distribution from funds available in the Receiver Estate to the allowed claims of investors and other

unsecured creditors of Lighthouse. The amount of additional fees and expenses that the Court allows and authorizes the Receiver to pay to administrative claimants from funds available in the Receiver Estate is hereinafter defined as the "Allowed Administrative Claims."

B. Claims and Distributions

7. The claims process should be conducted in an orderly, efficient, and fair manner, with each investor and creditor having the opportunity to challenge the process and decisions by the Receiver. Moreover, the ultimate distribution should be fair and equitable under the circumstances of this case. The Receiver asserts that the proposed Plan accomplishes each of these objectives. Accordingly, the Receiver requests that the Plan be approved and that the proposed claims administration process and payment methodology be binding on all interested parties, including investors and other creditors of the Receiver Estate.
8. After the allowance of claims and release of the Reserve by the Court, the Receiver proposes to use the Reserve and other funds available in the Receiver Estate in accordance with the Plan to pay: a) any Tax Liability; b) after the payment of any Tax Liability, any other Allowed Administrative Claims; and c) funds remaining in the Receiver Estate after the payment of the Allowed Administrative Claims to a final *pro rata* distribution to claimants with

Allowed Non-Administrative Claims (as defined herein). At this time, the estimated distribution to be made from the Receiver Estate to the allowed non-administrative claims of investors and unsecured creditors is approximately three cents (3¢) on the dollar of such claims.

II. FACTUAL BACKGROUND

9. The results of the investigation and other activities of the Receiver and the professionals engaged by the Receiver (the “Receiver Team”) are set forth in the Interim Reports filed with the Court on August 31, 2012 (Doc. No. 23), March 15, 2013 (Doc. No. 48), February 10, 2014 (Doc. No. 42), and January 13, 2015 (Doc. No. 61; collectively, the “Interim Reports”) and the updates (collectively, the “Updates”) periodically distributed by the Receiver to investors. Certain specific activities of the Receiver Team have also been or will be the subject of other filings and hearings before this Court. Although this Motion does not set forth a full factual recitation of the activities of the Receiver Team in the investigation and liquidation of the assets remaining from the investment scheme perpetuated through Lighthouse by Benjamin Daniel DeHaan (“DeHaan”), the Receiver will be filing a Final Report (the “Final Report”) in conjunction with a motion to terminate the Receivership and a summary of the facts relevant to the review and approval of the Plan by the Court are set forth hereinafter.

A. Ownership of Lighthouse and Certain Related Entities

10. From approximately 2007 until July, 2012, DeHaan operated Lighthouse as a purported investment advisory business.
11. Until the formation of a certain joint venture (the "Joint Venture") that was ultimately documented on or about November 30, 2011, DeHaan: a) was the sole member, manager, and owner of Lighthouse; and b) owned One Hundred Percent (100%) of DeHaan & Co. Financial Partners, Inc. ("DCFP").
12. As a result of the Joint Venture: a) DeHaan owned 49% of Lighthouse and DCFP owned the remaining 51% of Lighthouse; b) DeHaan owned 75 2/3% of DCFP and Letotech, Inc., ("Letotech") owned the remaining 24 1/3% of DCFP; and c) DeHaan owned 49% of Quantplat, LLC ("Quantplat") and Letotech owned the remaining 51% of Quantplat.
13. Pursuant to a certain stipulation entered after the entry of the Appointment Order by and between DeHaan and the Receiver, any interest of DeHaan in DCFP, Quantplat, and Lighthouse has been transferred to the Receiver for the benefit of the Receiver Estate.

B. Fraudulent Scheme

14. DeHaan promoted and purported to maintain funds of investors of Lighthouse at firms maintaining custodial accounts for such funds, however, a substantial amount of funds of investors were not actually maintained in custodial

accounts on behalf of investors and in certain instances custodial accounts were never even created.

15. Certain custodial accounts were created by Lighthouse and/or DeHaan on behalf of certain investors of Lighthouse and approximately 35 custodial accounts remained in existence at the time of the entry of the Appointment Order (the “Custodial Accounts”). The Custodial Accounts contained segregated funds for specific investors (the “Custodial Account Funds”), however, the amount of investor funds deposited into specific securities or trading accounts was very small compared to the total amount of funds invested with Lighthouse. The Custodial Account Funds are not being administered by the Receiver Estate and are not included in the funds available to the Receiver Estate for distribution.
16. Funds from clients of Lighthouse that are not Custodial Funds are defined herein as the “Lighthouse Funds.” DeHaan transferred the Lighthouse Funds into a certain pass through bank account located at Bank of America (the “Pass Through Account”) controlled by DeHaan and subsequently diverted certain Lighthouse Funds from the Pass Through Account.
17. DeHaan attempted to conceal the diversion of certain Lighthouse Funds in the Pass Through Account by: a) providing falsified account statements; b) making false statements and representations to investors and regulators; and c) entering

false information into certain software and using the manually imputed data to conceal the misappropriation of funds of investors of Lighthouse.

18. In early 2012, DeHaan began raising funds (collectively, the “Facebook Funds”) from certain investors purportedly to purchase shares in the initial public offering by Facebook, Inc. through the DeHaan Fund, LP, an entity related to Lighthouse and controlled by DeHaan. The Facebook Funds were deposited by DeHaan into the Pass Through Account of Lighthouse in the same manner as other investments made with Lighthouse and commingled with other funds in the Pass Through Account. For purposes of the Plan and this Motion, the Facebook Funds are treated as Lighthouse Funds resulting from investments made with Lighthouse and deposited into the Pass Through Account rather than being transferred into a custodial or separate account maintained by DeHaan or any other entity.

C. Lighthouse Was Operated As A Ponzi Scheme

19. From January, 2009, until the scheme collapsed upon the investigation by the Georgia Office of the Secretary of State of Georgia and the Securities and Exchange Commission in June, 2012, and the subsequent filing of this Civil Action and the entry of the Appointment Order, DeHaan and Lighthouse raised in excess of \$9 million from more than 50 different investors without regard for funds contributed to Lighthouse by investors prior to January, 2009.

20. Based on the investigation of the Receiver Team, the Lighthouse Funds were primarily deposited into and commingled with funds from other investors in the Pass Through Account rather than being segregated as were the Custodial Account Funds.
21. There was very little, if any, trading activity in the accounts purportedly managed by Lighthouse and the vast majority of the trading activity occurred with the Custodial Account Funds. The trading activities do not appear to have resulted in significant legitimate profits.
22. The funds in the Pass Through Account were used for a variety of purposes, including: a) payment of the expenses of the operation of Lighthouse, including rent, payroll and salaries, and overhead; b) payments to investors of illusory profits and/or returns of principal; c) payment of personal and business expenses of DeHaan; d) transfers to a personal account of DeHaan and for certain personal expenses of DeHaan; e) payment for acquisitions by DeHaan unrelated to the business of Lighthouse; and f) investments in at least two business ventures.
23. Based upon the investigation of the Receiver Team, the investments or other “business activities” of DeHaan or Lighthouse did not result in significant profits. The result is that Lighthouse was operated as a Ponzi scheme – i.e.,

payments of “profits” to investors, as well as withdrawals of principal, were funded with money derived from later investors/investments.

D. Lighthouse Did Not Maintain Reliable Records

24. Determining the amount of the loss of each claimant is an important aspect of the claims administration process. The ability of the Receiver Team to determine precisely the amount of money each investor invested with and received from Lighthouse is difficult for a number of reasons. First, the investment scheme was operated for well over five years. Second, certain software utilized by Lighthouse did not accurately reflect the actual balances of investors of Lighthouse and DeHaan routinely created and distributed to investors account statements that ultimately turned out to be false and fictitious. Third, many investors who contributed Custodial Account Funds also contributed Lighthouse Funds. Finally, Lighthouse did not maintain a reliable accounting or other bookkeeping system that was sufficient, accurate, and reviewable. Other than banking records, there are very few reliable financial records and many other documents that can be found are inaccurate or clearly fraudulent (e.g., investors’ account statements).
25. In an effort to ameliorate the effect of these issues, the Receiver Team constructed a financial database (the “Funds Tracing Database”) that is principally based on records dated between January, 2009, and June, 2012, that

were obtained from the bank where Lighthouse maintained accounts. The Funds Tracing Database includes nearly 6,000 financial transactions, which have been analyzed and “allocated” to various receipt and expense categories in order to determine the use of monies from investors. Based on such analysis, the Receiver Team prepared a preliminary report for the period between January, 2009, and June, 2012, regarding: a) funds of investors and/or advisory clients delivered to DeHaan and/or Lighthouse; and b) the use of such funds by DeHaan and/or Lighthouse.

26. The Receiver Team asserts that the Funds Tracing Database is a reliable tool that: a) has been and will be very beneficial in making determinations regarding financial issues between January, 2009, and June, 2012; and b) can be supplemented by records of investors and other available source materials.

E. The Claims Administration Process has been Completed

27. Beginning in September, 2012, the Receiver provided claim forms to all known individuals and entities who appeared to have invested with Lighthouse. The claim form was also posted on the website of the Receiver. Similar claim forms were subsequently provided to other known creditors of Lighthouse. In an Order of this Court dated January 23, 2013, this Court established March 29, 2013, as the deadline for submission of a claim with the Receiver (the “Bar Date”).

28. On or before the Bar Date, more than 67 claims from investors and 11 claims from other creditors were submitted to the Receiver. The Receiver Team reviewed each of the investor claims in an effort to make a precise determination of: a) the amount(s) invested by each claimant; and b) the amount(s), if any, paid to or on behalf of each claimant.
29. The overall circumstances as of the date of this Motion appear as follows:
- a. The investor claimants invested approximately \$9.36 million dollars with Lighthouse.
 - b. Approximately 25 of the investor claimants directly received payments from Lighthouse totaling approximately \$1.78 million dollars.
 - c. The cumulative net loss – i.e., cash invested minus cash directly received – suffered by all investor claimants is approximately \$7.6 million dollars.
30. The Receiver Team recognizes that there are investors who did not file claims. The working assumption is that these investors suffered very little, if any, loss, and some may have actually profited from their investments with Lighthouse.
31. Subject to further order of the Court, the filing of a non-administrative expense claim by the Bar Date is a prerequisite for a non-administrative expense claim to participate in a distribution from the Receiver Estate.

III. SUMMARY OF THE PLAN

A. Overview

32. The Plan is straightforward and streamlined given the limited resources in the Receiver Estate available for distribution. In sum, the Receiver has determined the amounts of claims submitted by investors and creditors based on the submitted claims, other information available to the Receiver, and communications with claimants. The Receiver proposes that the Court approve the non-administrative expense claims set forth in the schedule attached hereto as Exhibit "A" (the "Non Administrative Claim Schedule") and incorporated herein by reference in the proposed allowed amounts and in favor of the parties listed as claimants set forth therein. Certain parties have already agreed to their claim as set forth in the Non Administrative Claim Schedule. If an investor or creditor disputes the amount of their claim as shown on Exhibit "A", the claimant is required to: a) before any hearing (the "Hearing") on this Motion, contact the Receiver with regard to their asserted amount and grounds therefore; and b) submit documentation supporting the amount claimed as requested by the Receiver. In the event that a dispute arises with regard to a particular claim that cannot be resolved between the parties, the matter will be submitted to this Court at the Hearing by the objecting party for summary adjudication. In resolving any dispute with a non-administrative expense

claimant, the claimant will have the burden of proof with respect to establishing the amounts invested, the amounts received, and the amount of loss to evidence the amount of a claim and shall be responsible for all fees and expenses of the Receiver Estate in the event that the claimant is unsuccessful in challenging the Plan or the determination by the Receiver.

33. Once the Court has approved the amounts of allowed non-administrative claims and the parties holding such claims (as allowed, the "Allowed Non-Administrative Claims") and the Allowed Administrative Claims, the Receiver on behalf of the Receiver Estate shall: a) pay any Tax Liability; b) after the payment of any Tax Liability, pay any other Allowed Administrative Claims; and c) pay the funds remaining in the Receiver Estate after the payment of the Allowed Administrative Claims to pay a *pro rata* distribution to allowed claimants with Allowed Non-Administrative Expense Claims. Any payments by the Receiver to Allowed Non-Administrative Claims that are returned to the Receiver and not claimed within thirty (30) days of distribution by the Receiver shall be allocated to the \$250,000 in fees being written of by the Receiver Team. . Upon distribution of funds available in the Receiver Estate, the Receivership will be closed.

B. Distribution Approaches

34. Once the Court has approved the Allowed Non-Administrative Claims and the Allowed Administrative Claims, the Plan provides that, after the payment of Allowed Administrative Claims, the Receiver will make a *pro rata* distribution of funds remaining in the Receiver Estate to claimants holding Allowed Non-Administrative Claims. The Receiver considered other methods of distribution such as the “rising tide” method of calculating loss; however, due to the limited resources available in the Receiver Estate and the complicated nature of the rising tide and other methods of distribution, a *pro rata* distribution is most appropriate under the current circumstances.

C. Claims

35. In analyzing and approving claims and making payments, all prior payments from Lighthouse to investors are treated as returns of principal, rather than payments of “profits.” Moreover, the dates of investment and receipt of payment do not affect any calculation. Other than Custodial Account Funds, which are not being administered by the Receiver, no distinction is made between investments. As a general rule, however, discrete investors are treated separately, so that separate investments made by related investors are treated separately. Hence, a husband and a wife with separate accounts or an individual and the separate IRA account of that individual investor are treated

as discrete investors. Finally, absent extraordinary circumstances, the allowed claim amount of “non-investor” or creditor claimants will equal the principal amount owed by Lighthouse to that creditor claimant, and those claims will be paid in the same *pro rata* amount as investor claims.

IV. ARGUMENT AND CITATION OF AUTHORITY

36. This Court has “extremely broad” powers and “wide discretion” to administer this equity receivership and in the fashioning of appropriate forms of relief. See e.g., S.E.C. v. Capital Consultants, LLC, 397 F. 3d 733, 738 (9th Cir. 2005); S.E.C. v. Basic Energy & Affiliated Res., Inc., 273 F. 3d 657, 668 (6th Cir. 2001). The processes approved by a court and used in the administration of claims and distribution of proceeds in an equitable receivership are given great deference and may be disturbed on appeal only upon the showing of an abuse of discretion. See S.E.C. v. Elliott, 953 F.2d 1560, 1566-70 (11th Cir. 1992), *rev'd in part on other grounds*, 998 F. 2d 922 (11th Cir. 1993); S.E.C. v. Hardy, 803 F.2d 1034, 1037-8 (9th Cir. 1986).

37. In cases such as this, where the cumulative amount of the loss exceeds the funds available for distribution to all claimants, the Court is obligated to devise an equitable system of distribution with the goal of treating each similarly situated victim of the investment scheme fairly and as nearly equal as is possible. See U.S. v. Cabe, 311 F. Supp. 2d 501, 504 (D.S.C. 2003). “In

deciding how receivership assets should be distributed to defrauded investors, the fundamental principle which emerges from case law is that any distribution should be done equitably and fairly, with similarly-situated investors or customers treated alike.” S.E.C. v. Funding Res. Group, 2002 U.S. Dist. LEXIS 1666, *12 (N.D. Tex. Jan. 31, 2002) (quotations omitted). Equity demands equal treatment of victims in a factually similar case. See e.g., Capital Consultants, 397 F. 3d at 738-739; S.E.C. v. Drucker, 318 F. Supp. 2d 1205, 1206 (N.D. Ga. 2004); U.S. v. Real Prop. Located at 13328 and 13324 State Highway 75 N., 89 F. 3d 551, 553 (9th Cir. 1996). Since investors generally occupy the same legal position as other investors, equity should not permit one investor a preference over another investor, for “equality is equity”. Elliott, 953 F. 2d at 1570 (*quoting* Cunningham v. Brown, 265 U.S. 1 (1924)).

38. The task of formulating a proper distribution plan is a sensitive undertaking because a plan that is “equitable” might not necessarily be popular with all investors. Essentially, a receiver and an investor have the same goal, which is to maximize the distribution to investors. S.E.C. v. TLC Invs. and Trade Co., 147 F. Supp. 2d 1031, 1041-42 (C.D. Cal. 2001). Yet, as one court has observed:

[T]his is a case in which numerous victims of a fraud have competing claims to a limited receivership res. The relief sought by [certain investors] would come at the direct expense of the other . . . victims. . . [T]he Receiver at once represents the interests of all and none of

the [investors]---To the extent that the Receiver has the interest of all in mind, he is the adversary of the individual customer - whose concern is only for the return of his deposits.

S.E.C. v. Credit Bancorp, Ltd., 2000 U.S. Dist. LEXIS 17171 at * 61 (S.D.N.Y.

November 29, 2000) (internal quotations omitted), *rev'd on other grounds*. The

court in Credit Bancorp further observed that “[o]f course, where the assets of the

receivership estate are insufficient to afford full recovery to all victims, any given

plan is likely to be viewed more favorably by certain victims than others depending

on how they fare under that plan . . . An equitable plan is not necessarily a plan that

everyone will like.” Id. at * 94-95.

39. In determining whether a plan in the aggregate is reasonable and equitable,

“[b]ecause the Receiver is a fiduciary and officer of this Court, this Court may

and does give some weight to the Receiver’s judgment of the most fair and

equitable method of distribution.” CFTC v. Eustace, 2008 U.S. Dist. LEXIS

11810 (E.D. Pa. Feb. 15, 2008).

A. The Claims Determination Process And Loss Calculation Method Set Forth In The Plan Are Fair And Comport With The Requirements Of Due Process

40. In effect, the Plan provides that the gross amount of the loss of each investor is

equal to the total amount actually invested with Lighthouse. Payments made

by Lighthouse are treated as returns of principal, regardless of how they were

described by Lighthouse or understood by the investor at the time. No effort

has been made to trace the proceeds of any individual investment, nor has the date of an investment or payment been taken into account in calculating the amount of loss of an investor.

41. Investors have been provided with notice of the filing of this Motion and will have an opportunity to object to the adoption of the Plan by this Court. Notice of this Motion has been or will be served on all known investors and other creditors, as well as the Internal Revenue Service, the Securities and Exchange Commission, and the Georgia Secretary of State. Pursuant to the Plan, each claimant will be provided with an opportunity to object to the Non Administrative Claim Schedule. If a claimant disagrees with their claim as listed in the Non Administrative Claim Schedule, a summary process is proscribed for the resolution of the dispute. The claimant will have the burden to show that the determination of the Receiver Team is not correct. Basic Energy, 273 F. 3d at 661. Finally, only claims allowed and approved by this Court will participate in any distribution from the Receiver Estate.

B. Treating Prior Payments of “Profits” as Returns of Principal is Appropriate

42. In general, courts supervising a federal equity receivership have adopted a “net investment” approach in determining the amounts lost by investors. Accordingly, the Plan proposed by the Receiver employs this approach by treating prior payments by Lighthouse as returns of principal rather than

payment of profits. Courts have consistently recognized that this is appropriate in cases such as this one where payments to investors were made using fresh capital from later investors rather than through legitimate investment activity.

See e.g. generally, Cabe, 311 F. Supp. 2d at 509; Cunningham v. Brown, 265 U.S. 1 (1924). As one court has explained:

The rationale for a net investment approach is twofold. First, it is in the nature of a Ponzi scheme that customer returns are generated not from legitimate business activity, but, rather, through the influx of resources from new customers. “Since all the funds were obtained by fraud, to allow some investors to stand behind the fiction that the Ponzi scheme had legitimately withdrawn money to pay them would be carrying the fiction to a fantastic conclusion.” . . . Thus, permitting customers to retain such gains comes at the expense of the other customers. Second, recognizing claims to profits from an illegal financial scheme is contrary to public policy because it serves to legitimate the scheme.

Credit Bancorp, 2000 U.S. Dist. LEXIS 17171 at * 136-37 (quoting Cunningham, 265 U.S. at 13) (internal citations omitted).

43. Clearly, those investors who received prior payments from Lighthouse are, in relative terms, in a better position than those who did not. As the District Court in the Capital Consultants case observed, “[a]lthough they have not received the benefit of their bargain in the nature of promised returns, they are in a better situation than others who will not recover their principal.” S.E.C. v. Capital Consultants, Inc., 2002 U.S. Dist. LEXIS 27399 at * 7 (D. Or. Dec. 4, 2002). Hence, it is fair to ignore the concept of “profits” in determining the

amount of the loss of an investor and to treat any payment made by Lighthouse as a return of principal.

C. The Claim Determination and Dispute Resolution Procedures are Fair and Afford Investors with Due Process

44. The Receiver recognizes (and the Plan contemplates) that claimants may have certain due process rights in connection with the claims administration procedure used to determine the amount of allowed claims. Even so, “there are no specific standards or rules” setting forth precisely what rights claimants would have to participate in such a proceeding. See TLC Invs., 147 F. Supp. 2d at 1034. The basic principle is that due process requires notice to claimants and an opportunity to be heard regarding the formulation and execution of an equitable distribution plan. See generally, Elliott, 953 F.2d at 1566. The Plan of the Receiver complies with these fundamental requirements.
45. All claimants are being provided with notice and an opportunity to be heard and object to the proposed Plan. In addition, each claimant will receive notice of this Motion and has an opportunity to object to their claim as listed on the Non Administrative Claim Schedule. Any claimant who disagrees with the determination of the Receiver Team will have an opportunity to dispute this determination and, ultimately, would be entitled to have disputed issues decided by this Court in a summary proceeding.

46. The use of summary proceedings to determine appropriate relief is widely accepted as a permissible way to resolve claim disputes in a receivership and is within the jurisdiction of this Court so long as those affected are afforded adequate notice and an opportunity to be heard. Basic Energy, 273 F.3d at 668; Elliot, 953 F.2d at 1566-1567 (holding that the use of summary proceedings is appropriate so long as the parties are provided with notice and an opportunity to be heard when the facts are in dispute); S.E.C. v. Credit Bancorp, Ltd., 2000 U.S. Dist. LEXIS 22961 at *11-12 (S.D.N.Y. July 25, 2000) (“[i]ncluded within the court’s powers in administering the receivership estate and fashioning appropriate equitable relief is the discretion to use summary proceedings, so long as those affected are afforded adequate notice and an opportunity to be heard”); Hardy, 803 F. 2d at 1040 (approving a claims procedure where all claimants were given reasonable notice and opportunities to be heard).

47. Summary proceedings are not only permissible in this context, but may actually be preferable because the use of such proceedings reduce the time necessary to settle disputes, decrease litigation costs, and prevent further dissipation of the assets of the Receiver Estate. See Elliott, 953 F.2d at 1566; S.E.C. v. Wencke, 783 F. 2d 829, 837 (9th Cir. 1986). In this way, the use of summary proceedings furthers the primary purpose of the Receivership to

promote the orderly and efficient administration of the Receiver Estate for the benefit of claimants. See, e.g., Hardy, 803 F.2d at 1037-40. “Indeed, summary proceedings have the salutary effect . . . of preventing further dissipation of the receivership assets through unnecessary litigation costs and promoting judicial efficiency.” Credit Bancorp, 2000 U.S. Dist. LEXIS 22961 at *11-12.

48. The claims administration process set forth in the Plan provides for the fair, expeditious and cost efficient resolution of disputes, which is important not only to objecting investors and creditors, but to all claimants who may be required to await payment pending the resolution of these disputes. Clearly, the claim determination and dispute resolution provisions of the Plan meet any and all requirements of due process.

D. The Payment Method Provided In The Plan Is The Most Fair And Equitable Distribution Of The Remaining Assets In The Receiver Estate

49. In deciding how the assets of the Receiver Estate should be paid out to aggrieved investors and other creditors, “[n]o specific distribution scheme is mandated so long as the distribution is ‘fair and equitable.’” S.E.C. v. P.B. Ventures, 1991 WL 269982 at *2 (E.D. Pa. 1991). However, what is “fair and equitable” for one investor may be perceived as “unfair and inequitable” to another.

50. Courts administering equity receiverships have recognized that when, as here, there is “a small pie and many disappointed investors,” there is an inherent conflict among investors. Commodity Futures Trading Comm’n v. Hoffberg, 1993 U.S. Dist. LEXIS 15173, at * 4 (N.D. Ill. Oct. 27, 1993); See also, TLC Investments, 147 F. Supp. 2d at 1041-2 (recognizing that in any situation in which the pie is limited, each individual desiring a slice of that pie is, in a sense, adverse to others also wanting a slice of the pie); S.E.C. v. Credit Bancorp Ltd., 194 F.R.D. 457, 462-3 (S.D.N.Y. 2000), *rev’d on other grounds* (“[c]ertain . . . customers have made rather clear their individual desires that ‘Peter’ not be robbed to pay ‘Paul’ because of any fraud perpetrated by [the receivership entity] . . . However . . . it is not altogether clear at this point who are the ‘Peters’ and who are the ‘Pauls’ in this affair”). Hence, an equitable plan will not necessarily be better for each and every investor than any other plan since each investor will fare differently under different plans. Id.

51. Under the “Net Loss” method of distribution, the loss of an investor is calculated to be the difference between the amount invested in the scheme and the amounts received prior to the collapse of the scheme. Investors are then paid the *pro rata* portion of the receivership assets based on this “net loss” calculation. The “Net Loss” formula for calculating an individual investor claimant’s distribution from the Receiver Estate is as follows:

[(Actual Investment Amount by Claimant *minus* Amount Previously Received from Lighthouse) *divided by* aggregate net amount lost by all Claimants] *MULTIPLIED BY* amount available for distribution from Receiver Estate

52. The “Net Loss” method was adopted in Capital Consultants, 397 F. 3d at 737, which referred to this calculation as a “money-in-money-out” formula. A similar formula was also approved in Commodity Futures Trading Comm’n v. Franklin, 652 F. Supp. 163, 170 (W.D. Va. 1986) *rev’d on other grounds*, Anderson v. Stephens, 875 F. 2d 76 (4th Cir. 1989).

E. Tax Issues

53. The Receiver Team has completed the process of: a) determining the extent of outstanding payroll tax obligations of the Receiver Estate; b) preparing quarterly payroll and annual income tax returns for years 2009 through 2012 that were not filed or filed incorrectly; and c) continuing to evaluate whether Lighthouse properly filed payroll tax returns in prior years.
54. The Receiver has filed IRS Form 1120 and Georgia Form 600 for calendar year ended 12/31/2009, and forms 1120S and Georgia Form 600S corporate income tax returns for calendar years 2010 through 2011, and the pre-receivership short period ending in 2012. The Receiver has filed IRS Form 1120SF for the post receivership income tax returns.
55. During the administration of the Receiver Estate, Lighthouse was audited by the IRS for the short year ended July 1, 2012. The IRS also rejected the filing

of the 2009 tax return as an S Corporation because Lighthouse did not make a timely S Corp election. In conjunction with the audit, the Receiver provided the auditor with the requested draft of the 2009 tax return. as a C Corporation. The IRS auditor agreed with the reporting methodology and recommended that the 2009 return be filed as a C Corporation. The Receiver Estate filed the return in February, 2016. The IRS has not asserted additional tax liability as of this time and has been notified that the Receiver is seeking authority to distribute the funds remaining in the Receiver Estate to the investors and creditors and close the case. The auditor accepted the 2012 return under audit, with no adjustments, and indicated that there should be no future issue on the 2009-2011 returns.

56. The Receiver has filed original and amended quarterly payroll tax returns and W-2 Forms, for quarters and years ending in years 2009 through 2012, respectively. All of the payroll tax issues and penalty assessments associated with quarterly periods within these years have been resolved.. To the extent not already paid by the Receiver, there should be no additional taxes and penalties owed.

57. In addition, pursuant to IRS Tax Division Directive 137: Tax Claims Against Embezzlers, Swindlers, Etc. v. Recovery by Investors, Dupes, and Victims, Etc.:

“When both the tax claim and the claim of the investor or victim arise from the same transaction and the investor or victim can trace its property to the fund in issue, the Tax Division will recognize the priority of the claim of the investor or victim.”

(Indent issue here)This ruling is in accord with decisions cited in the Directive favoring innocent investors claims over IRS tax claims against the funds of the fraudster being administered by the Receiver, including *Wextrust* (SEC v. Byers, 1:08cv-07104-DC) (SDNY) and *Young*.

58. Only if necessary, the Receiver would be able to engage the IRS, prior to making any further distributions, “to obtain a determination of tax liability either through administrative procedures or through a judicial proceeding.” *Credit Bancorp, Ltd.*, 297 F.3d at 139.

V. CONCLUSION

WHEREFORE, for the foregoing reasons, the Receiver respectfully requests that this Court enter an Order, substantially in the form as the proposed Order attached hereto as Exhibit “B” and incorporated herein by reference that:

1. Approves this Motion and the proposed Plan;
2. Adopts the provisions of the Plan as governing the claims administration and distribution procedures to be implemented in this case;
3. Authorizes the Receiver to implement the Plan and the conduct detailed therein;

4. Approves the Non Administrative Claim Schedule, as may be modified by the Court, as the allowed non-administrative claims in the Receivership authorized to receive payment from the Receiver Estate in the amounts provided in the Non Administrative Claim Schedule;
5. Authorizes the release of the Reserve and the Receiver to pay from funds available in the Receiver Estate: a) any Tax Liability; b) after the full payment of any Tax Liability, any other Allowed Administrative Claims; and c) after the payment of the Tax Liability and any other Allowed Administrative Claims, a final *pro rata* distribution to allowed claimants with Allowed Non-Administrative Claims; and
6. Grants such other and further relief as is just and proper.

Respectfully submitted, this the 18th day of March, 2016.

/s/

S. Gregory Hays, Receiver for Lighthouse
Financial Partners, LLC, Defendant

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/s/

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