

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

Case No. 16-24678-Civ-COOKE/TORRES

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

ONIX CAPITAL, LLC, ALBERTO
CHANG-RAJII, DEEP OCEAN, LLC,
et al.,

Defendants.

**ORDER GRANTING RECEIVER'S
MOTION TO APPROVE CLAIMS ADMINISTRATION PROCESS**

THIS CAUSE is before me on the Receiver's Motion to Approve Claims Administration Process (ECF No. 133). 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"), filed the instant motion seeking an order approving her proposed claims procedure and claims forms ("Motion") (ECF No. 133). Shortly after filing her Motion, the Receiver filed a Notice of Filing Exhibits to Motion to Approve Claims Administrative Process (ECF No. 135), which included a proposed Court-Ordered Legal Notice and a proposed Proof of Claim. Intervenor Carlos Parada Abate, Liquidator of Onix Capital, S.A. ("Intervenor"), filed a Response in Partial Opposition to Receiver's Motion (ECF No. 142), as did Ely Magendzo, Inver Corp., NES SPA and Estanislao Bernardo Gonczanski ("Putative Petitioners") (ECF No. 143). Joint Liquidators Marcus Wide and Mark McDonald of Grant Thornton ("Joint Liquidators") filed a Notice of Joint Liquidators' Joinder in Liquidator's Response in Partial Opposition (ECF No. 144). The Receiver then filed her reply in support of her Motion (ECF No. 146). On January 24, 2018,

a Status Conference was held and the parties were given an opportunity to present argument on the instant Motion. After careful consideration of the Motion and the parties responses thereto, the record, and the relevant legal authorities, Receiver's Motion is granted.

I. BACKGROUND

The Securities and Exchange Commission ("SEC") initiated this action against Defendant and Relief Defendants, alleging Defendants Onix and Alberto Chang-Raji committed securities fraud by making material misrepresentations to investors. ECF No. 1, ¶ 1. On April 4, 2017, I entered a Receivership Order (ECF No. 84), appointing the Receiver to "[e]xercise full power and control to administer and manage the business affairs, funds, assets, properties, books and records, choses in action and any other financial instrument or asset of value of Onix and the Relief Defendants located within the United States." ECF No. 84, ¶ 1. The Receiver was Ordered 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" *Id.*, ¶ 2. The Receivership Order also acknowledged a related bankruptcy proceeding initiated by Intervenor under Chapter 15 of the United States Bankruptcy Code, *In re Onix Capital, S.A.*, Case No. 16-BK-26082 (S.D. Fla. 2016). *Id.*, p. 1. Putative Petitioners filed a Motion for Permission to File Involuntary Bankruptcy Petition (ECF No. 81), which was joined by Intervenor. *See* ECF No. 85. Joint Liquidators also filed a Motion for Permission for Relief Defendants to File Voluntary Bankruptcy Petitions (ECF No. 107). After a hearing before Judge Edwin G. Torres, Judge Torres issued a Report and Recommendation (ECF No. 121) recommending both motions be denied, which I adopted as Order of this Court (ECF No. 151). Intervenor filed a Notice of Interlocutory Appeal (ECF No. 161), appealing my Order adopting Judge Torres' Report and Recommendation.

II. DISCUSSION

A "district court has broad powers and wide discretion to determine relief in an equity receivership." *Sec. & Exch. Comm'n v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992) (citing *Sec. & Exch. Comm'n v. Safety Finance Service, Inc.* 674 F.2d 368, 372 (5th Cir. 1982); *Sec. & Exch. Comm'n v. Lincoln Thrift Ass'n*, 577 F.2d 600, 609 (9th Cir. 1978); *Sec. & Exch. Comm'n v. United Financial Group, Inc.*, 474 F.2d 354, 358 (9th Cir. 1973)). "[A]mong these broad powers is the power to establish proof of claim procedures and set an effective claims bar date." *Sec. & Exch. Comm'n v. Wells Fargo Bank, N.A.*, 848 F.3d 1339, 1344 (11th Cir.

2017) (citing *Sec. & Exch. Comm'n v. Tipco, Inc.*, 554 F.2d 710, 711 (5th Cir. 1977)). “No specific distribution scheme is mandated so long as the distribution is fair and equitable.” *Sec. & Exch. Comm'n. v. Homeland Commc'ns Corp.*, 2010 WL 2035326, at *2 (S.D. Fla. May 24, 2010) (internal quotation marks and citations omitted).

Receiver seeks an order approving her proposed claims administration process, the purpose of which is “to identify all parties who provided funds to the Receivership Entities and suffered a loss as 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.” ECF No. 133, p. 3. The instant Motion does not propose a distribution plan for the Receivership, but the Receiver intends the claims administration process as a first step towards distribution. Intervenor, Joint Liquidators, and Putative Petitioners do not object generally to a claims administration process and claims bar date, but mainly object to the process proposed by the Receiver because it is not identical to the rules and procedures established in the United States Bankruptcy Code—specifically, they cannot see and object to claims filed by other potential claimants. However, not only is there no legal requirement that an SEC Receivership be administered in the same manner as a bankruptcy proceeding, I have already considered and rejected Intervenor’s, Joint Liquidators’, and Putative Petitioners’ request to move this case to bankruptcy court. While I recognize that the Eleventh Circuit may ultimately disagree with that decision, I find no reason that the Receiver or this Court should be bound by the rules of the United States Bankruptcy Code during the claims administration process so long as the process is fair and equitable. Further, Intervenor, Joint Liquidators, and Putative Petitioners will have another opportunity to address any concerns they may have during the claims distribution process, which has not yet been proposed or approved. In reviewing the Receiver’s proposed claims administration process, I find it to be fair and equitable.

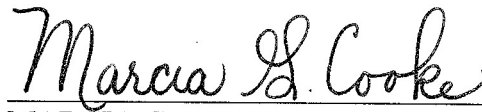
It is hereby **ORDERED AND ADJUDGED** as follows:

1. The Receiver is authorized and instructed to initiate a claims administration process in this Receivership action using the proposed Court-Ordered Legal Notice Regarding Claims Administration Process (ECF No. 135-1) and Proof of Claim (ECF No. 135-2). The timeline for such claims process shall be as outlined in the proposed Court-Ordered Legal Notice Regarding Claims Administration Process

(ECF No. 135-1).

2. The Receiver shall immediately post a copy of this Order and the Court-Ordered Legal Notice Regarding Claims Administration Process (ECF No. 135-1) and Proof of Claim (ECF No. 135-2) on the Receiver's website. The Receiver shall also immediately place notice of this claims administration process and the Claims Bar Date in South Florida newspapers.
3. The Court reserves ruling on what type of claims made by investors and other creditors will or will not be recognized until the Claims Administration process has run its course.

DONE and ORDERED in Chambers, Miami, Florida, this 23rd day of February 2018.



MARCIA G. COOKE
United States District Judge

Copies furnished to:
Edwin G. Torres, U.S. Magistrate Judge
Counsel of record