

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

SECURITIES AND EXCHANGE )  
COMMISSION, )

Plaintiff, )

v. )

BILLY WAYNE McCLINTOCK )  
DIANNE ALEXANDER, )

Defendants, )

MSC HOLDINGS USA, LLC, )  
MSC HOLDINGS, INC., MSC GA )  
HOLDINGS, LLC, )

Relief Defendants. )

CIVIL ACTION FILE

NO. 1:12-CV-04028-SCJ

**RECEIVER’S MOTION TO APPROVE PLAN OF DISTRIBUTION  
AND FIRST INTERIM DISTRIBUTION AND BRIEF IN SUPPORT**

Jason L. Nohr, Receiver for MSC Holdings, hereby moves the Court for approval of the following Plan of Distribution (hereinafter “Plan”) governing the determination of claims and distribution of assets of the Receivership Estate arising from the MSC Holdings Ponzi scheme. If approved by this Court, the Receiver intends to make an initial interim distribution, and all future distributions of Receivership Assets based upon the Plan set forth herein (less administrative

expenses, fees, and taxes). Accordingly, the Receiver seeks Court approval of the proposed Plan and asks the Court to establish a deadline for any objections.

The proposed Plan will make an initial interim distribution of \$1,600,000 and provide a total recovery percentage of approximately 34.58% for the Allowed Claims of General Investors (Class 3) by employing the “rising tide” distribution method. The rising tide approach is the most commonly used by receivership courts and seeks to achieve an equal total percentage recovery for all Claimants regardless of whether the recovery comes before or after the commencement of the Receivership.

Attached to this Motion as “Exhibit A” is a spreadsheet detailing each Documented Claim submitted to the Receiver, including the Claim amount sought, the amount of each verified and Allowed Claim, and the amount each Claimant will receive from the initial interim distribution. Claimants are identified in this spreadsheet by Claim Number, not name.

Within ten (10) days of filing this Motion, the Receiver will provide the following information to all Claimants by mail: (i) the Claim Number assigned, (ii) the amount of the Claim sought by that Claimant, (iii) the verified amount of payments to and from that Claimant, (iv) the amount of their Allowed Claim, (v) the Class to which their Claim has been assigned, (vi) any amount each Claimant will

receive from the initial interim distribution, and (vii) the recovery percentage for the initial interim distribution.

Each Claimant will also receive a copy of the Receiver's separately filed Motion [Doc. No. 119] proposing a deadline of January 31, 2017 for all objections to the Receiver's Claim Determination and Plan of Distribution along with the proposed Order, which contains instructions for filing objections to the Plan. The spreadsheet and these Motions will also be available on the Receiver's website ([www.cauthornnohr.com](http://www.cauthornnohr.com)).

If the proposed Plan is approved, the Receiver will make an initial interim distribution as described herein and in Exhibit A. Thereafter, the Receiver anticipates making additional distributions (less administrative expenses, fees, and taxes) pursuant to this Plan and with the distribution amounts determined by ongoing recovery efforts.

**A. The MSC Holdings Scheme**

While under the control of Defendants Alexander and McClintock, MSC Holdings was a Ponzi scheme with all of the well-established hallmarks. Using the Receivership entities (MSC Holdings USA, LLC, MSC Holdings, Inc., and MSC GA Holdings, LLC) McClintock and Alexander raised over \$15 million from over 200 investors in more than 20 states, including Georgia, by telling

investors that their money would be placed with a clandestine overseas entity that McClintock and Alexander referred to only as “the Trust.”

To secure investor funds, McClintock and Alexander promised to provide investors a return of at least 38 percent in so-called “General Performance Agreements”. In actuality, however, the MSC Holdings entities conducted no legitimate business activities of any kind but merely circulated and distributed commingled funds deposited by investors in the form of “interest” and “referral fee” transfers in order to continue and expand the illicit and fraudulent scheme.

As determined by the Receiver’s forensic accountant and fraud examiner, Thomas Buckhoff, Ph.D, CPA/CFF, CFE, MSC Holdings was not a legitimate business operation that generated profits that could be used to pay investors a return on their investments. Instead, existing investors were paid returns with money obtained from newly-recruited investors, was not a legitimate business operation, and was nothing more than a fraudulent Ponzi-type scheme.

The Receivership Defendants used commingled investor funds for their own personal benefit, including to pay their own living expenses and support their exorbitant lifestyle. Defendant Alexander personally withdrew at least \$2,956,246.40 of “investor” funds for her own personal use and benefit from approximately July 2006 through November 2012. Defendant McClintock spent

and withdrew for his own personal use at least \$1,649,812.80 in investor funds from various MSC Holdings bank accounts. These withdrawals consisted solely of investor deposits, as MSC Holdings was never engaged in any actual business of any kind.

**B. The Receiver's Work**

On February 11, 2013, the Court appointed Jason L. Nohr as Receiver for MSC Holdings. On April 15, 2013, the Receiver filed his First Interim Report pursuant to this appointment followed by ten subsequent interim reports describing his recovery and collection efforts against the Receivership Defendants and others. Since his appointment, the Receiver and his staff have been diligently engaged in completing the various tasks he has been assigned to accomplish by the Court, including asset identification and recovery.

The Receivership Court authorized the Receiver to investigate and pursue recovery actions against those who profited from the MSC Holdings Ponzi scheme on September 11, 2013. In April of 2014, the Receiver sent written demands for the return of false profits and referral fees received. As discussed further below, referral fee recipients were told their eligibility to recover any losses through an administrative claims process would require repayment of those referral fees by April 30, 2014. In response to the Receiver's pre-suit demands for repayment of

false profits and referral fees, the Receivership Estate collected \$1,152,581 from those who received false profits and referral fees.

The Receiver filed a Complaint against those investors who received referral fees and/or false profits in this Court on August 28, 2014. *See Nohr v. Jang, et al.*, Civ. Action No. 1:14-CV-02761-SCJ. As a result of litigation, the Receiver has collected \$942,437 to date. Summary judgment motions are currently pending before the Receivership Court against the remaining Defendants. The Receiver also obtained default judgments against twenty-eight (28) Defendants totaling \$1,769,393. The Receiver is in the process of identifying and pursuing assets of these Defendants to collect additional amounts in various states across the country.

In addition, the Receiver began leasing real property formerly belonging to Alexander and has collected \$16,250 in rental payments through October 31, 2016. The Receiver has conducted appraisals on Alexander's other property and began the process of listing that property for ultimate sale on the private market.

**C. Assets Available for Distribution**

As of October 31, 2016, the cash on hand for the Receivership Estate's bank accounts obtained through the Receiver's recovery efforts is \$1,757,203.89. These recovered amounts are available for distribution pursuant to this proposed

distribution Plan (after the payment of costs, fees, taxes, and expenses). Future distributions will consist of amounts collected through ongoing recovery.

At this time, the Receiver proposes an initial interim distribution of \$1,600,000 for the covered and Allowed Claims of defrauded investors, as set forth through this Plan. The difference between the initial interim distribution of \$1,600,000, as proposed, and the cash on hand in the Receivership Estate's bank accounts represents a reserve for accrued and future administrative expenses, fee applications, costs, and tax liabilities. The Receiver will allocate additional recovery and reserve amounts an approved Plan of Distribution.

#### **D. Claims Data, Intake, and Processing**

On May 23, 2016, the Court approved an Administrative Claim Form to be sent to those investors who were defrauded and suffered losses through their participation in the MSC Holdings Ponzi scheme [Doc. No. 112]. Pursuant to that Order, the Receiver sent out 150 claim forms to investors and potential claimants and received 88 Claim Forms in return.

To determine Claim amounts, the Receiver and his staff reviewed and verified the 88 claim forms by comparing the losses claimed with data from independent banking records for MSC Holdings bank accounts. In so doing, the Receiver attempted to resolve discrepancies in favor of the Claimants. For

instance, some Claim Forms presented amounts claimed that were lower than Allowed Claims to which Claimants were entitled. A number of other Claimants left the amount claimed blank or failed to provide supporting documentation, as specifically directed on the Administrative Claims Form. Many other Claimants provided incorrect information about the amounts and nature of their deposits or investments in the MSC Holdings scheme (e.g., cash, check, wire transfer, or money order).

In each of these instances, the Receiver and his staff verified the amounts each Claimant paid to and received from MSC Holdings using independent banking records to determine the correct amount of each Claim, including those in which the amount claimed was left blank. Where further documentation was necessary to resolve discrepancies, the Receiver's staff contacted the Claimant to request it.

In many instances, the discrepancies were due to incorrect calculations of payments made and/or deposits received by Claimants. In other instances, the Claim amounts were based on so-called "interest payments" that were promised by the Defendants as part of the underlying fraud of the Ponzi scheme, but are not recoverable from the Receivership. The Approved Claim amounts are based upon actual withdrawals and deposits reflected in independent banking records.

The total amount of Allowed Claims for General Investors (Class Three) is \$5,756,980. The amount proposed for the initial interim distribution is \$1,600,000. The claims spreadsheet (Exhibit A) details the amount of each Claim submitted, the Claim Number, the Claim Amount Submitted by each Claimant, the Allowed Claim Amount, and the initial interim distribution for each Claimant. If approved, this initial interim distribution will provide a recovery percentage of approximately 34.58% for the Covered and Allowed Claims of General Investors (Class 3).

**E. Summary of the Plan**

The Receiver's proposed Plan seeks an equitable return of losses to investors based upon the nature of their participation in the MSC Holdings Ponzi scheme with an emphasis on providing recovery to those who did not expand and promote the illicit Ponzi scheme to others, as reflected by their receipt of "referral fees." The Plan proposes use of the "rising tide" method in determining distribution amounts. As a result, those Claimants who received little or no payments from the MSC Holdings Ponzi scheme will generally have a higher percentage of recovery from the proposed Plan's initial interim distribution. If approved, the initial interim distribution will provide a 34.58% gross recovery for the Covered and Allowed Claims of General Investors (Class 3).

A description of the various types of participants and payments involved in the MSC Holdings Ponzi scheme is important for purposes of explaining their treatment under the Plan of Distribution. Participants in the MSC Holdings Ponzi scheme may be categorized based upon whether they received (a) “interest” payments from MSC Holdings that were less than their principal “investment” or deposits; (b) “interest” payments from MSC Holdings in excess of their principal “investment” or deposits - also known as “false profits”; and, (c) “referral fees” from MSC Holdings in exchange for promoting and expanding the Ponzi scheme by bringing in additional investor deposits (in the form of commissioned sales agents for MSC Holdings).

In April 2014, the Receiver sent written demands for the return of all “false profits” (payments in excess of their principal investment) and/or “referral fees” (amounts paid to those who brought in new investors to the MSC Holdings Ponzi scheme) from the investors who received them. These letters informed all “referral fee” and/or “false profit” recipients they would be named in a lawsuit by the Receiver unless those amounts were returned by a date certain.

The Receiver’s April 3, 2014 letter also informed investors who received “referral fees” and suffered investment losses that their eligibility to participate in the administrative claims process would be conditioned upon the repayment of all

“referral fees” by April 30, 2014 (the “Referral Fee Repayment Deadline”). The letter stated that, upon repayment of referral fees, “the Receiver will treat your administrative claim for recovery equally as other general investor claims (i.e., as if submitted by an investor who received no ‘referral fees’).” However, “the claim of any investor who fails to repay all ‘referral fees’ by the Referral Fee Repayment Deadline will be treated as subordinate to General Investor Claims.”

Those investors that did not repay false profits and/or referral fees by the Referral Fee Repayment Deadline were, in fact, named as Defendants in the *Nohr v. Jang, et al.*, action. Many of those Defendants ultimately settled their cases with the Receiver and (with one exception) the settling Defendants expressly waived any administrative claim in their written releases.

Under the proposed Plan, only those with investment losses (whose deposits exceed their payouts from MSC Holdings) have Covered Claims under the proposed Plan. Those Covered and Allowed Claims, including those who timely repaid referral fees by the Referral Fee Repayment Deadline, are relegated to Class 3 General Investor Claims.

Under the proposed Plan, the Allowed Claims of those who failed to repay referral fees by the Referral Fee Repayment Deadline are subordinated to Class 4. This treatment is appropriate for a variety of equitable reasons. Due to the limited

funds available for distribution, the Receiver must make priority distinctions reflected in Plan classes. Subordinating the Allowed Claims of those who received referral fees in exchange for increasing the size, scope, and number of investors in this illicit Ponzi scheme and refused to timely repay those fees upon written notice and demand from the Receiver is such a valid line of demarcation. While Claimants may not have originally appreciated the fraudulent nature of the receivership entities, that was no longer the case after the SEC's action, the Court's injunction and appointment of the Receiver, and the Receiver's written demand in April 2014.

In addition, prioritizing Claims based on the Referral Fee Repayment Deadline was an effective means of expanding assets now available for distribution. In response to the Receiver's April 2014 demand, investors repaid \$474,226.50 in referral fees by this deadline, including twenty (20) Claimants whose claims will now be afforded General Investor (Class 3) status. These Claimants clearly understood the consequences of failing to timely repay referral fees based upon the Receiver's April 2014 notice and took the steps necessary to have Class 3 General Investor Claims. By comparison, only three (3) Allowed Claims have been relegated to Class 4 status for their failure to timely repay referral fees. In light of the many Claimants who timely repaid their referral fees,

it would be inequitable to afford equal treatment and priority under the Plan to those who failed to do so and to disregard these consequences described in the Receiver's April 2014 demand.

For all of the foregoing reasons, the Receiver believes that subordinating the Allowed Claims of investors who received but did not timely repay referral fees to Class 4 is equitable, necessary, and appropriate.

**F. The “Rising Tide” Method of Distribution**

The Receiver's proposed Plan employs the “rising tide” method of distributing the assets of the Receivership Estate for the Covered Claims of defrauded investors. The rising tide approach seeks to achieve an equal total percentage recovery for all Claimants regardless of whether the recovery comes before or after the commencement of the Receivership.

“Rising tide appears to be the method most commonly used (and judicially approved) for apportioning receivership assets.” *S.E.C. v. Huber*, 702 F.3d 903, 906 (7<sup>th</sup> Cir. 2012). “The basic goal [of the rising tide allocation] is to equalize recovery for victims regardless of whether the recovery comes before or after the commencement of the [receivership].” *See* Michael L. Martinez, *The Ebb of Rising-Tide Distributions in Ponzi Scheme Bankruptcies*, 35 Am. Bankr. Inst. J. 16 (June 2016). Accordingly, a “rising tide” allocation “result[s] in a pro rata

distribution of available assets to victims.” *Id.*; see also *S.E.C. v. Par.*, No. 2:07-CV-00919, 2010 WL 5394736, at \*3 (D.S.C. Feb. 10, 2010) (discussing “prorata payments based on the Rising Tide calculation”).

The equity achieved by using the rising tide method for distributing receivership assets has also been approved and endorsed by courts in this district. See *S.E.C. v. Detroit Memorial Partners*, 1:13-cv-1817-WSD, 2016 WL 6595942, \*3 (N. D. Ga. 2016). The rising tide approach was described in *Detroit Memorial Partner*, as follows:

[T]he Receiver will deduct the amount of a claimant’s pre-receivership disbursements after calculating the claimant’s pro rata share of any distribution. If the result is negative - meaning that the claimant has already received pre-receivership disbursements in excess of his or her calculated pro rata share of a distribution - that claimant will not participate in that distribution, although he or she may participate in later distributions. **This method recognizes that claimants have already recovered differing percentages of their investment, and seeks to achieve an equal total percentage recovery for all claimants.**

*Id.* (emphasis added) (quoting *Commodity Futures Trading Comm’n v. Equity Fin. Grp., Inc.*, 2005 WL 2143975, at \*24 (D.N.J. Sept. 2, 2005)).

The Receiver submits that the rising tide method is the most equitable method of calculating distribution amounts in this case. It strikes a reasonable balance between those claimants who invested early and have, therefore, been

without their money longer - although they are more likely to have received a pre-receivership withdrawal - and those investors who invested near the end of the scheme and may have thus far received no withdrawals. It is for these reasons that the rising tide method is the “most commonly used (and judicially approved) for apportioning receivership assets.” *Huber*, 702 F.3d at 906. Accordingly, the Receiver moves for approval of the Plan using this distribution methodology.

The rising tide method preserves assets for those claimants who have received nothing to date while others have already recovered a substantial percentage. Employing this method, the Receiver will deduct the amount of a claimant's pre-receivership withdrawals after calculating the investor’s pro rata share of any distribution. If the result is negative - meaning that the claimant has already received pre-receivership withdrawals equal to or in excess of his or her calculated pro rata share of a distribution - that claimant will not participate in the distribution.

The formula for the calculation of a claimant’s pro rata distribution amount under the rising tide method is, as follows:

$$\begin{aligned} & \text{amount invested x pro rata multiplier} \\ & - \text{pre-receivership withdrawals} \\ & = \text{distribution amount} \end{aligned}$$

An example illustrates application of this formula with only two investors, each of whom invested \$100,000. Investor A has received no withdrawals, but Investor B has received pre-receivership withdrawals totaling \$20,000. Assuming a distribution fund of \$40,000, the rising tide method would distribute those dollars among the two investors using the following steps:

1. Calculate a pro rata multiplier by dividing the distribution fund amount by the total allowed claims of the investors to be involved in this distribution. In this example the pro rata multiplier is determined to be 20% (\$40,000 divided by \$200,000).

2. Multiply each investor's amount invested by the pro rata multiplier. This action results in an initial gross distribution allocation to each investor of \$20,000 (\$100,000 x 20%). Note that the gross distribution amount is the same for each investor in this example, because Investor A and Investor B had each invested equal, \$100,000 amounts.

3. Determine each investor's net distribution amount by subtracting their respective pre-receivership withdrawals from their gross distribution amounts. Investor A has not yet recovered any of his investment, so no deductions will be made to his \$20,000 gross distribution allocation. Investor A's net distribution amount is therefore \$20,000. Investor B, on the other hand, has already received

\$20,000 in pre- receivership withdrawals, so this amount is subtracted from Investor B's \$20,000 gross distribution allocation, resulting in Investor B's net distribution amount of zero.

Reallocate any remaining distribution fund amount. Because the above steps have distributed only \$20,000 of the \$40,000 distribution fund total among the two investors, a second-round multiplier is necessary to determine the allocation of the \$20,000 remainder of the distribution fund. Calculating it in the same manner as in the first round, the pro rata multiplier for this second round is determined to be 10% (\$20,000 divided by \$200,000). This second-round multiplier is then applied to each investor's invested amount to allocate a second-round gross distribution amount of \$10,000 to each (\$100,000 x 10%). Because neither investor has any pre-receivership withdrawal balance that has not already been offset by a (first round) gross distribution amount, each investor is allocated a \$10,000 net distribution of this \$20,000 distribution fund remainder in the second round of calculations.

Table A below summarizes the results of this rising tide distribution using this example:

**Table A**  
**Total Recovery Amount (including pre-receivership withdrawals)**

	<b>Investor A</b>	<b>Investor B</b>
Pre-receivership withdrawals	\$0	\$20,000
First round distribution	\$20,000	\$0
Second round distribution	\$10,000	\$10,000
Total Recovery Amount	\$30,000	\$30,000
Total Recovery Percentage	30%	30%

In the foregoing example, Investor A's total recovery amount (the sum of pre-receivership withdrawals and distributions) is \$30,000 (\$0 + \$20,000 + \$10,000), and Investor B's total recovery amount is also \$30,000 (\$20,000 + \$0 + \$10,000). Even if the invested amounts had been different, one can nevertheless confirm the equitability of this method by dividing each investor's respective recovery amount by his amount invested. In this example, each investor's recovery percentage is the same at 30% (\$30,000 divided by \$100,000).

**G. The Receiver's Proposed Distribution Plan**

The Receiver's proposed Plan incorporates the foregoing principles and conclusions and consists of the following:

## **PLAN OF DISTRIBUTION**

### **ARTICLE I - DEFINITIONS**

All capitalized terms shall have the meanings stated below:

**“ALLOWED CLAIM”** means a Claim amount that is deemed permitted by the Receiver based upon the amounts a Claimant paid and received as Verified by independent banking records of MSC Holdings bank accounts following the timely submission of a Claim Form or a Claim that has been ruled as Allowed by separate Order of the Court.

**“BAR DATE FOR CLAIMS”** or **“CLAIMS BAR DATE”** means July 22, 2016, pursuant to the Receivership Court’s May 23, 2016 Order [Doc. No. 112].

**“CLAIM”** refers to any written demand that is received by the Receiver from any Claimant that demands payment from the Receivership Estate. Claims that do not conform to the Proof of Claim Form instructions may be considered by the Receiver in his sole discretion, or as otherwise permitted by this Plan of Distribution on a case by case basis.

**“CLAIM FORM”** means the Administrative Claim Form used to assert a Claim as authorized and approved by the Receivership Court’s May 23, 2016 Order [Doc. No. 112].

**“CLAIM FORM RULING”** refers to the Court's ruling granting the Receiver's Motion to Approve Claim Form on May 23, 2016 [Doc. No. 112] and setting July 22, 2016 as the Bar Date for Claims.

**“CLAIM NUMBER”** refers to the number assigned to a Claim by the Receiver. The Claim Number is made known to the Claimant by written notice from the Receiver within ten (10) days of filing this motion.

**“CLAIMANT”** refers to any Person who asserts a Claim in this case, including any entity controlled by that Person.

**“CONTESTED CLAIM”** is a Claim to which an Objection is properly and timely presented by the Claimant to this Court and the Receiver.

**“COURT”** or **“RECEIVERSHIP COURT”** refers to the United States District Court for the Northern District of Georgia before which this action is pending.

**“COVERED CLAIM”** is defined as an investment loss occasioned by a Claimant's participation in the fraudulent Ponzi scheme conducted through MSC Holdings (or a related entity) during the period from 2006 through 2012, involving money actually deposited with an MSC Holdings entity through an MSC Holdings bank account over which the Receivership Defendants had control and for which a Claim Form was timely submitted.

**“DEFECTIVE CLAIM”** means a Claim not submitted in accordance with the Proof of Claim Form Instructions, but does not include Late Claims. A Claim lacking a complete return address shall be deemed to be a Defective Claim and may be wholly disregarded by the Receiver.

**“DENIED CLAIM”** or **“DISALLOWED CLAIM”** means (1) any Claim or portion of a Claim that the Receiver has rejected in a writing filed with the Court or sent to the Claimant at the address stated on the Claim Form; or (2) any Claim or portion of a Claim which the Receiver deems to be a Defective Claim under the terms of this Plan.

**“DISTRIBUTION”** refers to a payment by the Receiver on an Allowed Claim in accordance with the procedures outlined in this Plan of Distribution.

**“DOCUMENTED CLAIM”** is a Claim submitted with the supporting documents specified in the Proof of Claim Form Instructions.

**“GENERAL INVESTOR”** is a Claimant who invested in one or more of the MSC Holdings General Performance Agreements, suffered investment losses, had no other financial relationship with the Receivership Defendants, and either received no referral fees or repaid them by the Referral Fee Repayment Deadline.

**“GENERAL PERFORMANCE AGREEMENT”** or **“OFFERING”** refers to any one of the securities offerings that are the subject of the United States

Securities and Exchange Commission's action against the Receivership Defendants involving MSC Holdings or related entities.

**“LATE CLAIM” or “UNTIMELY CLAIM”** means a Claim submitted or posted after the Claims Bar Date.

**“MSC HOLDINGS”** (and/or MSC HOLDINGS USA, LLC, MSC HOLDINGS, INC., and MSC GA HOLDINGS, LLC) refers to the entities through which the Defendants carried out an illicit Ponzi-style scheme up to the date that the SEC filed the instant action and obtained an injunction and, subsequent to February 11, 2013, the entities that the Receiver has operated and controlled in accordance with this Court’s Order of Appointment.

**“NET AMOUNT” or “NET CLAIM” or “NET”** refers to a Claimant's Verified Allowed Claim minus any Withdrawals.

**“OBJECTION”** refers to a written document filed by a Claimant with the Clerk of the Court, disputing the Receiver's determination of the Claimant's Allowed Claim and/or objecting to this Plan of Distribution.

**“OBJECTOR”** refers to a Person who files an Objection and seeks a hearing with respect to that Objection.

**“ORDER”** refers to an Order of this Court.

**“ORDER APPOINTING RECEIVER”** refers to the Order Appointing the Receiver dated February 11, 2013 [Doc No. 19].

**“PERSON”** means any natural person, corporation, limited liability company, partnership, association, trustee, agent, or other entity of any kind.

**“PLAN”** or **“PLAN OF DISTRIBUTION”** or **“DISTRIBUTION PLAN”** refers to this Plan of Distribution.

**“PROOF OF CLAIM”** refers to the Proof of Claim Form approved by this Court and provided by the Receiver to Claimants to document Claims against the Defendants.

**“RECEIVER”** refers to Jason L. Nohr, as Receiver pursuant to the Court’s Order Appointing Receiver dated February 11, 2013 [Doc. No. 19] and those employed to assist in that mandate.

**“RECEIVERSHIP ASSETS”** refers to the assets defined as Receivership Assets in the Court’s Order Appointing Receiver.

**“RECEIVERSHIP ESTATE”** refers to the Receivership Assets that have been or may be collected by the Receiver.

**“RECOVERY AMOUNT”** is the sum of a Claimant’s Withdrawals and Distributions.

**“REFERRAL FEE REPAYMENT DEADLINE”** is the date those who were paid referral fees were required to repay them, pursuant to the Receiver’s written notice and demand.

**“SEC”** refers to the United States Securities and Exchange Commission.

**“TIMELY CLAIM”** means a Claim submitted in accordance with the Proof of Claim instructions on or before the Claims Bar Date.

**“VERIFIED”** is the amount of a Claimant's Claim that the Receiver was able to verify via the independent banking records available.

**“WITHDRAWAL”** refers to any Commission, payment of supposed profit, interest, or return of principal, and/or other payments received from the Defendants prior to the Order Appointing Receiver.

## **ARTICLE II - CLAIMS REVIEW AND DETERMINATION**

**Section 2.01: Discretion of Receiver.** The Receiver is authorized, in the exercise of his sole discretion after consideration of all available evidence, to determine what information, if any, to require before allowing or disallowing a claim and to determine whether a Claim should be designated as an Allowed Claim.

**Section 2.02: Filing Requirement.** On or before the Claims Bar Date, except as otherwise ordered by the Court, each Claimant should have filed - via

fax, governmental mail, or by overnight delivery to the Receiver's offices - a properly completed Proof of Claim Form reflecting the amount of the Claim and including all supporting documentation.

A Claimant who did not file a properly completed and documented Proof of Claim on the prescribed Proof of Claim Form before the Claims Bar Date is forever barred from asserting a Claim against the Receivership Estate or the Receivership Assets, unless for good cause shown and in the Receiver's sole discretion, he waives that bar in writing. Any purported filing of a Proof of Claim that was not properly documented or that did not reasonably comply with the Proof of Claim Form instructions, may be rejected by the Receiver and treated as if no Proof of Claim was timely filed by the Claimant. The burden is on the Claimant to ensure that his or her Proof of Claim has been properly received by the Receiver and that all requested information has been provided.

**Section 2.03: Claim Determinations Generally.** The Receiver has reviewed each Proof of Claim to determine the apparent validity and allowed amount of each Claim, to classify such Claim, to apply the distribution methodology to each Claim, to review independent banking information to verify the amount of each Claim, and to make any additional recommendations to the Court on issues relevant to the Claim. Each Claimant has the burden of proof to

establish the validity, amount, and classification of his or her Claim. The Receiver has, in his sole discretion, determined what information, if any, to require before allowing or disallowing a Claim, or determining how a Claim should be classified, and in determining the amounts paid and received for purposes of applying the distribution method to each Claim. Moreover, the Receiver has the right to request, and the Claimant is obligated to provide to the Receiver, any additional information and/or documentation deemed relevant by the Receiver.

The Receiver may divide a Claim and classify it into more than one Class. The Receiver may also divide a Claim, treating a part of the Claim as an Allowed Claim, and treating the balance as either a Disallowed Claim or reserving a determination with respect to the balance of the Claim. In determining the amount of an Allowed Claim, the Receiver will consolidate the multiple claims of a Claimant, and has the right to set-off against a Claim any claims which the Receiver or the SEC may have against a Claimant, as well as any Withdrawals. Should these set-offs result in a negative Net Amount, the Receiver shall be entitled to recover from the Claimant the amount by which the Net Amount is negative. Failure to provide complete and truthful information may result in the Claim being deemed a Defective Claim.

**Section 2.04: Further Determination.** The Receiver has computed for each Claim the amount of the Allowed Claim, including payments made and received by each Claimant as verified by independent banking records.

**Section 2.05: Late or Defective Claims.** The Receiver has no obligation to consider any Late or Defective Claims until all Timely Claims have been (1) approved by the Receiver, (2) approved by the Court, or (3) denied both by the Receiver and the Court. The Receiver shall, however, be entitled, in his sole discretion, to consider and approve Late or Defective Claims in due course to the extent that processing such Claims does not unreasonably delay the handling of Timely Claims, and to the extent that, in the Receiver's opinion, good cause existed for the tardiness or defectiveness of the Late or Defective Claim.

**Section 2.06: Notice of Claim And Claim Determination and Deadline for Objections.** The Receiver has prepared a schedule showing the Receiver's Claim Determination for each Claimant, including Late or Defective Claims. The Schedule of Claims is set forth in Exhibit A (Claimants are identified by number, not name).

Within ten (10) days of filing this Motion, the Receiver will provide the following information to all Claimants by mail: (i) the Claim Number assigned to them, (ii) the amount of the Claim sought by the Claimant, (iii) the verified amount of

payments to and from each Claimant, (iv) the amount of their Allowed Claim, (v) the Class to which their Claim has been assigned, (vi) any amount the Claimant will receive from the initial interim distribution, and (vii) the recovery percentage for the initial interim distribution. In other words, each Claimant will receive their specific information set forth in Exhibit A spreadsheet for all Claimants.

This direct mailing will also include the Receiver's separately filed Motion proposing a deadline of January 31, 2017 for all objections to the Receiver's Claim Determination and Plan of Distribution along with the proposed Order, which contains instructions for filing objections to the Plan. Claimants will also be informed that the spreadsheet and these Motions will also be available on the Receiver's website ([www.cauthornnohr.com](http://www.cauthornnohr.com)).

### **ARTICLE III - PAYMENT OF CLAIMS**

**Section 3.01: Priority of Distributions.** The Receiver is hereby expressly authorized to pay Claims of Classes 1 and 2 in full from the Receivership Estate, to pay Allowed Claims of Class 3-9 (in the form of a check made payable to the Claimant, and sent by reasonable means to the Claimant using the information listed on the Claim Form), using the rising tide method, in the following order of priority:

**Class 1: Administrative Claims.** Class 1 Claims are Claims for expenses of administering the Receivership, including fees and expenses paid in connection with marshaling and preserving Receivership Assets, fees and expenses paid in accordance with the Receivership Orders or other Orders, and fees and expenses of the Receiver and his experts, consultants, accountants, and attorneys. The Receiver will not know the full amount of Class 1 Claims until the conclusion of this case. The Receiver will, in the exercise of his discretion, retain a sum as a reserve to fund the cost of pursuing and securing additional Receivership Assets and to meet all future Administrative Claims. The Receiver may reserve additional amounts from funds later obtained for the Receivership, but will endeavor to reserve no more for Administrative Claims than he reasonably believes to be necessary to cover such Claims.

All current and future Class 1 Claims shall be paid in full from funds held in the Receivership bank accounts. Any amount left in reserve at the conclusion of this case shall be distributed to Claimants pursuant to the terms of this Plan.

**Class 2: Tax Claims.** Class 2 Claims are Claims for expenses related to liabilities to taxing authorities. All current and future Class 2 Claims will be paid in full from funds held in the Receivership bank accounts.

**Class 3: General Investor Claims.** Class 3 Claims are Covered and Allowed Claims of General Investors, including those who timely repaid referral fees by the Referral Fee Repayment Deadline. After satisfaction of all Class 2 Allowed Claims, Class 3 Allowed Claims will be paid until either: (a) the Distribution amount available is exhausted, or (b) the minimum recovery percentage among all Class 3 Claimants reaches 100 percent, whichever comes first.

**Class 4: Referral Fee Recipient Claims.** Class 4 Claims are Claims of investors with Covered and Allowed Claims who failed to timely repay referral fees by the Referral Fee Repayment Deadline. When the minimum recovery percentage among all Class 3 Claimants reaches 100%, Class 4 Allowed Claims will be paid until either: (a) the Distribution amount available is exhausted or (b) the minimum recovery percentage among all Class 4 Claimants reaches 100%, whichever comes first. If any Distribution in which Class 4 Claimants are to be paid is insufficient to bring the minimum recovery percentage among all Class 4 Claimants up to 100%, Class 4 Allowed Claims will continue to be paid in subsequent Distributions until the minimum recovery percentage among all Class 4 Claimants reaches 100%.

**Class 5: Verified Late or Defective Claims of General Investors.** Class 5 Claims are the same as Class 3 Claims, except that the Claim Form was posted after the Bar Date, was unsupported, or was otherwise defective. When the minimum recovery percentage among all Class 4 Claimants has reached 100%, Distributions will be paid to Class 5 Allowed Claims until either: (a) the Distribution amount is exhausted or (b) the minimum recovery percentage among all Class 5 Claimants reaches 100%, whichever comes first. If any Distribution in which Class 5 Claimants are to be paid is insufficient to bring the minimum recovery percentage among all Class 5 Claimants up to 100%, Class 5 Allowed Claims will continue to be paid in subsequent Distributions until the minimum recovery percentage among all Class 5 Claimants reaches 100%.

**Class 6: Verified Late or Defective Claims of Referral Fee**

**Recipients.** Class 6 Claims are the same as Class 4 Claims, except that the Claim Form was posted after the Bar Date, was unsupported, or was otherwise defective. When the minimum recovery percentage among all Class 5 Claimants has reached 100%, Distributions will be paid to Class 6 Allowed Claims until either: (a) the Distribution amount is exhausted or (b) the minimum recovery percentage among all Class 6 Claimants reaches 100%, whichever comes first. If any Distribution in which Class 6 Claimants are to be paid is

insufficient to bring the minimum recovery percentage among all Class 6 Claimants up to 100%, Class 6 Allowed Claims will continue to be paid in subsequent Distributions until the minimum recovery percentage among all Class 6 Claimants reaches 100%.

**Section 3.02: Multiple-Entity Claims.** In cases where Claimants may have invested through multiple entities or joint accounts, the Receiver has consolidated or divided Claims to aid in the proper allocation of Distribution amounts among Claimants. Where the Receiver has divided a Claim, he may treat a portion of the Claim as an Allowed Claim, and treat the balance as either a Disallowed Claim or reserve a determination with respect to the balance of the Claim.

**Section 3.03: Distributions to be Made From Receivership Assets.** In making a Distribution of Receivership Assets to Classes 1 and 2 of Claimants set forth above, the Receiver may utilize any Receivership Assets. The Receiver may utilize any other assets transferred to the Receiver by agreement of the Person then in possession, custody, or control of assets so transferred. In the event that funds are transferred by agreement, such funds shall be deemed Receivership Assets. Likewise, whenever assets are transferred to the Receiver pursuant to an Order of any court of any jurisdiction, foreign or domestic, such

assets shall be deemed Receivership Assets. Whenever the Receiver is in doubt as to whether property may be Receivership Assets, he may apply to the Court for determination of same.

**Section 3.04: Payment of Distributions.** The Receiver is hereby expressly authorized to pay Allowed Claims from Receivership Assets (in the form of a check made payable to the Claimant and sent by reasonable means to the Claimant using the information listed on the Claim Form) as set forth in this Plan of Distribution.

**Section 3.05: Distribution.** The Receiver shall make the first interim Distribution under the Plan of Distribution as soon as practicable, but no later than thirty (30) days after an Order is entered by the Receivership Court approving the Plan of Distribution. Subsequent distributions shall be made pursuant to the Plan (as approved by the Court) as described in future notices of distribution by the Receiver. At such time as all Receivership Assets have been fully administered, all Claims have been resolved by Final Order of the Court, and after approval of a final report and accounting, the Receiver shall make a final Distribution.

**Section 3.07: Rounding.** Notwithstanding any other provision to the contrary, no payments of fractions of dollars will be made. Whenever any

payment of a fraction of a dollar would otherwise be called for, the actual payment will reflect a rounding of such fraction to the nearest whole dollar (up or down).

**Section 3.08: Reserve Permitted But Not Required.** The Receiver will make reasonable efforts to notify those who are reasonably expected to be Claimants pursuant to this Plan of Distribution. The Receivership Court expressly authorizes the Receiver to pay Claims according to the terms of this Plan without regard for the possibility that Claims may, with good cause, be presented late. The Court will consider any such Late Claims on a case-by-case basis, but will not expect the Receiver to have accrued Receivership Assets to guard against this possibility. The Receiver may reserve funds for such Claimants. To the extent that the Receiver does reserve funds, the Receiver shall so notify the Court and the SEC, and shall periodically report to the Court and the SEC as to the Receiver's plan for ultimate disposition of the reserved funds. In the event that any additional Claimants do come forward, the procedures herein regarding the Claims process shall apply as to those Claimants.

**Section 3.09: Payment Effects Release.** If a Claim is paid by the Receiver pursuant to this Plan, then any and all claims, demands, rights, and causes of action of any nature whatsoever, whether arising at law or in equity, known or unknown, asserted or unasserted, for all damages (whether actual or

punitive, known or unknown, latent or patent, foreseen or unforeseen, direct or indirect or consequential, matured or unmatured, and accrued or not accrued), debts, putative interest, and liabilities of whatever nature that are or could be asserted by the Claimant or any other person against the Receiver or his agents, the SEC, or any defendant, or any Receivership Assets are hereby forever discharged, released, extinguished, and satisfied. By effecting notice of Claim determinations according to the terms of this Plan, the Receiver shall be deemed to have provided reasonable and sufficient notice to all Persons. Neither the Receiver nor any Person accepting Receivership Assets from the Receiver shall have any liability to any Person (including the Defendants) other than the Receiver to return any Receivership Assets used for payment or satisfaction of an Allowed Claim.

Neither the Receiver nor any Person acting at his direction shall have any liability in any respect for having paid or otherwise satisfied an Allowed Claim, nor for any other action taken in good faith under or relating to this Plan or arising out of the processing of any Claim, including, but not limited to, any act or omission in connection with or arising out of the administration of Claims or this Plan or the Receivership Estate to be distributed hereby. In the event of any Claim being made against the Receiver for such matters - whether or not willful

misconduct is alleged - the Receiver shall be entitled to a defense by counsel of his choice, payable as any other professional expenses herein, and the provisions of the Order Appointing the Receiver shall otherwise apply.

**Section 3.10: Unclaimed Distributions.** Except as otherwise provided herein, any Person who fails to claim any Distribution within ninety (90) days from any payment date shall forfeit all rights thereto.

**Section 3.11: Disposition of Remaining Receivership Assets.** Should the Receiver ultimately determine that there exists a surplus of Receivership Assets, including any reserved funds, in excess of all Claims which can be reasonably identified and Allowed, the Receiver shall so notify the Court and the SEC, and the SEC and the Receiver shall seek the Court's approval for final disposition of the remaining Receivership Assets.

#### **ARTICLE IV - PARALLEL AND RELATED PROCEEDINGS**

**Section 4.01: Claims of Other Creditors and Actions to Resolve Other Claims or Other Disputes Involving Receivership Property.** To the extent that claims of third-parties are raised with respect to Receivership Assets in any other action or proceeding, “no action for equitable relief instituted by the Commission pursuant to the securities laws shall be consolidated or coordinated with other actions not brought by the Commission, even though such other actions may

involve common questions of fact, unless such consolidation is consented to by the Commission.” 15 U.S.C. §78u(g). Furthermore, there shall be no right of intervention by any Claimant in this action unless expressly consented and agreed to by the SEC.

**Section 4.02: Interpleader - Receiver as Stakeholder.** The Receiver is hereby expressly authorized to receive and to hold separate and apart from other Receivership Assets, any assets tendered voluntarily to the Receiver by any Person in the same fashion as would the Clerk of the Court in a case where assets are interpled or otherwise deposited into the registry of the Court, and to refrain from commingling such assets with Receivership Assets otherwise available for distribution under this Plan. The Receiver is authorized to settle out of such assets any claims thereto. The Receiver is further authorized to apply to this Court for a determination as to the ownership of any such assets, and to join any parties necessary to effect such a determination.

## **ARTICLE V – RETENTION OF JURISDICTION**

**Section 5.01: Exclusive Jurisdiction.** This Court has had jurisdiction over this matter since the February 11, 2013 appointment of the Receiver and shall continue to retain exclusive jurisdiction over the Receiver, the Receivership Estate, and all Receivership Assets. Accordingly, in determining

whether a Claim or any portion thereof is an Allowed Claim, the Receiver may, but shall not be required to, consider (nor shall the Receiver be subject to) any judicial determination rendered by any court, tribunal, agency or authority whatsoever (other than this Court) as to any Receivership Asset from and after February 11, 2013, unless this Court directs otherwise. No action taken by or against the Receiver with regard to any pending matter in any other court shall be deemed to have terminated, limited, reduced, waived, or relinquished this Court's exclusive jurisdiction.

**Section 5.02: Continuing Jurisdiction.** This Plan and the Order approving this Plan are not, and are not intended to be, and therefore shall not be deemed to be, either a final adjudication of this matter or a termination, limitation, reduction waiver or relinquishment of this Court's exclusive jurisdiction with regard to all Receivership Assets and all matters in controversy in this case.

This Court shall continue to have and retain exclusive jurisdiction over all matters existing or arising in this Receivership or related in any way thereto, including, but not limited to, all matters relating to approving or denying Claims, making Distributions on Approved Claims, and locating, recovering, settling claims, and liquidating Receivership Assets. Furthermore, this Court, upon the

request of the Receiver or the SEC, or upon its own motion, may make further modifications to this Plan or the Order approving this Plan, including, but not limited to, modifications which may affect the Receiver's determination with respect to, or payment of, any particular Claim, or the amount of any particular Distribution.

### **Conclusion**

The Receiver asks the Court to approve the proposed and foregoing Plan of Distribution, set a date to consider and hear any Objections to the Plan, and set a deadline for filing of objections to this plan. The Receiver has attached a proposed Order for the Court's convenience.

This 9th day of December, 2016.

CAUTHORN NOHR & OWEN

/s Jason L. Nohr

Georgia Bar No.: 545435

As Receiver for MSC Holdings

212 Church Street  
Marietta, GA 30060  
(770) 528-0150  
[jln@cauthornohr.com](mailto:jln@cauthornohr.com)

**CERTIFICATE OF SERVICE**

This certifies that I have this day served a copy of the foregoing *Receiver's Motion to Approve Plan of Distribution and First Interim Distribution and Brief in Support* via the CM/ECF electronic filing system which will send notice of such filing to counsel of record.

This 9th day of December, 2016.

/s Jason L. Nohr  
\_\_\_\_\_  
Georgia Bar No.: 545435

212 Church Street  
Marietta, GA 30060  
(770) 528-0150  
(770) 528-0160 - facsimile  
[jln@cauthornohr.com](mailto:jln@cauthornohr.com)