

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

SECURITIES AND EXCHANGE COMMISSION,)
)
Plaintiff,)
)
vs.) Case No. 15-CV-00191-S-LDA
)
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.)
)

RECEIVER’S REPORT AND REQUEST FOR ENTRY OF ORDERS

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 Report and Request for Entry of Orders (the “Request”) in response to the issues and questions raised by this honorable Court at the conference held on December 18, 2019.

On December 18, 2019, this honorable Court held a status conference in connection with the above referenced matter (the “Conference”). At the conclusion of the Conference the Court requested that the Receiver prepare this Request addressing certain specific issues discussed during the Conference. The issues that this Court requested be addressed are the following:

1. A request for entry of an Order or Orders authorizing the Receiver to accept IRS Form W-9s submitted by investors in connection with the initial or revised (second) Claim Analyses

- and utilize that IRS Form W-9 in connection with the 3rd and Final Claim Analysis provided in May 2019;
2. The Receiver's recommended process and procedure to locate investors entitled to a first interim distribution based on the 3rd and Final Claim Analysis and the related "rising tide" calculation who have not ever responded to the Receiver, as well as a request for an Order or Orders approving that recommended process and procedure;
 3. A request for entry of an Order or Orders approving the final designation of certain claimants as "insiders" and establish a formal objection process for those parties to appear and show cause as to why they should not be designated as "insiders";
 4. Provide the Court with a status regarding the potential buy-out of the remaining Capiro Partners waterfall payments; and
 5. Provide a status to the Court regarding the draft communication to be sent to the US Marshall's and US Attorney's Offices in Maryland in order to obtain a status of their administration of the investigation and liquidation associated with the Maryland Ponzi scheme which involved the JER investments that are related to this matter.

I. Acceptance of Previously Submitted W-9 Forms for Interim Distribution

In its Order Approving Receiver's Recommendation and Motion to Allow Recommended Class 3 Claims entered on June 12, 2019 [Document #151], the Court Ordered that "[p] ursuant to paragraph 23 of the Distribution Order (Document No. 118) no Class 3 Claim will be entitled to a distribution unless and until the claimant has submitted the required W-9 or W-8 forms (as applicable), the filing of which shall also evidence the Class 3 Claimants' release of any claims against the Receivership Estate." See Document #151 at paragraph 3. Between October 13, 2018, and May 20, 2019, the Receiver prepared and delivered three (3) claims analyses versions to investors.¹ In accordance with this Court's Order Approving Distribution Procedures and Certain Other Relief dated

¹ The initial Class 3 Claims Analysis was sent to investors on or about October 13, 2018. Following several lengthy discussions with multiple investors regarding valid claim questions, the Receiver revised the Class 3 Claim Analysis to reclassify certain investments and capture other missing investments. The Revised Class 3 Claim Analysis was then sent to investors on or about December 28, 2018. Again, following several new, lengthy discussions with multiple investors regarding additional valid claim questions, the Receiver again revised the Class 3 Claim Analysis to further reclassify certain investments and capture other missing investments. The 3rd and Final Claim Analysis (originally referred to as the "Adjusted Revised Claim Analysis") was then sent to investors on or about May 20, 2019. The Receiver is confident that 3rd and Final Claim Analysis properly accounts for and reflects the investor claims in this matter.

July 15, 2018 [Document #118], claims disputes must be brought formally before the Court if more than ninety (90) days has passed since the Receiver's issuance of a claim analysis/determination. Based on the 3rd and Final Claim Analysis sent on May 20, 2019, the ninety (90) day period expired on or about August 20, 2019. Since that date no investor has ever formally filed an objection or dispute with the Court relative to the calculation of their claim as set forth on the 3rd and Final Claim Analysis.²

Although several investors issued executed Form W-9s to the Receiver in connection with the Initial and Revised Class 3 Claim Analyses, some of those same investors did not deliver an executed Form W-9 in connection with the 3rd and Final Claim Analysis despite the Receiver's request to do so.³ Because those Class 3 Claimants already sent an executed W-9 and, thus, indicated their acknowledgment of their release of any claims against the Receivership Estate, the Receiver believes it is appropriate and efficient to accept those Form W-9s submitted for the prior claim analyses and accept and apply them to the rising tide calculation associated with the 3rd and Final Claim Analysis. If this Court approves that authorization it will permit the Receiver to issue additional interim partial distributions to approximately twenty-nine (29) Class 3 Claimants in a total amount of \$594,750.21.

Based on the above, the Receiver respectfully requests that this Court enter an Order authorizing him to accept and apply any and all Form W-9s submitted to the Receiver in connection with the original or any revised or adjusted Class 3 Claim Analyses to the 3rd and Final Claim Analysis and, as applicable, make interim distributions in accordance with the rising tide calculation.

II. Recommended Process and Procedure to Locate Investors

The Court has requested that the Receiver recommend process and procedure to locate investors entitled to an interim distribution based on the 3rd and Final Claim Analysis and the related "rising tide" calculation who have not ever responded to the Receiver. The Receiver believes that he has valid mailing addresses and/or electronic mail addresses for all investors. Despite that, several investors have never communicated with nor responded to any filings, notices or letters from the Receiver. Some of those investors, if they had provided a Form W-9 at any time, would now be entitled

² It is important to note that a small number of investors have questioned the inclusion and/or classification of pre-receivership investments and disbursements from the ClearPath Entities and the resulting calculation of their claim; however, none of these investors have formally filed an objection with this Court. Thus, in the absence of any such formal objections the Receiver considers the claim calculation set forth in the 3rd and Final Claim Analysis to be finally established and determined.

³ Instead of re-issuing a new W-9, some investors sent authorization to use a prior executed version in connection with the 3rd and Final Claim Analysis. The Receiver accepted that authorization and, if entitled to an interim distribution, those investor claims have been sent their distributions. As a result, those investors are not part of the relief requested in this pleading.

to a partial, interim distribution. There are 12 investors who would collectively receive partial distributions totaling \$274,205.12 that have never communicated with the Receiver.

In order to take best efforts to locate these parties, the Receiver has already mailed and/or emailed letters with Form W-9s to these investors advising them of their pending distribution and requesting that they send an executed Form W-9 so that their distribution can be mailed to them. In addition, the Receiver recommends that he work with the Plaintiff to assure that he is in possession of the same email and/or mailing addresses as the Commission and update that database as appropriate. Further, the Receiver will, with the assistance of the Commission attempt to identify telephone numbers associated with these Class 3 Claimants and place calls to each in an effort to advise them of their claim distribution. Lastly, the Receiver will utilize a people search platform in an effort to further identify current contact information.

Based on the above, the Receiver respectfully requests that this Court enter an Order approving the above process and procedure and authorize any additional processes and procedures that the Court deems reasonable and appropriate.

III. Formal Objection Process for Those Parties Designated as “Insiders”

The Court approved the Receiver’s recommendation relative to the definition of an “insider” in this matter. The definition of “insider” approved by this Court is as follows:

“An ‘Insider Claimant’ shall be defined as Defendant Patrick Churchville (“Churchville”) or Jonathan E. Rosenberg (West Orange, New Jersey) (“Rosenberg”) or any Class 3 Claimant who (a) has familial relationship, direct or indirect or immediate or extended, with either Churchville or Rosenberg; or (b) was a business associate or agent, paid or unpaid, of Churchville, Rosenberg, ClearPath Wealth Management or any other affiliated or other entity in which Churchville or Rosenberg held an ownership interest of twenty-five percent (25%) or more; or (c) served as a director, officer, manager or employee, paid or unpaid, of ClearPath Wealth Management or any other affiliated or other entity in which Churchville or Rosenberg held an ownership interest of twenty-five percent (25%) or more; or (d) any individual(s) or entity(ies) who are found to have received or obtained insider information regarding any investments related to Churchville, Rosenberg or ClearPath Wealth Management funds or other investments or investment vehicles.”

Following the Court's approval of the "insider" definition, on October 13, 2018, the Receiver sent a Notice to only to those Class 3 Investor Claimants who appeared to qualify as an "Insider" based upon that definition. The Receiver received information and had substantive discussions with the majority of those parties who appeared to fall within the "insider" definition. Following the review of that information and those discussions the Receiver is satisfied that only three (3) parties remain which fall within the definition and have not satisfied the Receiver that they should not be considered "insiders". Those parties are Linda Rosenberg⁴, Michael Rosenberg⁵ and Andrew "Drew" Carlin⁶.

In connection with those insider claims, the Receiver recommends the following procedure for objections to the insider designation:

- a. each of the "insider" parties prepare and submit an attested to formal affidavit and filing with this Court (with copies to the Receiver and the Commission) setting forth all information and reasons why they believe they should not be considered "insiders";
- b. the Receiver and the Commission shall have thirty (30) days to file an objection or response;
- c. the parties designated as "insiders" shall have ten (10) days to reply;
- d. following submission of all filings, the Court can either docket the matter for hearing or, if it deems it appropriate, issue a decision on the pleadings.

Based on the above, the Receiver respectfully requests that this Court enter an Order approving the above "insider" objection process and direct any additional requirements that the Court deems reasonable and appropriate.

IV. Status of Buy-Out

The Receiver received a proposed buy-out from counsel to Capiro Partners, LLC on January 17, 2020. The Receiver has not had an opportunity to review that proposal or discuss with the Commission. The Receiver expects to have an update for the Court at the hearing on this Request.

⁴ Ms. Rosenberg is the mother of Jonathan Rosenberg, the individual who was convicted in connection with the Maryland Ponzi scheme.

⁵ Mr. Rosenberg was the father of Jonathan Rosenberg, the individual who was convicted in connection with the Maryland Ponzi scheme. It is the Receiver's understanding that Mr. Rosenberg passed away and any distribution, if any, would be the property of his Estate.

⁶ Mr. Carlin is a biological relative of Mr. Churchville, a former employee of ClearPath Wealth Management and a business partner of Mr. Churchville for two (2) Rhode Island entities that directly benefitted from Mr. Churchville's illegal actions.

V. **Status of the Draft Communication to the US Marshall's and US Attorney's Offices
in Maryland**

At the December 18, 2019, conference, the Court requested that a draft of a proposed letter to the federal offices handling the Maryland Ponzi scheme matter (the JER/Rosenberg Ponzi) be prepared for the Court's review. The Commission offered to prepare the first draft of that letter. The Receiver has not yet received a copy of that draft.

WHEREFORE, the Receiver prays that, upon final consideration of this Request, the Court enter an order or orders granting and approving the relief, processes and procedures set forth herein and for such other and further relief, general or special, at law or in equity, to which the Receiver may show himself justly entitled.

Respectfully submitted,

/s/ Stephen F. Del Sesto

Stephen F. Del Sesto, Esq. (Bar #6336)

*Receiver for Patrick Churchville, ClearPath
Wealth Management, LLC, ClearPath*

Multi-Strategy Fund I, L.P., ClearPath

*Multi-Strategy Fund II, L.P., and ClearPath Multi-
Strategy Fund III, L.P. and not individually*

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January 17, 2020

CERTIFICATE OF SERVICE

I, Stephen F. Del Sesto, hereby certify that I filed the within document on the 17th day of January, 2020, 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