UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v. Case No. 8:09-cv-87-T-26TBM

ARTHUR NADEL,
SCOOP CAPITAL, LLC,
SCOOP MANAGEMENT, INC.

Defendants,

SCOOP REAL ESTATE, L.P.
VALHALLA INVESTMENT PARTNERS, L.P.,
VALHALLA MANAGEMENT, INC.
VICTORY IRA FUND, LTD,
VICTORY FUND, LTD,
VIKING IRA FUND, LLC,
VIKING FUND, LLC, AND
VIKING MANAGEMENT,

Relief Defendants.
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RECEIVER'S MOTION TO APPROVE SETTLEMENT

Burton W. Wiand, as Receiver (the "**Receiver**"), moves the Court for an order approving settlement of claims he intended to assert against Shoreline Trading Group, LLC ("**Shoreline**") on the basis of the Settlement Agreement attached as **Exhibit A** (the "**Settlement Agreement**"), which, among other things, contemplates entry of a bar order as described below. Contemporaneously with this motion, the Receiver is also filing (1) the Declaration Of Burton W. Wiand In Support Of Receiver's Motion To Approve Settlement

(the "**Receiver's Declaration**"), which sets forth the facts and conclusions on which this motion relies, and (2) a Motion To Approve Proposed Notice Of Settlement (the "**Notice Motion**"). The Receiver respectfully requests that the Court first address the Notice Motion and, if that motion is granted, that it continue a decision on this motion until after the deadline set forth in the Notice Motion for objections or other responses to the relief requested in this motion.

ARGUMENT

The Securities and Exchange Commission (the "**Commission**" or "**SEC**") instituted this action (the "**SEC Receivership Action**") to "halt [an] ongoing fraud, maintain the status quo, and preserve investor assets . . . ." (Dkt. 1, Compl. ¶ 7.) Mr. Wiand was appointed by this Court as the Receiver for Defendants other than Arthur Nadel ("**Nadel**") and for Relief Defendants. (*See* Order Appointing Receiver (Dkt. 8).) Additionally, the Receivership was expanded to include Venice Jet Center, LLC and Tradewind, LLC (Dkt. 17); Laurel Mountain Preserve, LLC, Laurel Preserve, LLC, the Marguerite J. Nadel Revocable Trust UAD 8/2/07, and the Laurel Mountain Preserve Homeowners Association, Inc. (Dkt. 44); The Guy-Nadel Foundation, Inc. (Dkt. 68); Lime Avenue Enterprises, LLC, and A Victorian Garden Florist, LLC (Dkt. 79); Viking Oil & Gas, LLC (Dkt. 153); Home Front Homes, LLC (Dkt. 172); and Traders Investment Club (Dkt. 454). All of the entities in receivership are collectively referred to as the "**Receivership Entities,**" and Receivership Entities Valhalla Investment Partners, L.P.; Viking Fund, LLC; Viking IRA Fund, LLC; Victory Fund, Ltd.; Victory IRA Fund, Ltd.; and Scoop Real Estate, L.P. are collectively referred to as the "**Hedge Funds**".

Pursuant to the Order Appointing Receiver (Dkt. 8), in relevant part the Receiver has the duty and authority to:

> 2. Investigate the manner in which the affairs of the Receivership Entities were conducted and institute such actions and legal proceedings, for the benefit and on behalf of the Receivership Entities and their investors and other creditors as the Receiver deems necessary . . . against any transfers of money or other proceeds directly or indirectly traceable from investors in the Receivership Entities; provided such actions may include, but not be limited to, seeking imposition of constructive trusts, disgorgement of profits, recovery and/or avoidance of fraudulent transfers under Florida Statute § 726.101, et. seq. or otherwise, rescission and restitution, the collection of debts, and such orders from this Court as may be necessary to enforce this Order.

Further, the Order Appointing Receiver (at paragraph 6) authorizes the Receiver to "[d]efend, compromise or settle legal actions . . . in which the Receivership Entities or the Receiver is a party . . . with authorization of this Court . . . ."

The Receiver's Investigation Of Nadel And Shoreline

The Receiver's investigation has revealed that Nadel used certain financial institutions in connection with his Ponzi scheme. One such institution, Shoreline, was an introducing Broker/Dealer that dealt directly with Nadel's and certain Receivership Entities' securities transactions. Shoreline's brokerage transactions were cleared by Goldman Sachs Execution & Clearing, LLC ("**GSEC**"). The Receiver gathered information relating to these transactions and contacted Shoreline to discuss its role in providing such services to Nadel and Receivership Entities. Shoreline cooperated with the Receiver and, in fact, produced a large volume of documents, was responsive to all requests for documents made by the Receiver over time, and promptly accommodated the Receiver's requests to speak with the Shoreline registered representative who had primary responsibility for the Nadel relationship. Further, in October 2010, Shoreline entered into a tolling agreement, at the Receiver's

request, so the parties could fully investigate matters and work to resolve them in an amicable fashion without concern for applicable statutes of limitation.

The Receiver's investigation revealed information indicating to the Receiver that Shoreline may have failed to appropriately respond to certain "red flags" that could have revealed Nadel's scheme and that it may have failed to raise certain questions with respect to accounts controlled by Nadel. Based upon those findings, the Receiver concluded that it was appropriate to seek compensation for the Receivership Estate from Shoreline. While the Receiver determined that some amount of compensation was due from Shoreline to the Receivership, an important consideration for the Receiver was, as discussed more fully below, Shoreline's finances and whether it could be "judgment proof."

Further, the Receiver was presented with various possibilities for calculating the actual value of his claims. For example, in negotiating the Settlement Agreement the Receiver considered the following variations for determining damages:

- **Apportioned Loss Amount:** Hundreds of investors lost approximately $168 million in connection with Nadel's scheme. The Receiver could have attempted to hold Shoreline responsible for a portion of all such losses (according to Shoreline's comparative liability and minus the amount recovered by the Receiver through "clawback" lawsuits and related litigation) on the theory that Shoreline should have detected and prevented (or at least terminated) the Ponzi scheme.

- **Unauthorized External Transfers:** The Receiver's investigation determined that Nadel used "shadow" accounts at Wachovia Bank, N.A. ("**Wachovia**") to perpetrate and perpetuate his scheme. Specifically, in relevant part, Nadel opened accounts in a "doing business as" capacity to mimic the names of Hedge Funds Valhalla Investment Partners, Viking Fund, and Viking IRA Fund (the shadow accounts included one in the name of "Arthur Nadel dba Valhalla Investments" and another one in the name of "Arthur Nadel dba Viking Fund"). Nadel was not an officer, director, or principal of these three Hedge Funds and otherwise did not have authority to open accounts on their behalf. Nevertheless, Shoreline followed Nadel's instructions to transfer money from the Hedge Funds' "official" trading

accounts to Nadel's imposter accounts at Wachovia. During the course of the scheme, such transfers totaled approximately $10 million.

- **Shoreline's Fees & Interest:** The Hedge Funds were charged certain fees for services provided to them and were charged interest for margin credit extended to the Hedge Funds. These amounts represent GSEC's and Shoreline's revenues in connection with the scheme. Collectively, GSEC and Shoreline received approximately $13.5 million in fees and interest.

Given these various possibilities for calculating the amount of potential liability to the Receivership Entities, the ultimate determination of the value of the Receiver's claims following a trial or similar proceeding could vary significantly, depending on the applicable legal theory, the fact finder's view of causation, the relative apportionment of losses between Shoreline and other potential tortfeasors, and the strength of Shoreline's defenses. The Receiver carefully considered all of these potential defenses in evaluating the claims against Shoreline and in determining to accept this settlement.

Shoreline has maintained, and continues to maintain, that its conduct was in no way inappropriate and that it did not fail to comply with its duties and obligations. However, due to practical concerns and a desire to resolve what could be a protracted dispute resolution process, Shoreline determined early on to attempt to negotiate a resolution to the Receiver's claims to avoid the obvious expense, disruption, and risk that would be caused by protracted litigation.

The Receiver's Negotiations With Shoreline

Once the Receiver and Shoreline had exchanged significant amounts of information and had communicated their various views with respect to Shoreline's potential liability, the Receiver's and Shoreline's counsel engaged in negotiations with respect to the specifics of a potential resolution of their dispute. These negotiations focused on potential liability,

defenses, and risk to the parties, the potential valuation of the Receiver's claims, as well as the Receiver's ability to collect on any potential judgment.

As a result of these negotiations, an agreement has been reached between the Receiver and Shoreline to be presented through this motion to the Court, which includes a resolution of all claims the Receiver and Receivership Estate may have against Shoreline that in any way relate to any matters arising out of Nadel's conduct, including any of the account relationships with respect to which Shoreline had any involvement. It is the intention of the Receiver and Shoreline to resolve through Shoreline's payment to the Receivership Estate of $2,500,000 (the "**Settlement Amount**"), in accordance with a set payment schedule, any claims of investment losses or other damages that might be asserted against Shoreline, its registered representatives, or its officers.[1]

Settlement Considerations

In deciding to accept $2,500,000 from Shoreline in resolution of all claims, the Receiver considered a number of significant factors. Among these considerations, the Receiver considered his ability to collect on any potential judgment against Shoreline. Shoreline provided its Focus Report dated December 2011 to the Receiver, which reveals that it has a total net capital of $2,454,019. That amount essentially is the amount by which Shoreline's liquid assets exceed its liabilities. The Settlement Amount is slightly greater than

[1] The Receiver also entered into a separate agreement with certain control persons of Shoreline to protect the Receivership Estate in the event the Receiver does not receive the full Settlement Amount. In connection with those efforts, these control persons entered into a tolling agreement so the parties could work towards resolution and approval of this settlement without concern for applicable statutes of limitation. The control persons also agreed to waive any time bar defenses in connection with any proceeding brought by the Receiver if the Receiver does not receive the full Settlement Amount from Shoreline or he is required to return the monies as a result of any bankruptcy proceeding.

Shoreline's net capital. Further, Shoreline has no applicable insurance and it is unlikely that a litigated result in favor of the Receiver, and the substantial expense the Receivership Estate would incur to reach such a result, could yield a larger recovery.

The Receiver also considered the potential value of his claims against Shoreline. As noted above, under principles of comparative fault, the Receiver could have attempted to hold Shoreline responsible for its portion of all investor losses arising from Nadel's scheme, which losses total approximately $168 million. In addition, the Receiver considered the amount of money that Nadel transferred from the Hedge Funds' official accounts at Shoreline to Nadel's imposter accounts at Wachovia Bank. As noted above, that amount is approximately $10 million. These transfers allowed Nadel to perpetrate and perpetuate his Ponzi scheme because it enabled him to move money to fund payments to investors for purported profits and principal. The Receiver contends that such transfers were improper and that Shoreline did not follow relevant guidelines and internal policies and procedures applicable to third-party transfers. Courts have imposed liability on brokerage firms and banks in analogous circumstances. *See, e.g., Neilson v. Union Bank of Ca., N.A.,* 290 F. Supp. 2d 1101, 1120-21, 1143 (C.D. Ca. 2003) (holding that use of "atypical banking procedures" in connection with Ponzi scheme can demonstrate sufficient knowledge to support claim of aiding and abetting fraud; upholding negligence claim for failure to ensure "accuracy, legitimacy, and existence" of certain assets); *In re Lloyds Secs., Inc.* 1992 WL 318588, *11, 14 (Bankr. E.D. Pa. 1992) (holding that clearing firm "at all times maintained a duty to safeguard the funds and securities of the individual customers" and that firm breached that duty by failing to "put into practice the minimal checkpoint procedures which it has

itself established to protect the customers"); *RPR Clearing, a Div. of Rauscher Pierce Refsnes, Inc. v. Glass*, 1997 WL 460717, *2 (S.D.N.Y. 1997) (refusing to vacate arbitration award against clearing firm for "breach of ordinary care"). Courts have also denied claims based on similar theories under some circumstances. *See Lawrence v. Bank of America, N.A.*, 2010 WL 3467501 (M.D. Fla. 2010) (dismissing investors' claims against financial institution for failure to state a claim); *In re Agape Litigation*, 773 F.Supp.2d 298, 327 (E.D.N.Y. 2011) (same).

Further, the Receiver also considered the fees and margin interest that Shoreline earned for providing services to the Hedge Funds. As noted above, the Hedge Funds paid approximately $13.5 million in fees and interest to GSEC and Shoreline, collectively. Courts have allowed the recovery of fees, commissions, and similar payments as fraudulent transfers from individuals or entities that provided brokerage services in connection with Ponzi schemes. *In re Evergreen Sec., Ltd.,* 319 B.R. 245, 255 (Bankr. M.D. Fla. 2003) (allowing recovery of commissions as fraudulent transfers because broker "did not perform the minimal due diligence required to demonstrate good faith"); *In re World Vision Entertainment, Inc.,* 275 B.R. 641, 660 (Bankr. M.D. Fla. 2003) (same); *In re Randy*, 189 B.R. 425, 440 (Bankr. N.D. Ill. 1995) ("These brokers were also paid commissions for inducing persons who had already invested in the scheme to keep their principal investments in place so that the Ponzi scheme would not collapse. The underlying reasoning that courts have used to find that profits paid in a Ponzi scheme to innocent investors are fraudulent transfers applies equally well to commissions paid to brokers who promoted or aided the investment scheme, whether or not they had any culpable intent."). Courts are not, however, unanimous on this issue, as

some defendants have successfully argued that they acted in good faith and provided reasonably equivalent value for the fees or commissions they received, which is a defense against the recovery of fraudulent transfers. *See, e.g., In re Fin. Fed. Title & Trust, Inc.*, 309 F.3d 1325, 1331-33 (11th Cir. 2002) (disagreeing with *Randy* and examining related cases).

In deciding to recommend the resolution reflected in the Settlement Agreement, the Receiver also found the following considerations significant:

(1) Shoreline is financially able to vigorously defend itself against the Receiver's claims. Consequently, litigation of claims against Shoreline could easily cost the Receivership in excess of $1 million and would not be without significant risks. If litigation is unsuccessful, defrauded investors would recover nothing instead of the $2,500,000 set forth in the Settlement Agreement. Further, forcing Shoreline to defend these claims would only serve to deplete its funds which could be available to pay the Receivership.

(2) Claims against the registered representatives that serviced the accounts would not likely provide any meaningful recovery. Based upon information gathered by the Receiver, the representatives do not have the ability to satisfy any potential judgment, and the Receiver's investigation revealed that there is no applicable insurance coverage. As such, the agents of Shoreline most directly involved in dealing with Nadel do not appear to be able to satisfy any substantial judgment. Further, any potential claims against Shoreline's controlling persons would be difficult. In addition to establishing that Shoreline was a primary violator of the federal securities laws, the Receiver would have to establish both that (1) the individual had the power to control the general affairs of the primary violator and (2) the individual had the power to control the specific corporate policy that resulted in the

primary violation. *Brown v. Enstar Group, Inc.*, 84 F.3d 393, 396 (11th Cir. 1996). Even assuming the Receiver could establish these elements, the control person could assert an affirmative defense that he or she acted in good faith. *Laperriere v. Vesta Ins. Group, Inc.*, 526 F.3d 715, 724 (11th Cir. 2008).

(3) As a result of Shoreline's cooperative and good-faith approach to resolving matters with the Receiver, the Receiver and Shoreline were able to reach an agreement before the filing of any action. This provided a considerable cost savings to the Receivership.

As noted above and in the Settlement Agreement, the Receiver and Shoreline, subject to the approval of this Court, have agreed to settle for, among other things, payment by Shoreline to the Receiver of $2,500,000 and a broad release of liability. Also, the Settlement Agreement is conditioned on entry of a bar order precluding any claims against Shoreline by investors in the Receivership Entities or by potential joint tortfeasors, including claims for contribution or indemnity, which relate in any way to Nadel's Ponzi scheme (the "**Bar Order**"). It is the Receiver's opinion that the amount of this settlement constitutes an appropriate resolution in light of the potential liability that Shoreline might have as a result of its involvement with any accounts controlled by Nadel, given the applicable claims, defenses, risks, and ability to collect on a judgment.

The Bar Order Is Appropriate

Federal Rule of Civil Procedure 16 provides the Court authority to use special procedures, including bar orders, to assist parties in reaching a settlement. *See* Fed. R. Civ. P. 16(c)(9). Relying on Rule 16 and the Bankruptcy Code, the Eleventh Circuit has explicitly

authorized the use of bar orders in bankruptcy proceedings. *See In re Munford, Inc.*, 97 F.3d 449, 455 (11th Cir. 1996). According to the Eleventh Circuit, "[s]everal justifications for entering bar orders in bankruptcy cases exist" (*id.*):

> First, public policy strongly favors pretrial settlement in all types of litigation because such cases, depending on their complexity, can occupy a court's docket for years on end, depleting the resources of parties and the taxpayers while rendering meaningful relief increasingly elusive. Second, litigation costs are particularly burdensome on a bankrupt estate given the financial instability of the estate. Third, bar orders play an integral role in facilitating settlement. This is because defendants buy little peace through settlement unless they are assured that they will be protected against codefendants' efforts to shift their losses through cross-claims for indemnity, contribution, and other causes related to the underlying litigation.

Id. (quotations and citations omitted). All of these factors are as applicable to equity receiverships as they are to bankruptcy proceedings.[2] Entry of a bar order here is within the Court's broad power to administer this Receivership. *See S.E.C. v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992) ("The district court has broad powers and wide discretion to determine relief in an equity receivership. . . . This discretion derives from the inherent powers of an equity court to fashion relief . . . ."); *S.E.C. v. HKW Trading LLC,* 2009 WL 2499146, *2 (M.D. Fla. 2009); *see also S.E.C. v. Hardy*, 803 F.2d 1034, 1040 (9th Cir. 1986); *S.E.C. v. Basic Energy & Affiliated Resources, Inc.*, 273 F.3d 657, 668 (6th Cir. 2001).

In fact, courts have issued bar orders in connection with settlements proposed by equity receivers. For example, in *Commodity Futures Trading Comm'n v. Equity Fin.*

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[2] Although receivership and bankruptcy proceedings have some important distinctions, the similarities of their goals make an analogy here particularly appropriate. *See, e.g., S.E.C. v. Wealth Mgmt. LLC*, 628 F.3d 323, 334 (7th Cir. 2010) (goal in securities-fraud receivership and liquidation bankruptcy is identical: the fair distribution of liquidated assets).

Group, 2007 WL 2139399 (D.N.J 2007), the court approved a settlement between an equity receiver and a firm retained by receivership entities to perform accounting services, and entered a bar order after finding that "the Receiver established th[e] settlement is in the best interest of the Receivership estate, and that federal law and public policy favor the entry of the Bar Order to facilitate settlement of th[e] matter." *Id.* at *2. The court also found that the bar order would not prejudice investors because of the difficulties investors would have to bring claims directly against the settling defendant. *Id.; see also S.E.C. v. Capital Consultants, LLC,* 2002 WL 31470399 (D. Or. 2002) (approving settlement and entering bar order); *Gordon v. Dadante*, 336 Fed. Appx. 540 (6th Cir. 2009) (same). *Harmelin v. Man Fin., Inc.,* 2007 WL 4571021 (E.D. Pa. 2007) (same). Indeed, this Court in this Receivership recently entered a similar bar order under similar circumstances. *S.E.C. v. Arthur Nadel et al*, Case No. 8:09-cv-87-T-26TBM (M.D. Fla.) (Doc. 742).

Here, the Receiver has determined that the settlement reflected by the Settlement Agreement is in the best interests of the Receivership and the investors in the Hedge Funds. Specifically, the settlement avoids protracted and expensive litigation, thereby avoiding litigation risk and conserving very substantial Receivership resources, as well as judicial resources. In addition, the Settlement Amount represents an equitable and good-faith resolution, especially when it is considered in light of Shoreline's ability to pay. It is also in the best interests of investors because it represents a substantial recovery to the Receivership Estate – the second largest settlement to date, yet without the expense and risk of litigation – which will ultimately compensate investors with approved claims through the claims process.

The Bar Order is also authorized by and appropriate under the All Writs Act. "An important feature of the All-Writs Act is its grant of authority to enjoin and bind non-parties to an action when needed to preserve the court's ability to reach or enforce its decision in a case over which it has proper jurisdiction." *In re Baldwin-United Corp.*, 770 F.2d 328, 338 (2d Cir. 1985) (citing *United States v. New York Telephone Co.,* 434 U.S. 159, 174 (1977) ("The power conferred by the Act, extends, under appropriate circumstances, to persons who, though not parties to the original action or engaged in wrongdoing, are in a position to frustrate the implementation of a court order or the proper administration of justice, and encompasses even those who have not taken any affirmative action to hinder justice.")).[3]

Notice Will Be Provided To Investors And Others

"[T]he requirements of the All-Writs Act are satisfied if the parties whose conduct is enjoined have actual notice of the injunction and an opportunity to seek relief from it in the district court." *Id.* at 340. Similarly, cases located by the Receiver involving equity receivers' requests for bar orders in connection with settlement of claims have included notice to investors of the request for a bar order. *See, e.g.*, *Equity Fin. Group*, 2007 WL 4571021[4]; *Harmelin*, 2007 WL 4571021 (notice of bar order provided to all investors before

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[3] "The power to bind non-parties distinguishes injunctions issued under the Act from injunctions issued in situations in which the activities of the third parties do not interfere with the very conduct of the proceeding before the court." *Baldwin*, 770 F.2d at 338.

[4] Although there is no discussion of notice to investors in this *Equity Financial Group* opinion, the receiver's motion for approval of the settlement in that case explained that such notice had been provided. *See Equity Financial Group*, Case No. 1:04-cv-01512-RBK-AMD (D. N.J.), Memorandum In Support Of Motion Of Equity Receiver To Approve Settlement With Puttman & Teague, LLP, Elaine Teague, And John Puttman (Dkt. 428-3, ¶¶ 25, 36), attached as **Exhibit B**.

court approved settlement); *Gordon*, 336 Fed. Appx. at 544 (court entered order providing interested parties with opportunity to "comment" on settlement reached by equity receiver with broker/dealer and request for bar order).

Here, the Receiver intends to provide: (1) actual notice of the settlement with Shoreline and the requested Bar Order to the investors in the Hedge Funds and to potential tortfeasors the Receiver believes have liability to Receivership Entities – *i.e.*, the individuals and entities who are to be enjoined and barred from asserting claims against Shoreline relating to Nadel's Ponzi scheme - and (2) publication notice to all other interested parties.[5] A copy of the proposed notice to investors and potential joint tortfeasors is attached to the Notice Motion (the "**Notice**"), and an abbreviated version for publication is contained in the text of the Notice Motion. In brief, the Notice sets forth the terms of the Settlement Agreement and advises the recipients that they may object or otherwise respond to this motion in writing by May 3, 2012, by (1) filing their objection or response with the Court by that deadline and (2) simultaneously serving a copy on the Receiver. As such, the Notice will provide investors and known potential joint tortfeasors with actual notice of the proposed Settlement Agreement and the Bar Order and an opportunity to object. Unless the Court directs otherwise, no public hearing will be held concerning this motion.

Investors Will Not Be Prejudiced By Entry Of The Bar Order

Entry of the Bar Order is also appropriate because investors will not be prejudiced by it as (1) the Settlement Amount is greater than the amount of Shoreline's net capital; (2) there

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[5] As set forth in the Settlement Agreement, Shoreline agreed to pay $11,000 to the Receivership Estate to cover the cost of providing notice.

are no pending litigations between any of them and Shoreline; (3) any contemplated actions by investors may be barred by applicable statutes of limitation; and (4) the claims that investors might assert against Shoreline, in the absence of the Bar Order, are more limited – and thus less valuable – than the Receiver's potential claims.

First, as noted above, the Settlement Amount exceeds the total amount of Shoreline's net capital. Thus, even if an investor were to bring a claim, it would be highly unlikely that he or she could recover a greater amount.

Second, there are no pending litigations between investors and Shoreline relating to Nadel's Ponzi scheme despite the fact that the scheme collapsed over three years ago, in January 2009. This indicates that no investor is likely to assert any claims against Shoreline. *See Harmelin,* 2007 WL 4571021 at *4 ("[I]n the two and a half years since Mr. Hodgson was appointed as Receiver and despite all the communications that have gone forth, and the website, and the absence of any Order precluding an investor from filing their own lawsuit, no investor has done so.").

Third, the Receiver has had a tolling agreement with Shoreline since October 2010, and has been advised by Shoreline's counsel that it does not have any tolling agreements with investors. As such, it is possible that future claims by investors would be barred by applicable statutes of limitation. *See id.* (considering statutes of limitation in entering bar order).

Finally, the claims that investors might assert against Shoreline, in the absence of the Bar Order, are more limited – and thus less valuable – than the Receiver's potential claims. Specifically, because Shoreline had a relationship with Nadel and Receivership Entities (*i.e.*,

the Hedge Funds), the Receiver could potentially assert breach of contract and breach of duty claims against Shoreline as well as claims for the return of fraudulent transfers. On the other hand, because Shoreline had no relationship with investors, they would likely be limited to asserting claims for violations of securities laws, which are difficult to prosecute and have been significantly narrowed. For example, in *Stoneridge Inv. Partners, LLC v. Scientific-Atlanta*, 552 U.S. 148 (2008), the United States Supreme Court confirmed that there is no private right of action for aiding and abetting a violation of Section 10(b) of the Securities Exchange Act of 1934. Accordingly, an investor would have to prove, among other things, that Shoreline was a primary actor engaged in securities fraud. Indeed, an investor's ability to assert against Shoreline any claim other than a claim for violations of federal securities laws appears to have been significantly limited by the Honorable Elizabeth A. Kovachevich's decision in *Sullivan v. Holland & Knight LLP,* 2010 WL 1558553, *6 (M.D. Fla. 2010). In that case, which relates to Nadel's Ponzi scheme, Judge Kovachevich held that claims asserted by investors in the scheme against a law firm that represented the Hedge Funds and other receivership entities, among others, which claims included claims under the Florida Securities Investor Protection Act and related common law claims, were barred by the Securities Litigation Uniform Standards Act. In light of these matters, investors are unlikely to be able to obtain a greater recovery from Shoreline than that obtained by the Receiver and reflected in the Settlement Agreement. This is another reason why the settlement with Shoreline, including the Bar Order, is in the bests interests of the Receivership and, ultimately, of defrauded investors.

Joint Tortfeasors Are Not Entitled To Contribution From Shoreline

Under Florida law, if the Court approves the Settlement Agreement, no joint tortfeasor will be entitled to contribution from Shoreline in connection with Nadel's scheme. Specifically, under the Uniform Contribution Among Tortfeasor's Act:

> When a release or a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death: (a) It does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide, but it reduces the claim against the others to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is the greater; and, (b) It discharges the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor.

Fla. Stats. § 768.31(5). Here, the terms of the Settlement Agreement do not discharge any potential tortfeasor from liability other than Shoreline. Further, for the reasons discussed before and in the Receiver's Declaration, both Shoreline and the Receiver entered into the Settlement Agreement in good faith. As such, if approved the Settlement Agreement will discharge Shoreline from "from all liability for contribution to any other tortfeasor." Accordingly, the Bar Order – in barring potential joint tortfeasors' claims against Shoreline – is consistent with Florida law.

CONCLUSION

For these reasons, the Receiver respectfully requests that this Court enter an Order granting this Motion and finding and ordering that:

1. The settlement between the Receiver and Shoreline presented to the Court in this motion is a fair, equitable, and good faith settlement of all claims the Receiver, the Receivership Estate, and the Receivership Entities may have against Shoreline;

2. The settlement reflected in the Settlement Agreement attached as Exhibit A is approved, and the Receiver is authorized to enter into and complete the proposed settlement with Shoreline in accordance with the requirements of the Settlement Agreement;

3. All individuals or entities who invested money in a Receivership Entity, as well as all persons or entities who may have liability to the Receiver, the Receivership Entities, or such investors arising or resulting from the fraudulent scheme underlying the SEC Receivership Action, together with their respective heirs, trustees, executors, administrators, legal representatives, agents, successors, and assigns, are permanently enjoined and barred from commencing or pursuing a claim, action, or proceeding of any kind and in any forum against Shoreline that arises from or relates to the clearing, execution, and/or prime brokerage services that Shoreline performed for Receivership Entities, or the allegations of the SEC Receivership Action; and

4. Said injunction bars all claims against Shoreline for contribution, indemnity, or any other cause of action arising from the liability of any person or entity to the Receiver or to any of the Receivership Entities or their investors (including claims in which the injury is the liability to the Receiver or any of the Receivership Entities or their investors or where damages are calculated based on liability to the Receiver or any of the Receivership Entities or their investors), in whatever form and however denominated.

A proposed Order is attached as **Exhibit C**. However, as indicated at the beginning of this motion, the Receiver respectfully requests that the Court first address the Notice Motion and, if that motion is granted, that it continue a decision on this motion until after the

deadline set forth in the Notice Motion for objections or other responses to the relief requested in this motion.

LOCAL RULE 3.01(g) CERTIFICATION

Pursuant to Local Rule 3.01(g), counsel for the Receiver has conferred with counsel for the Commission and is authorized to represent to the Court that the Commission has no objection to the relief requested in this motion.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 29, 2012, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

I FURTHER CERTIFY that on March 30, 2012, I will mail the foregoing document and the notice of electronic filing by first-class mail to the following non-CM/ECF participants:

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