

**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 APPROVE CLAIMS ADMINISTRATION PROCESS

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 an order approving the Receiver's proposed claims procedure and claims forms (the "Claims Administration Process"). In support, the Receiver states:

BACKGROUND

On November 8, 2016, the 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." (the "Onix Fraud") [DE 41].¹

¹ In fact, as indicated below, it appears that substantially more funds than the approximately \$7.4 million initially identified by the SEC was raised by the Receivership Entities through material misrepresentations.

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 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,” and to “[i]nvestigate the aforementioned assets, documents, and other items to ascertain the identity of any additional investors, debtholders, or other persons located within the United States and having any connection to these proceedings.” [DE 84, ¶¶ 2, 7].

Since her appointment on April 4, 2017, the Receiver has marshaled a significant amount of the Estate’s assets, has liquidated certain assets with the Court’s approval, and has identified significant additional assets that she is seeking to recover for the benefit of the Estate. On August 8, 2017, after moving for and obtaining the Court’s approval of the proposed sale of the Receivership Entities’ interest in shares of Square, Inc. [D.E. 116, 123], the Receiver sold the Square Shares and received net proceeds of approximately \$3.17 million. On August 10, 2017, the Receiver filed a further motion to liquidate the Receivership Entities’ interest in shares of Snap Inc. [D.E. 126], and with an order having been granted on August 30, 2017 [D.E. 132], the Receiver will proceed with liquidation of those shares in accordance therewith. There are several other assets for which a liquidation process is in development and will be presented to the Court for approval shortly.

The Receiver has also proceeded to investigate the potential claims against the Receivership Entities by investors and others, through review of the documents provided by the

SEC, as well as formal and informal discovery from other parties. As a result of that investigation, which is ongoing, the Receiver to date has identified a total of 89 investors or noteholders who may have provided nearly \$23 million to the Receivership Entities. The Receiver's investigation is ongoing and the Receiver has moved to employ a forensic accounting firm to assist in the investigation of potential claimants and potential assets and causes of action of the Receivership Entities.

In furtherance of the Receiver's duty and responsibility to investigate and "ascertain the identity of additional investors, debtholders, or other persons located within the United States and having any connection to these proceedings" [DE 84, ¶7], the Receiver believes it is appropriate for the Court to establish a claims administration process ("Claims Administration Process") for all victims and other creditors of the Receivership Entities ("Claimants") to identify and assert all claims they may hold against the Receivership Entities.

A. Proposed Claims Administration Process

The intended purpose of the Claims Administration Process is to identify all parties who provided funds to the Receivership Entities and suffered a loss as a result, provided goods or services to the Receivership Entities for which they have not been paid, or otherwise have a legally enforceable obligation due to them from the Receivership Entities. The Receiver will provide notice of the proposed Claims Administration Process to all Claimants of the Receivership Entities and encourage them to submit a claim to the Estate. Although the Receiver has not yet proposed a distribution plan for the Receivership and does not seek approval of any distribution plan through this motion, the establishment of a Claims Administration Process is an appropriate first step.

The Claims Administration Process will require each Claimant to establish its claim to the satisfaction of the Receiver through documentation and/or sworn statements, among other things:

- (i) that such Claimant transferred funds, or provided goods or services directly to any Receivership Entity, or otherwise possesses a legally enforceable obligation payable by the Receivership Entities;
- (ii) that such Claimant (a) was not an affiliate, family member or insider of any Receivership Entity, any affiliate of any Receivership Entity, or the Onix Fraud, and (b) did not knowingly assist any Receivership Entity or affiliate of any Receivership Entity to effectuate, perpetuate or promote the Onix Fraud or have knowledge of its fraudulent nature at the time funds were transferred to, or a debt was incurred by, those entities; and
- (iii) that the total amount of funds that such Claimant transferred to the Receivership Entities or their affiliates exceeds the total amount of funds that the Receivership Entities and their affiliates transferred back to such Claimant, or that the total value of the goods or services that the Claimant provided to the Receivership Entities exceeds the total amount that the Receivership Entities paid to such Claimant for those goods and services.

If an investor cannot prove the foregoing factors (i), (ii) and (iii), that Claimant's claim may be disallowed (subject to the procedures described below) in the Receiver's discretion. However, the Receiver may consider other factors in determining whether a claim should be an allowed claim, and notwithstanding these the foregoing factors, the Receiver will analyze each claim individually and the circumstances surrounding each Claimant's transactions with and relationship to the Receivership Entities and/or their affiliates, and reserves the right to object to and seek to disallow any claim, allow late-filed claims, or conduct further investigation into any particular claim.²

² To the extent a Claimant received transfers from Receivership Entities and/or their affiliates in excess of such Claimant's total transfers to those entities, or received transfers from the Receivership Entities in excess of the value of the goods or services they provided, such that the

1. Proposed Notice to Claimants

All potential Claimants presently identified by the Receiver will receive the Claims Package (as defined below) including an approved form of notice and claim form. The Receiver will use her best efforts to notify all potential Claimants by (i) sending Claims Packages by first class mail or Federal Express to their last known addresses, and by email to the extent email addresses are known, (ii) sending Claims Packages to all known counsel of record for any potential Claimants, by email and U.S. Mail, (iii) posting the notice and claim form on the websites of the Receivership (www.onixcapitalreceivership.com) and her counsel (www.dvllp.com & www.kttlaw.com), (iv) providing publication notice, and (iii) filing them with the Court.

2. Proposed Claims Documentation

The Receiver proposes to effectuate the Claims Administration Process as follows. The Receiver will deliver to all known Claimants two claim forms: (i) a Court-Ordered Legal Notice (the proposed form of which is attached hereto as **Exhibit A**); and (ii) a Proof of Claim form (the proposed form of which is attached hereto as **Exhibit B**). The documents attached as Exhibits A and B shall be referred to collectively as the “Claims Package”.

The Court-Ordered Legal Notice will apprise potential Claimants of how the Claims Administration Process was created, who is eligible to submit a claim, the process by which eligible claimants can submit a claim, and the process by which the Receiver will review claims. **See Exhibit A.** The Proof of Claim and Release will solicit, among other information: (a) details regarding the claimant’s identity and contact information; (b) details regarding the amount and

Claimant profited from the Onix Fraud, the Receiver further reserves the right to pursue a claim against such Claimant for the return of the profit received and any other appropriate relief.

timing of the claimant's transfer of funds to one or more of the Receivership Entities and/or their affiliates, or details regarding the debt of any Receivership Entity to the claimant, including the value of goods and services underlying such debt and the date(s) the creditor provided such goods and services to any Receivership Entity; (c) details regarding the amount, timing and transfer of any monies received by the claimant from Receivership Entities and/or their affiliates; and (d) documentation supporting the Claimant's claim. *See Exhibit B.* The Proof of Claim also will require the claimant to, *inter alia*, certify the accuracy of the information provided and certify that each of the three factors of an Allowed Claim, set forth above, are satisfied. *Id.*

B. Proposed Sequence and Timing of Claims Process

The Receiver proposes that the claims process proceed in accordance with the following schedule:

- a. Claims Process Approval: The date upon which this Court grants this Motion and approves the Receiver's proposed Claims Administration Process shall be referred to herein as the "Claims Process Approval Date";
- b. Receiver's Mailing of Claims Package: The Receiver will send the Claims Package to known potential Claimants via first class mail or Federal Express, and by email to the extent email addresses are known, within fourteen (14) days after the Claims Process Approval Date; and the Receiver will post the forms on the Receiver's websites;
- c. Claims Bar Date: Claimants would then have until forty-five (45) days after the Claims Process Approval Date (the "Claims Bar Date") to return the completed Proof of Claim to the Receiver. Any completed Proof of Claim not postmarked by the Claims Bar Date may be barred in the Receiver's discretion, subject to, for example, exceptions for good cause shown;
- d. Receiver's Initial Determination of Allowed Claims: The Receiver will have until forty-five (45) days after the Claims Bar Date ("Receiver's Initial Determination Date") to approve or reject, in whole or in part, all claims received. In the event that the Receiver were to reject any claim, in whole or in part, the Receiver would apprise the Claimant, via first class mail and/or email, of the rejection of the claim, the basis for that rejection, and the process for appealing such rejection;

- e. Claimant's Request for Reconsideration of Initial Determination: Any Claimant whose claim is rejected by the Receiver, in whole or in part, may request that the Receiver reconsider that denial by sending the Receiver a letter seeking a reconsideration, which must be postmarked within twenty (20) days after the Receiver's Initial Determination Date and which must state the basis of the claim and the Claimant's response to the Receiver's notice of rejection;
- f. Receiver's Final Determination: The Receiver shall have until twenty (20) days after receipt of a timely Request for Reconsideration to reconsider any request by any Claimant whose claim was initially rejected by the Receiver and to apprise the Claimant, via first class mail and/or email, of the reconsideration or rejection of the claim ("Receiver's Final Determination");
- g. Claimant's Appeal of Receiver's Final Determination: Any Claimant whose claim was finally rejected by the Receiver may appeal the Receiver's rejection of the claim to the Court by filing with the Court an Appeal of the Receiver's Final Determination, which must be postmarked fourteen (14) days after the Receiver's Final Determination Date (the "Appeal Deadline") and which must state the basis of the claim and the Claimant's response to the Receiver's Final Determination;
- h. Receiver's Response to Appeals: The Receiver's Response to all appeals filed with this Court shall be due within fourteen (14) days after the Appeal Deadline. Following the time for the Receiver's response, the Court may make a final determination or may set the matter for hearing. A final determination by the Court is final for all purposes.

The foregoing schedule is reflected in the following summary timetable:

Day 0	Plan Approval Date
Day 14	Notice/Proof of Claim forms sent out
Day 59	Claims Bar Date
Day 104	Receiver's Initial Determination Date
Day 124	Claimant Deadline to Seek Reconsideration
Day 144	Receiver's Final Determination Date
Day 159	Claimant Deadline for Appealing to the Court
Day 173	Receiver Response to Appeals Deadline

VI. LEGAL ARGUMENT

“A district court has broad powers and wide discretion to determine relief in an equity receivership.” *SEC v. Wells Fargo Bank, N.A.*, 848 F.3d 1339, 1343–44 (11th Cir. 2017) (quoting *SEC v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992)); *see also SEC v. Homeland Commc'ns Corp.*, 2010 WL 2035326, at *1–*2 (S.D. Fla. 2010) (“In equity receiverships resulting from SEC enforcement actions, district courts have very broad powers and wide discretion to fashion remedies and determine to whom and how the assets of the Receivership Estate will be distributed.”). “This discretion derives from the inherent powers granted an equity court to fashion relief. *See Elliott*, 953 F.2d at 1566 (citing *SEC v. Safety Finance Service, Inc.*, 674 F.2d 368, 372 (5th Cir. 1982)).

“[A]mong these broad powers is the power to establish proof of claim procedures and set an effective claims bar date.” *See Wells Fargo Bank, N.A.*, 848 F.3d at 1343–44 (citing *SEC v. Tipco, Inc.*, 554 F.2d 710, 711 (5th Cir. 1977)). In receivership proceedings, “[e]very person who

has any claim or demand against the estate or property in the custody of the court through the receiver, . . . must assert such claim or demand in the court in which such receiver was appointed.” Ralph E. Clark, *Clark on Receivers* § 646, at 1132 (3rd ed. 1992). Although there are many ways in which a claimant can assert a claim, one such way is for claimants to be authorized “under a general order of the appointing court [to file their] claim(s) with the receiver . . . and if the receiver allow(s) the claim it must be approved or disapproved by the appointing court, in which event the action of the appointing court is equivalent to a judgment” *See Id.* “The claims should be definite enough to enable the receiver to pass on their validity, fairness and legality and to place them in their proper and legal category of claims for preference, if any.” *See Id.* § 651, at 1142.

In addition to approving the proof of claim form, it is not unusual for those courts with jurisdiction over a receivership to enter an order limiting the time within which claims are presented. *See Id.* § 652, at 1142 (citing *Chicago Title & Trust Co. v. Fox Theatres Corp.*, 91 F.2d 907 (2d Cir. 1937); *People of New York v. Hopkins*, 18 F.2d 731 (2d Cir. 1927)). Such an order limiting the time within which claims are to be presented has been deemed to be necessary to “lay the foundation for the court to order payment to creditors and distribution to those entitled to receive.” *See Id.* § 651, at 1142. Furthermore, a court with jurisdiction over a receivership, “by advertisement and by proper notices by mail, by publication and otherwise should take every precaution to notify everyone interested in and substantially affected by the receivership.” *See Id.* § 652, at 1143. “When it comes to fashioning a claims process,” no specific scheme is mandated so long as the plan is fair and equitable.” *SEC v. Homeland Commc'ns Corp.*, 2010 WL 2035326, at *1–*2.

The Receivership Order 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,” and to “[i]nvestigate the aforementioned assets, documents, and other items to ascertain the identify of any additional investors, debtholders, or other persons located within the United States and having any connection to these proceedings.” [DE 84, ¶¶ 2, 7]. In exercising her duties, the Receiver has determined that it is appropriate that a claims administration process be established as set forth above.

The relief sought by the Receiver here falls squarely within the Court’s inherent powers as a court of equity to fashion relief, and within the Receiver’s duties as set forth in the Receivership Order. Accordingly, the Receiver submits that this Court should exercise its discretion to approve the proposed Claims Administration Process as detailed herein. *See Bendall v. Lancer Mgmt. Grp., LLC*, 523 F. App’x 554, 557 (11th Cir. 2013) (“[A]ny action by a trial court in supervising an equity receivership is committed to [her] sound discretion”) (quoting *S.E.C. v. Safety Fin. Serv., Inc.*, 674 F.2d 368, 373 (5th Cir. 1982)).

CERTIFICATION OF CONFERENCE WITH COUNSEL

Counsel for the SEC has informed undersigned counsel that he has no objection to the relief requested herein. Receiver’s counsel has conferred generally with counsel for Carlos Parada Abate, as Foreign Representative of Onix Capital, S.A. (“Liquidator”) regarding the establishment of a claims administration process, and while the Liquidator has expressed his support for the establishment of a claims process, the Liquidator may or may not concur with the particular process proposed herein.

WHEREFORE, the Receiver respectfully requests that the Court enter an Order granting this motion, and entering an order approving the Receiver's proposed claims procedure and claims forms set forth above.

Dated: September 20, 2017

Respectfully submitted,

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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 September 20, 2017 as filed with the Clerk of the Court using CM/ECF.

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

SERVICE LIST

1:16-cv-24678-MGC Notice has been electronically mailed to:

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1:16-cv-24678-MGC Notice will be provided via US Mail:

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Next Cab Ventures, LLC.
Next Call Ventures, LLC.
Next Chat Ventures, LLC.
Next Pay Ventures, LLC.
Next Track Ventures, LLC.
Next U Ventures, LLC.
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