

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO.: 16-CV-24678-COOKE/TORRES

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ONIX CAPITAL LLC, *et al.*,

Defendants.

RECEIVER'S MOTION TO LIQUIDATE SHARES OF SNAP INC.

Melanie E. Damian, Esq., as Receiver (the "Receiver") for Defendant Onix Capital, LLC ("Onix") and Relief Defendants Deep Ocean LLC, Next Cab Ventures LLC, Next Call Ventures LLC, Next Chat Ventures LLC, Next Pay Ventures LLC, Next U Ventures LLC, Next Track Ventures LLC, and Progressive Power LLC (collectively, the "Relief Defendants," and with Onix, the "Receivership Entities"), moves for authority to liquidate the shares owned by the Receivership Entities in Snap Inc. ("Snap"). In support, the Receiver states:

BACKGROUND

On November 8, 2016, the Securities and Exchange Commission ("SEC") initiated this action against Onix, Alberto Chang-Rajii, and the Relief Defendants. [DE 1]. The SEC alleged that Onix and Chang "violated the anti-fraud provisions of the federal securities laws by fraudulently raising approximately \$7.4 million from investors based on material misrepresentations." [DE 41].

The SEC requested the appointment of a Receiver to exercise full power and control over Onix and the Relief Defendants, marshal and safeguard their assets, and "take whatever actions

are necessary for the protection of investors.” [DE 4]. On April 4, 2017, this Court entered its Receivership Order appointing the Receiver to exercise full power and control over Onix and the Relief Defendants, including all of their assets within the United States [DE 84]. The Court has specifically tasked the Receiver to “[m]arshal and safeguard all such assets and take whatever actions necessary for the protection of any investors of Onix and/or Relief Defendants.” [DE 84, ¶2].

The primary assets of the Receivership Entities are equity holdings in non-public and public companies, including Snap. Relief Defendant Next Chat Ventures LLC (“Next Chat”) purchased shares in Snap through an investment in a private equity vehicle, RT SC Co-Invest II, LLC (“RT SC”). Onix paid \$2,000,000 to purchase 2,000 Class A shares in RT SC, which are held in the name of Next Chat. RT SC in turn owns shares in Snap, which are distributable to Next Chat and the other investors in RT SC in accordance with RT SC’s Amended and Restated Limited Liability Company Agreement (“Company Agreement”).

Snap is now a publicly traded company, and with the term of a “lock up agreement” between RT SC and Snap now expired, a portion of the Snap shares are due to be distributed to Next Chat. Under the Company Agreement, 10% of the Snap shares are to be distributed as promptly as reasonably possible after expiration of the lock-up, with the remainder distributed no later than six months thereafter. RT SC advises that the total number of Snap shares to be distributed to Next Chat (the “Snap Shares”) is 171,652. Over the past three months, Snap stock has traded at prices ranging from approximately \$12.50 to \$23 per share, and is presently trading near the bottom of that range.

Since her appointment, the Receiver has communicated with counsel to RT SC regarding the Snap Shares. A copy of this motion is being served on counsel to RT SC. RT SC will, upon

entry of an order from this court and consistent with the Company Agreement, transfer the Snap Shares to an account opened by the Receiver to hold the shares so that the Receiver may proceed with liquidation of the Snap Shares.

RELIEF REQUESTED

Receivers in S.E.C. proceedings are frequently authorized to liquidate the assets of the receivership entities, subject to ultimate approval of any plan of distribution. *See, e.g., S.E.C. v. Bilzerian*, 378 F.3d 1100, 1101 (D.C. Cir. 2004) (describing receivership order authorizing receiver to liquidate any interest in any asset held by anyone on behalf of the defendant); *S.E.C. v. Malek*, 397 Fed. Appx. 711, 714 (2d Cir. 2010); *S.E.C. v. First Choice Mgmt. Servs., Inc.*, 66 Fed. Appx. 652, 653 (7th Cir. 2003); *S.E.C. v. TLC Invs. and Trade Co.*, 147 F.Supp. 2d 1031, 1035 (S.D. Cal. 2013).

Here, in order to maximize any potential recovery for the investors, creditors and other stakeholders (collectively, “Claimants” of the Receivership Entities), and minimize the risk of market fluctuations, the Receiver believes that the liquidation of the Snap Shares is the best course of action. The Receiver believes that the sale of the Snap Shares will result in significant proceeds. Therefore, the Receiver requests an Order authorizing the liquidation of the Snap Shares so that those shares can be converted to cash and held in trust by the Receiver pending further Order of the Court authorizing distributions at the appropriate time.

The Receiver has made arrangements for the sale of the Snap Shares to be handled and the proceeds held by Gibraltar Private Bank and Trust, which charges a .30% (annualized, and pro-rated) custodial fee for assets held by it as custodian pending liquidation into cash, with no additional transaction fee for the sale. The fees charged by Gibraltar are significantly less

expensive than the commissions proposed by the broker with whom RT SC had made arrangements to facilitate liquidation requests by investors in the fund.

Granting the Receiver authority to liquidate and safeguard the Snap Shares is in the best interests of the Claimants who may ultimately be entitled to receive distributions from the Receivership Entities. By converting the Snap Shares to cash and holding them in trust, the Receiver can ensure that these assets are not diminished in value or lost due to market fluctuations or other adverse conditions that may affect the stock holdings.

The relief sought by this motion is directed solely at present to the Snap Shares, and the Receiver will seek further court authority prior to liquidating any other holdings of the Receivership Entities, and further is without prejudice to any parties' claim or position with respect to the Snap Shares or the proceeds realized from the sale of the shares.

The Receiver accordingly requests that the Court:

1. Authorize and direct RT SC to distribute the Snap Shares to the Receiver in accordance with this Order as soon as reasonably possible.
2. Authorize the Receiver to sell, transfer or dispose of the Receivership Entities' rights regarding the Snap Shares as provided herein.
3. Authorize the Receiver to hold the proceeds of the sale, transfer or disposition of the Snap Shares ("Snap Proceeds") in an account designated for Next Chat Ventures LLC, and hold such Snap Proceeds separately from the proceeds of any other transaction by Onix or the other Relief Defendants, pending further order of this Court.
4. Authorize the Receiver to compensate Gibraltar Private Bank and Trust from the Snap Proceeds for its .30% annualized, pro-rated custodial fee in connection with it acting as custodian of the Snap Shares prior to their liquidation.

5. Direct that the sale of the Snap Shares, and this Order, shall be without prejudice to any Parties' claim or position with respect to the Snap Shares or the Snap Proceeds and any defenses or objections thereto, and any liens enforceable against the Snap Shares shall attach to the proceeds thereof in the same priority as they had in the Snap Shares prior to their sale, transfer, or disposition under the Court's Order.

CERTIFICATION OF CONFERENCE WITH COUNSEL

Counsel for the SEC has informed undersigned counsel that he has no objection to the relief requested herein. Counsel for the Intervenor, Carlos Parada Abate, Liquidator of Onix Capital, S.A. has also informed undersigned counsel that he has no objection to the relief requested herein.

WHEREFORE, the Receiver respectfully requests that the Court enter an Order granting this motion, authorizing the Receiver to liquidate the Snap Shares in accordance with this request, and granting any such other, further relief as the Court deems just and appropriate.

Dated: August 10, 2017

Respectfully submitted,

KOZYAK TROPIN & THROCKMORTON, LLP
Counsel for the Receiver
2525 Ponce de Leon Boulevard, 9th Floor
Miami, Florida 33134
Tel: (305) 372-1800
Fax: (305) 372-3508

By: */s/ David L. Rosendorf*
David L. Rosendorf
FL Bar No. 996823
Coral Lopez-Castro
FL Bar No. 863830
Chauncey D. Cole IV
FL Bar No. 102184
dlr@kttlaw.com
clc@kttlaw.com
cdc@kttlaw.com

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true copy of the foregoing has been served via transmission of Notices of Electronic Filing generated by CM/ECF on August 9, 2017 as filed with the Clerk of the Court using CM/ECF, and by email and U.S. mail on Lee Ann Russo, Esq., Jones Day, 77 West Wacker Drive, Chicago, IL 60601-1692, email: larusso@jonesday.com (counsel for RT SC Co-Invest II, LLC).

By: /s/ David L. Rosendorf
David L. Rosendorf

SERVICE LIST

Sharon L. Kegerreis
Berger Singerman LLP
1450 Brickell Avenue, Suite 1900
Miami, Florida 33131
Telephone: (305) 714-4393
[Email: skegerreis@bergersingerman.com](mailto:skegerreis@bergersingerman.com)

Eric E. Morales
Andrew O. Schiff
Sean M. O'Neill
Securities and Exchange Commission
801 Brickell Avenue, Suite 1800
Miami, Florida 33131
Telephone: (305) 982-6300
[Email: moralese@sec.gov](mailto:moralese@sec.gov)
[Email: schiffa@sec.gov](mailto:schiffa@sec.gov)
[Email: oneills@sec.gov](mailto:oneills@sec.gov)

Edward H. Davis
Gregory S. Grossman
Arnoldo B. Lacayo
Cristina Vicens Beard
SEQUOR LAW
1001 Brickell Bay Dr., 9th Floor
Miami, Florida 33131
Telephone: (305) 372-8282
Facsimile: (305) 372-8202
[Email: edavis@sequorlaw.com](mailto:edavis@sequorlaw.com)
[Email: ggrossman@sequorlaw.com](mailto:ggrossman@sequorlaw.com)
[Email: alacayo@sequorlaw.com](mailto:alacayo@sequorlaw.com)
[Email: cvicens@sequorlaw.com](mailto:cvicens@sequorlaw.com)

Melanie E. Damian, Receiver
1000 Brickell Avenue, Suite 1020
Miami, Florida 33131
Telephone: (305) 371-3960
Facsimile: (305)371-3965
Email: mdamian@dvllp.com
Email: dfd@dvllp.com