

UNITED STATES DISTRICT COURT  
DISTRICT OF RHODE ISLAND

SECURITIES AND EXCHANGE COMMISSION, )  
)  
Plaintiff, )  
)  
vs. )  
)  
PATRICK CHURCHVILLE, )  
CLEARPATH WEALTH MANAGEMENT, LLC, )  
)  
Defendants, )  
)  
and )  
)  
CLEARPATH MULTI-STRATEGY FUND I, L.P., )  
CLEARPATH MULTI-STRATEGY FUND II, L.P., )  
CLEARPATH MULTI-STRATEGY FUND III, L.P., )  
HCR VALUE FUND, L.P., )  
)  
Relief Defendants. )  
)

Case No. 15-CV-00191-S-LDA

**RECEIVER’S MOTION TO AUTHORIZE INITIAL INTERIM DISTRIBUTION TO  
APPROVED CLASS 3 CLAIMS, ESTABLISH RECORD DATES AND SET INITIAL  
INTERIM DISTRIBUTION DATE**

Now comes Stephen F. Del Sesto, Esq. solely in his capacity as the Court-appointed Receiver for Defendants Patrick Churchville and ClearPath Wealth Management, LLC and Relief Defendants ClearPath Multi-Strategy Fund I, L.P., ClearPath Multi-Strategy Fund II, L.P., and ClearPath Multi-Strategy Fund III, L.P. (collectively “Receivership Entities”), and respectfully submits this Motion (the “Motion”) seeking an order of this Court authorizing the Receiver to pay an interim distribution to certain victims of the ClearPath scheme who hold Class 3 Allowed Claims and establishing related record and distribution dates to fairly implement this distribution. Specifically, as described below, the Receiver seeks an order (i) authorizing an interim distribution on account of Class 3 Allowed Claims (the “Initial Interim Distribution”), (ii) establishing a Record Date for eligibility to receive the Initial Interim Distribution on the Initial Interim Distribution Date, (iii) setting the Initial Interim Distribution Date, and (iv) establishing Subsequent Record Dates and Subsequent Distribution Dates for making the Initial Interim

Distribution to Class 3 Claimants whose Claims are allowed prior to a Subsequent Record Date. For the reasons discussed below and in the best interests of the Receivership Estate, the Receiver respectfully submits that the Motion should be granted.<sup>1</sup>

### **PRELIMINARY STATEMENT**

Following the filing of this Motion, the Receiver will also file the Receiver's Recommendation and Motion to Allow Class 3 Claims (the "Claims Recommendation"). The Claims Recommendation will provide the Court with the Receiver's claim analysis and conclusions regarding the recommended claim amount for each Class 3 Claim. A Claims Recommendation Summary of all Class 3 Claims and a separate detailed breakdown for each Class 3 Claim will be included as an exhibit to the Claims Recommendation. However, due to the private and sensitive nature of the information contained in the Claims Recommendation (more specifically the exhibit), in accordance with the terms of paragraph 36 of this Court's "Order Approving Distribution Procedures and Certain Other Related Relief" ("the "Order") [Document No. 118], the Claims Recommendation will be filed under seal. Because the Claims Recommendation and exhibits will be sealed and not be available for public viewing, after the filing of the Claims Recommendation the Receiver will mail to each Class 3 Claimant, via first class mail, postage pre-paid, a copy of the Claims Recommendation and the portion of exhibit that relates to that claimant only. It is the Receiver's recommendation to the Court that this mailing (as opposed to the filing of the Claims Recommendation) will begin the Response Period established in paragraph 35(b) of the Order [Document No. 118].

In advance of the filing of Claims Recommendation and once Class 3 Claims are established and allowed, through this Motion the Receiver seeks authority to pay holders of Class 3 Allowed Claims an Initial Interim Distribution amount that will provide such holders an initial and partial recovery in regard to their investment into the ClearPath scheme. In accordance with the Distribution Procedures, the pre-receivership receipt of funds by a holder of a Class 3 Claim from one or more of the Receivership Entities on account of his/her/their/its investment will be considered a "distribution" against the Initial Interim Distribution and the Class 3 Allowed Claim

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<sup>1</sup> Capitalized terms used, but not defined herein, shall have the meanings ascribed them in the Receiver's Motion for an Order Approving Distribution Procedures and Certain Other Related Relief [Document No. 117] and the Order [Document No. 118].

for that claimant will be reduced dollar-for-dollar by that amount.<sup>2</sup> If a holder of a Class 3 Allowed Claim previously received in excess of the established distribution percentage, the holder of that Class 3 Allowed Claim will not receive a distribution pursuant to the relief requested in this Motion.

Moreover, the Receiver is cognizant of the right of Class 3 Claimants to respond/object to the Claims Recommendation and process established by the Order [Document No. 118] to address those responses/objections. However, the Receiver believes that equity requires that Class 3 Claim claimants who do not respond/object to the Claims Recommendation should be entitled to receive at least a portion of the Initial Interim Distribution. For such non-responding/non-objecting Class 3 Claim claimants the Receiver seeks approval from this Court to make a partial Initial Interim Distribution to qualifying Class 3 Claims.<sup>3</sup>

### **RELEVANT FACTS**

Approximately 150 Claims were timely asserted by investors through the Claims Process. These Claims assert damages in excess of \$39 million against the Receivership Entities. As of the date of the filing of this Motion, the Receiver holds approximately \$4.1 million in Receivership Assets that will be used to pay Claimants and administrative fees in this case.<sup>4</sup> Additionally, the Receiver continues to seek recovery of additional Receivership Assets.

After filing the “Motion for an Order Approving Distribution Procedures and Certain Other Related Relief” (the “Distribution Procedures Motion”) [Document No. 117], the Receivership Team began preparing the Claims Recommendation Summary and individual detailed analyses for each Class 3 Claim. As of the date of this Motion, all of the Class 3 Claims have been analyzed by the Receivership Team and the Receiver has finalized the recommendation for each Class 3 Claim based upon that analysis. Pursuant to the Distribution Procedures, no claims in classes other than Class 3 are required to be reconciled by the Receivership Team at this time.

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<sup>2</sup> By way of example, if a Class 3 Claim claimant invested \$100,000 and received a distribution in the amount of \$25,000, the Class 3 Allowed Claim would be reduced to \$75,000 and the Class 3 Claim claimant would be considered to have received a 25% distribution against the Class 3 Allowed Claim.

<sup>3</sup> A qualifying Class 3 Claim shall be defined as a Class 3 Claim that qualifies for a distribution pursuant to the “rising tide” calculation approved by this Court.

<sup>4</sup> Pursuant to paragraphs 16(a) and 32 of the Order [Document No. 118], the Receiver shall establish an appropriate reserve to satisfy Class 1 Claims and any claims not disallowed by this Court.

It is the Receiver's recommendation to the Court that each Class 3 Claim claimant is allowed 30 days from the date of mailing by the Receiver of the Claims Recommendation and the portion of exhibit that relates to that claimant only (as opposed to the filing date of the Claims Recommendation) to accept or object to the Receiver's Claims Recommendation. If a Class 3 Claim claimant fails to timely respond or object to the Claims Recommendation for his/her/their/its claim, the Class 3 Claim claimant is deemed to have accepted the Receiver's Claims Recommendation.

Upon a Class 3 Claim claimant accepting or being deemed to accept their Claims Recommendation, a Class 3 Claim claimant is required to provide the Receiver with a completed W-9 or W-8 (as applicable)<sup>5</sup> in order for his/her/their/its Class 3 Claim to be allowed against the Receivership Entities (a "Consensual Allowed Claim"). If the Class 3 Claim claimant timely responds/objects to the Claims Recommendation, the Claims Recommendation will be allowed upon the resolution of such objection (whether consensual or through litigation in accordance with the Distribution Procedures) and the submission of the Release and the W-9 or W-8 (the "Resolved Allowed Claims," together with the Consensual Allowed Claims, are hereafter referred to as the "Allowed Claims"). The failure of any party to submit an executed Release and W-9 or W-8 will be treated as the waiver of a holder of an allowed claim to any distribution by the Receiver or Receivership Estate.

## **ARGUMENT**

The Receivership Team has worked diligently to collect and return as much of the money lost by the investors of the ClearPath scheme as efficiently as possible. Towards that end, this Court previously entered the Order which established the Distribution Procedures [Document No. 118]. The Distribution Procedures created the framework for returning funds gathered by the Receiver to the holders of allowed claims in this case. This Motion seeks approval of certain procedural matters to implement the Distribution Procedures. These procedures are necessary to make an initial interim payment to holders of Class 3 Allowed Claims.

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<sup>5</sup> As approved by the Court in the Order [Document No.118], submission of a completed W-9 or W-8 (as applicable) shall serve as conclusive evidence that the submitting Class 3 Claim claimant agrees that it has released any and all claims that it has or may have, if any, against the Receiver or the Receivership Estate. The failure to submit a W-9 or W-8 form would be treated as the waiver of a holder of an allowed claim to any distribution by the Receiver or Receivership Estate.

Because of the volume of Claims and the uncertainty regarding the amounts paid into and out by the ClearPath scheme, the Receivership Team was required to reconcile a large number of filed Proofs of Claim against a variety of data sources prepared by different parties. In addition to the Proof of Claim forms submitted to the Receiver and Victim Impact Statements submitted to the US Attorney's Office in connection with the criminal sentencing hearing, in order to complete the Class 3 Claim analysis the Receivership Team also reviewed and verified/cross-referenced (to the extent possible) the following data: (a) the Receiver's investor list spreadsheet; (b) the so-called Harvey Mason distribution plan analysis – "Waterfall Analysis All Investments 12-10-14 v1 – 30 months with holdback to SEC" spreadsheet obtained by the Receiver from the Plaintiff; (c) the analysis done by the Court-approved financial consultant, Sansiveri, Kimball & Company, LLP ("SK"), using (i) Audit work papers for 2009, 2010 and 2011 and (ii) Archway General Ledger Detail for 2012, 2013 and 2014; (d) JER-RP Analysis spreadsheet prepared by Plaintiff; and (e) the review of pleadings and recoveries obtained from investors in the Rhode Island Superior Court matter captioned as Curtis Ball, et al. v. Patrick Churchville, et. al. (docket number CA No.: PB-2014-0425).<sup>6</sup>

The Receivership Team has now completed the Class 3 Claim analysis and is prepared to make a partial, interim distribution to holders of Allowed Class 3 Claims. Accordingly, the Receiver seeks to distribute (or reserve for future distribution on objected to and unresolved Class 3 Claims) the majority of the funds he has recovered to Class 3 Claim claimants on account of their Class 3 Claims pursuant to the Distribution Procedures. If approved, this initial, interim distribution would result in all holders of Class 3 Allowed Claims receiving a percentage of the amount such persons directly invested in the ClearPath scheme.

Although the Receiver is hopeful that he will obtain future recoveries and that such future recoveries will allow for further distributions to holders of Class 3 Allowed Claims, it remains very unlikely that the Receiver will be able to recover funds sufficient to pay all Allowed Claims in full. Consequently, there will likely be no distribution to, nor (in accordance with the

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<sup>6</sup> Ball litigation recovery detail was verified from the Archway General Ledger Detail identified in (c)(ii).

Distribution Procedures) will any reserve be established for, Class 2<sup>7</sup>, 4<sup>8</sup> or 5<sup>9</sup> Claims or Class 3 Claims that have been disallowed.

### **DISTRIBUTION APPROVAL**

This Court previously authorized the Receiver to collect, liquidate and marshal the assets of the Receivership Entities. Subject to responses/objections that may be lodged by Class 3 Claim claimants, the Receiver believes that he is now in a position to make the Initial Interim Distribution in accordance with the Distribution Procedures to the Class 3 Claim claimants who hold Allowed Claims. Subject to an appropriate reserve established by the Receiver, the Receiver requests that this Court approve the payment of the Initial Interim Distribution directly to the holders of Class 3 Allowed Claims in accordance with the Distribution Procedures.

### **Establishing Record and Distribution Dates**

In order to establish the universe of Class 3 Claim claimants who are eligible to receive the Initial Interim Distribution on the Initial Interim Distribution Date and to efficiently and cost effectively make the Initial Interim Distribution, the Receiver has determined that he needs to establish the Initial Interim Distribution Record Date and Subsequent Record Dates. Establishing the Initial Interim Distribution Record Date is necessary: (i) to establish the date by which a Claim must be an Allowed Claim to be eligible to participate on the Initial Interim Distribution Date; (ii) to provide adequate time to allocate the assets that the Receivership Estate holds into various pools (i.e. assets needed for the Initial Interim Distribution on the Initial Interim Distribution Date, assets to be reserved for the Initial Interim Distribution on Subsequent Distribution Dates, and assets to be used for future distributions, administrative costs and Class 1 Claims<sup>10</sup>); and (iii) to ensure that,

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<sup>7</sup> Class 2 Claims are Claims asserted by Claimants who contend that their claims are secured by collateral as classified in accordance with the Distribution Plan.

<sup>8</sup> Class 4 Claims are Claims asserted by taxing authorities and other governmental entities as classified in accordance with the Distribution Plan.

<sup>9</sup> Class 5 Claims are Claims asserted by general unsecured creditors of the Receivership Defendant as classified in accordance with the Distribution Plan.

<sup>10</sup> Class 1 Claims are Claims for the actual necessary costs and expenses incurred by the Receiver and the Receivership Team subsequent to the appointment of the Receiver, as classified in accordance with the Distribution Plan.

among other things, each Class 3 Claim that later becomes an Allowed Claim will receive equal treatment from the Receivership Estate.

The Receiver requests that the Initial Interim Distribution Record Date be set as November 2, 2018. That date would allow sufficient time to hear this Motion and provide Class 3 Claim claimants to submit the required Release and W-9 or W-8 forms to have their Claims become Allowed Claims (thereby allowing their participation in the Initial Interim Distribution on the Initial Interim Distribution Date). The Receiver further proposes that the Court set the Initial Interim Distribution Date as December 15, 2018, for all Class 3 Claims that are Allowed Claims on or prior to the Initial Interim Distribution Record Date. The Receiver believes that this will provide the Receivership Team the time needed to prepare distribution checks that are to be made on the Initial Interim Distribution Date and to confirm that the Receivership Team properly reserves sufficient funds to pay those Class 3 Claims that later become Allowed Claims.

Additionally, the Receiver also requests that this Court establish subsequent dates for determining a previously unallowed Class 3 Claim claimant's eligibility to receive its Initial Interim Distribution. The Receiver requests that the Court establish (i) the first Subsequent Record Date as February 15, 2019, and (ii) additional Subsequent Record Dates on the last business day of each calendar quarter subsequent to the first Subsequent Record Date. The Receiver also requests that this Court establish Subsequent Distribution Dates for the Initial Interim Distribution on the last business day of the calendar month that directly follows a Subsequent Record Date.

The Receiver believes that establishing these dates is in the best interest of the Receivership Estate and the holders of Class 3 Claims against the Receivership Entities because they will promote efficiency by permitting the Receiver to issue checks in groups (as opposed to every time a Claim becomes an Allowed Claim), provide certainty to Class 3 Claim claimants regarding when they will receive payment on account of their Allowed Claims, and provide the Receivership Team adequate time to make the distributions.

The Receiver will, in the future, move this Court for approval to make distributions to Class 3 Claim claimants in addition to the Initial Interim Distribution.

### **Reserves**

Additionally, the Receiver seeks to establish reserves in order to ensure that there are funds remaining in the Receivership Estate that are sufficient to pay Class 3 Claims when they become

Allowed Claims, and to pay the costs, fees and expenses incurred by the Receivership Estate in accordance with Orders of this Court. The Receiver anticipates setting the reserves for all Class 3 Claim claimants as the aggregate amount of the Initial Interim Distribution Amount that would be necessary to pay each such Class 3 Claim claimant if that claimant held an Allowed Claim in the amount that the Class 3 Claim claimant asserted by the Receiver in the Claims Recommendation. If a Class 3 Claim is disallowed, the reserve created on account of that particular Claim will be released to the pool of assets of the Receivership Estate to be held for future distribution in accordance with the Distribution Procedures. If a Class 3 Claim is allowed at an amount that is less than the amount on which the reserve for that Claim was established, the reserve shall be reduced by a proportional amount. The difference between the total reserves and the aggregate amount of the newly established aggregate Initial Interim Distribution Amount shall be released to the pool of assets of the Receivership Estate to be held for future distribution in accordance with the Distribution Procedures. In the unlikely event that the amount that is reserved for payment of the Initial Interim Distribution Amount for a given Class 3 Allowed Claim is insufficient to pay the Initial Interim Distribution Amount for such Class 3 Allowed Claim, the additional funds necessary to pay the Initial Interim Distribution Amount shall be withdrawn from the pool of assets of the Receivership Estate that was to be used for subsequent distribution on Class 3 Claims.

Finally, in accordance with the Distribution Procedures, no reserve will be established for any Class 2, 4, or 5 Claims, or for the Class 3 Claims that have been disallowed by order of this Court. Pursuant to the Distribution Procedures, the Receivership Team does not believe that there will be any funds available to pay Class 2, 4 or 5 Claims.

Thus far no Claimant has sought to have his/her/their/its Claim classified as a Class 2 claim. Pursuant to the Court's Order Appointing Receiver (the "Appointing Order") [Document No. 16], all parties, including, without limitation any claimants, were required to turn over any assets or collateral that they held for any of the Receivership Entities. To the extent that a claimant failed to turn over such funds, they were and remain in contempt of the Appointing Order. Therefore, the Receiver will urge the Court to deny any assertions by any claimant that any claim should be afforded treatment in Class 2 pursuant to the Distribution Procedures. Instead, the Receiver requests that he be authorized to treat these Claimants' Claims as Class 3, 4 or 5 Claims, as may be applicable, in accordance with such claimant's initial filings and applicable law.



## **CONCLUSION**

For all of the foregoing reasons, the Receiver requests that this Court enter an order (i) approving the Motion; (ii) authorizing the Initial Interim Distribution; (iii) establishing the Initial Interim Distribution Record Date; (iv) setting the Initial Interim Distribution Date; (v) establishing Subsequent Record Dates and Subsequent Distribution Dates; and (vi) granting whatever further relief this Court deems just and proper.

Respectfully submitted,

/s/ Stephen F. Del Sesto  
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## **CERTIFICATE OF SERVICE**

I, Stephen F. Del Sesto, hereby certify that I filed the within document on the 7<sup>th</sup> day of August, 2018, and that notice will be sent electronically to all counsel who are registered participants identified on the Mailing Information for Case No. 15-cv-00191-S-LDA.

/s/ Stephen F. Del Sesto