

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

SECURITIES AND EXCHANGE  
COMMISSION,

Case No. 8:20-CV-325-T-35AEP

Plaintiff,

v.

BRIAN DAVISON, et al.,

Defendants.

128 E. DAVIS BLVD, LLC, et al.,

Relief Defendants.

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**NON-PARTY, BANK OF AMERICA, N.A.'S MOTION FOR CLARIFICATION**

Non-party Bank of America, N.A. ("Bank of America" or the "Bank"), by and through its undersigned counsel, hereby moves for clarification of this Court's Sealed Order Granting Emergency Ex Parte Motion For Temporary Restraining Order, Asset Freeze, and Other Injunctive Relief [ECF 10], along with the Agreed Order Extending And Modifying Asset Freeze [ECF 31], directing the hold of Defendants' funds and assets, and as grounds therefore, Bank of America states as follows:

**REQUEST FOR HEARING ON BANK OF AMERICA'S MOTION**

Pursuant to M. D. Fla. L. R. 3.01(j), Bank of America respectfully requests a fifteen-minute hearing for this Court to address Bank of America's motion to clarify whether Bank of America should continue holding funds pursuant to the Court's Sealed Order Granting Emergency Ex Parte Motion For Temporary Restraining Order, Asset Freeze, and Other Injunctive Relief (the

“Temporary Restraining Order”) and the Agreed Order Extending And Modifying Asset Freeze (the “Asset Freeze Order”) [EC 31] (collectively referred to as the “Freeze Orders”). The Defendant, Brian Davison, argues that certain accounts are not subject to the Freeze Orders and is demanding the Bank release those accounts, while the Securities and Exchange Commission (“SEC”) and Receiver claim that those certain accounts are subject to the Freeze Orders. Accordingly, Bank of America respectfully requests that this Court entertain a fifteen-minute hearing to clarify the language of the Freeze Orders, as to whether the certain accounts are subject to the Freeze Orders.

### **STATEMENT OF FACTS**

On February 14, 2020, the Court entered the Temporary Restraining Order [ECF 10] directing “any financial or brokerage institution to hold the funds or assets...under the control of Defendants...held indirectly, jointly or singly.” Specifically, Section III(b), titled “Asset Freeze” of the Temporary Restraining Order, states the following:

**Any financial or brokerage institution or other person or entity holding any such funds or other assets, in the name, for the benefit or under the control of Defendants and Relief Defendants or indirectly, held jointly or singly, and wherever located, and which receives actual notice of this order by personal service, mail, email, facsimile, or otherwise, shall hold and retain within its control and prohibit the withdrawal, removal, transfer, disposition, pledge, encumbrance, assignment, set off, sale, liquidation, dissipation, concealment, or other disposal of any such funds or other assets, including but not limited to, the following presently known bank accounts: (emphasis added).**

Section (III)(b) further proceeds to identify twelve specific bank accounts held at Bank of America via their account number (the “Specified Accounts”). Pursuant to the Temporary Restraining Order, Bank of America placed a hold on the “known bank accounts”—the twelve Specified Accounts. In addition, pursuant to the Temporary Restraining Order, the Bank placed a

hold on twelve additional accounts (the “Additional Accounts”)<sup>1</sup> as the plain language of section III(b) of the Temporary Restraining Order specified that the hold, was “*including but not limited* to the ...known bank accounts.” See the bolded language of section III(b) as referenced above. Additionally, pursuant to the plain language of the Temporary Restraining Order, the Bank placed a hold on a safe deposit box, in which one of the individual Defendants is a co-signer.

On February 28, 2020, this Court entered the Asset Freeze Order [ECF 31], which exactly mirrors the language of the Temporary Restraining Order [ECF 10] as it relates to Bank of America. [ECF 31]. Pursuant to section I(b), titled “Extension of Temporary Order Freezing Assets” of the Asset Freeze Order, Bank of America, held the Specified Accounts, along with the twelve Additional Accounts which are “under the control of the Defendants...indirectly, held jointly or singly” as the Defendant, Brian Davidson, is a signatory on all of the Additional Accounts. See section (I)(b) of the Asset Freeze Order. A true and correct copy of the Declaration In Support of Non-Party, Bank of America, N.A.’s Motion for Clarification is attached hereto as **Exhibit A**.

The SEC confirmed to Bank of America that pursuant to the Temporary Restraining Order and the Asset Freeze Order, the Specified Accounts, along with the twelve Additional Accounts were to be held. A true and correct copy of the email correspondence between the undersigned and counsel for the SEC is attached hereto as **Composite Exhibit B**. While the SEC insists that the Bank hold the Additional Accounts pursuant to the Freeze Orders, the Defendant, Brian Davison, has specifically objected to the Bank holding three of the Additional Accounts. Specifically, Defendant objects to the hold on the accounts titled in the name of Equialt Secured

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<sup>1</sup> The Receiver’s First Quarterly Report specifically lists the twelve Additional Accounts that bear the designation of “Remain Frozen on page 43. [ECF 31]

Income Portfolio REIT, Inc. and Equalt Qualified Opportunity Zone Fund, LP. A true and correct copy of the correspondence with the SEC is **attached hereto as Exhibit C**. Upon information and belief, Defendant Brian Davison also objects to the Bank holding all of the remaining additional accounts.

It also should be noted that on February 14, 2020, the Court entered its *Sealed Order Granting Plaintiff's Emergency Ex Parte Motion for Appointment of Receiver and Memorandum of Law* (the "Order Appointing the Receiver") [ECF 11]. The Receiver also objects to the release of the hold as reflected by the *Receiver's First Quarterly Status Report*, filed on May 8, 2020 (the "Receiver's Report") [ECF. 84]. In the Receiver's Report, the Receiver asserts that "[t]he Receivership should be expanded to include the New Funds (QOZ and REIT) for the protection of the investors in the Receivership Funds and the New Funds and to assure their continued ability to operate and be wound down [ECF. 84]." In other words, the Receiver not only objects to the Bank releasing the Additional Accounts that Defendant seeks to release, but the Receiver also insists that the Receivership include the three Additional Accounts, titled in the name of Equalt Secured Income Portfolio REIT, Inc. and Equalt Qualified Opportunity Zone Fund, LP.

Meanwhile, it also should be noted that pursuant to the Order Appointing the Receiver [ECF 11], the Receiver has requested that Bank of America issue checks for the account balances from the Specified Accounts that are being held pursuant to the Freeze Orders. According to the Receiver's Report, the Receiver has opened duplicate accounts at another financial institution. [ECF. 84]. Bank of America is in the process of closing the Specified Accounts and seeks to also close the Additional Accounts.

### MEMORANDUM OF LAW

Pursuant to the specific language of the both the Temporary Restraining Notice and the Asset Freeze Order, the Bank placed a hold on the twelve Additional Accounts. Notwithstanding the language of the Freeze Orders, Defendant's counsel insists the Bank release the hold on the Additional Accounts while the SEC and the Receiver maintains that the Bank should not release the hold. Bank of America is a non-party to this dispute and is caught in the middle of the parties' conflicting demands and the parties' disagreement as to the scope of Temporary Restraining Order and the Asset Freeze Order. Bank of America is in a difficult position of possibly exposing itself to liability to the SEC and the Receiver, if it releases the hold on the funds set aside from the Additional Accounts. On the other hand, if Bank of America maintains the holds on the Additional Accounts, Bank of America is in a position of exposing itself to liability to the Defendant. In light of the conflicting demands, Bank of America seeks this Court's clarification regarding the Freeze Orders.

"[W]here an order or judgment is unclear, a court retains inherent authority to interpret ambiguities." *United States v. Brooks*, 2019 U.S. Dist. LEXIS 79924, \*6, 2019 WL 2085138 (M.D. Fla., Apr. 22, 2019) quoting *United States v. Spallone*, 399 F.3d 415, 421 (2d Cir. 2005). Further, it is well settled that the "[t]he Court has the discretionary authority to dissolve, modify, or *clarify* its injunction." *PB Legacy, Inc. v. Am. Mariculture, Inc.*, 2020 U.S. Dist. LEXIS 3550, \*8, 2020 WL 104154 (M.D. Fla. Jan. 9, 2020) citing *Dillard v. Baldwin County Comm'rs*, 376 F.3d 1260, 1264 (11th Cir. 2004); *CBS Broad. Inc. v. EchoStar Comm. Corp.*, 532 F.3d 1294, 1299 "[The district Court] nevertheless retains inherent authority to interpret ambiguities in its own orders and judgments... The district court did not exceed its authority in clarifying this ambiguity." *United States v. Spallone*, 399 F.3d 415, 418 (2d. Cir. 2005)

Based on the foregoing, Bank of America requests this Court enter an order clarifying the Temporary Restraining Order and the Asset Freeze Order, authorizing Bank of America to close the Specified Accounts and Additional Accounts, and authorizing Bank of America to release or disburse funds as instructed, or in the alternative, to tender the proceeds into the Court's registry to be held pending further order of the Court, so that the Court can determine whom should have authority over the Funds or portion thereof.

**WHEREFORE**, Bank of America respectfully requests this Honorable Court enter an Order:

- a. Granting Bank of America, N.A.'s Motion for Clarification and clarifying the scope of the Asset Freeze Order.
- b. Permitting Bank of America to issue checks and deliver as instructed, or in the alternative tender the Funds into the Court's registry via check payable to the Clerk of Court;
- c. Authorize Bank of America close the Additional Accounts;
- d. Grant Bank of America its reasonable fees and costs;

[BLANK SPACE LEFT INTENTIONALLY]

- e. Confirm that Bank of America is not liable for holding the Specified Accounts and Additional Account pursuant to the Temporary Restraining Order and subsequent Asset Freeze Order and complying with an order entered pursuant to this Motion.
- f. And provide any other or further relief deemed just and proper by this Court.

**LIEBLER, GONZALEZ & PORTUONDO**

*Counsel for Bank of America, N.A.*

Courthouse Tower - 25th Floor

44 West Flagler Street

Miami, FL 33130

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By: /s/ Jaimee L. Braverman

MIGUEL M. CORDANO

Florida Bar No. 523682

[mc@lgplaw.com](mailto:mc@lgplaw.com)

JAIMEE L. BRAVERMAN

Florida Bar No. 62452

[jlb@lgplaw.com](mailto:jlb@lgplaw.com)

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 20<sup>th</sup> day of May, 2020, I electronically caused the foregoing document to be filed with the Clerk of Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record in the manner specified via transmission of Notices of Electronic Filing generated by CM/ECF.

By: /s/ Jaimee L. Braverman

JAIMEE L. BRAVERMAN

Florida Bar No. 62452

# EXHIBIT “A”



UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

SECURITIES AND EXCHANGE  
COMMISSION,

Case No. 8:20-CV-325-T-35AEP

Plaintiff,

v.

BRIAN DAVISON, et al.,

Defendants.

128 E. DAVIS BLVD, LLC, et al.,

Relief Defendants.

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**DECLARATION OF BRITTANY D'AMORE IN SUPPORT OF  
NON-PARTY, BANK OF AMERICA, N.A.'S MOTION FOR CLARIFICATION**

I, Brittany D'Amore, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury that the foregoing is true and correct as follows:

1. I am over eighteen (18) years of age and am competent to testify of the matters contained herein.

2. I am currently employed by Non-Party, Bank of America, N.A. ("Bank of America" or the "Bank") as a duly authorized bank officer, with a position of being a Litigation Specialist, that I have held for several years.

3. Based upon my review of the Bank of America's books and records, maintained in the ordinary course of the Bank's business, I am fully familiar with the facts and circumstances set forth herein. The information provided herein is true and correct to the best of my current knowledge, information and belief.

4. The Bank's records were made at or near the time of the occurrence of matters set forth by or from information by or from information transmitted by, a person with knowledge of those matters.

5. The Bank's records were made and kept in the course of regularly conducted banking activity of Bank of America personnel or by persons acting under their control.


6. The Bank's records were made and kept by the regularly conducted activity of Bank of America as a regular practice, on or about the time the act, condition or event occurred.

7. Pursuant to section III(b) of the Sealed Order Granting Emergency Ex Parte Motion For Temporary Restraining Order, Asset Freeze, and Other Injunctive Relief ("Temporary Restraining Order") [ECF 10], along with section (I)(b) of the Agreed Order Extending And Modifying Asset Freeze ("Asset Freeze Order") [ECF 31] (collectively, the "Freeze Orders"), Bank of America placed a hold on the twelve (12) accounts (the "Additional Accounts") specifically listed on the Freeze Orders by account number, that bear the designation of "Liquidated/Transferred to Receiver Controlled" Accounts on page 42-43 on The Receiver's First Quarterly Status Report [ECF 84]. Bank of America also held twelve additional accounts pursuant to the plain language of the Freeze orders, that bear the designation of "Remain Frozen" Accounts on page 43 on The Receiver's First Quarterly Status Report [ECF 84]. Additionally, pursuant to the plain language of the Temporary Restraining Order, the Bank placed a hold on a safe deposit box, in which one of the individual Defendants is a co-signer.

8. The Freeze Orders specifically directs "any financial or brokerage institution" to hold and retain within its control "any such funds or assets in the name, for the benefit or under the control of Defendants...held indirectly, jointly or singly." *See* section III(b) of the TRO and section (1)(b) of the Asset Freeze Oder.

9. I have reviewed the Bank's records, including but not limited to the signature cards for the Additional Accounts, and can confirm, that based upon the signature cards, the Defendant, Brian Davison is a signer on all of the Additional Accounts and pursuant to the signature cards governing these Additional Accounts, Brian Davison has the authority to control the transactions on these Additional Accounts, thereby necessitating the hold on the Additional Accounts pursuant to the Freeze Orders.

Executed in Newark, Delaware this 19<sup>th</sup> day of May, 2020.

  
Brittany D'Amore  
Litigation Specialist

# COMPOSITE EXHIBIT “B”

[REDACTED]

---

**From:** Johnson, Alise <[REDACTED]@SEC.GOV>  
**Sent:** Friday, February 21, 2020 5:18 PM  
**To:** Miguel Cordano; John D. Bernstein  
**Subject:** FW: SEC vs Brian Davison (20-cv-00325)  
**Attachments:** Equalt LLC 0220.ppt; Equalt Holdings LLC 0220.ppt

These are the accounts we believe should be frozen.

Alise Johnson  
Senior Trial Counsel  
Securities and Exchange Commission  
Miami Regional Office

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]@sec.gov

# EquiAlt, LLC

EquiAlt, LLC

3310

Silver Sands TI, LLC

3336

Bungalows TI, LLC

3307

TB Oldest House Est. 1842, LLC

3226

Blue Waters TI, LLC

3187

EA SIP, LLC

3213

EquiAlt Fund II, LLC

3284

EquiAlt Fund, LLC

3190

EA SIP, LLC

Escrow Account

5716

EquiAlt Fund II, LLC

Escrow Account

3297

EquiAlt Fund, LLC

Escrow Account

3200

EquiAlt, LLC

Escrow Account

3323

# EquiAlt Holdings, LLC

EquiAlt Secured Income Portfolio  
Reit, Inc.

4079

EquiAlt Secured Income Portfolio  
Limited Partnership

4008

EquiAlt Secured Income Portfolio  
Reit Holdings, LLC

4011

EquiAlt Property Management, LLC

4082

EquiAlt Holdings, LLC

4147

EquiAlt Capital Advisors, LLC

4150

EquiAlt Property Management, LLC  
Escrow Account

6911

EquiAlt Secured Income Portfolio  
Reit Inc / EquiAlt Reit  
Subscription Account

5648

EquiAlt Qualified Opportunity Zone  
Fund, LP

8441

EquiAlt Property Management, LLC  
BERKELEY OPERATIONAL

5113

EquiAlt Property Management, LLC  
BERKELEY ESCROW

5126

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**From:** Johnson, Alise <[REDACTED]@SEC.GOV>  
**Sent:** Monday, March 2, 2020 2:02 PM  
**To:** John D. Bernstein  
**Cc:** Miguel Cordano; Mark E. Steiner; [REDACTED]  
**Subject:** RE: Davison investments

That is correct. All the accounts at BOA that are frozen remain frozen until further order of the Court.

Alise Johnson  
Senior Trial Counsel  
Securities and Exchange Commission  
Miami Regional Office  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]@sec.gov

---

**From:** John D. Bernstein <jdb@lgplaw.com>  
**Sent:** Monday, March 2, 2020 2:00 PM  
**To:** Johnson, Alise <[REDACTED]@SEC.GOV>  
**Cc:** Miguel Cordano <MC@lgplaw.com>; Mark E. Steiner <MES@lgplaw.com>; [REDACTED]@lgplaw.com>; [REDACTED]@lgplaw.com>  
**Subject:** Re: Davison investments

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Alise,

As discussed, the attached Order Modifying Asset Freeze does not impact Bank of America. Thank you.

Best,

John



**John D. Bernstein**  
Associate Attorney  
**LIEBLER, GONZALEZ & PORTUONDO**

44 West Flagler Street | Courthouse Tower 25th Floor | Miami, FL 33130 | Tel: (305) 379-0400 | Fax (305) 379-9626 | Email: [jdb@lgplaw.com](mailto:jdb@lgplaw.com) | Web: [www.lgplaw.com](http://www.lgplaw.com)

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# EXHIBIT “C”

**From:** Miguel Cordano  
**Sent:** Tuesday, April 14, 2020 9:26 AM  
**To:** Kent C. Kolbig; Howard A. Fischer  
**Cc:** John D. Bernstein; Mark E. Steiner  
**Subject:** RE: Proposal - Unfreezing REIT and QOZ Accounts (Equalt)

Kent,

For clarification regarding your proposal, we spoke with the Receiver's counsel and SEC. They each advised that they believe these accounts are clearly subject to the TRO. Furthermore, they advised that you did not have an agreement to the essential terms you outlined to us.

As discussed with you, my client will consider whether or not the SEC/Receiver are on board with any proposal in their analysis of any proposed resolution. Please advise whether our understandings regarding our communications with SEC and Receiver differ from what you have been informed. If so, we can make ourselves available for a call with your office, the SEC and Receiver's counsel to discuss the matter moving forward. Thanks.

Best,

Miguel



**Miguel Cordano**

Shareholder

**LIEBLER, GONZALEZ & PORTUONDO**

44 West Flagler Street | Courthouse Tower 25th Floor | Miami, FL 33130 | Tel: (305) 379-0400 | Fax (305) 379-9626 | Email: [MC@lgplaw.com](mailto:MC@lgplaw.com) | Web: [www.lgplaw.com](http://www.lgplaw.com)

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**From:** Kent C. Kolbig <[kkolbig@MOESSINGER.COM](mailto:kkolbig@MOESSINGER.COM)>  
**Sent:** Monday, April 13, 2020 9:55 AM  
**To:** Miguel Cordano <[MC@lgplaw.com](mailto:MC@lgplaw.com)>; Howard A. Fischer <[hfisher@MOESSINGER.COM](mailto:hfisher@MOESSINGER.COM)>  
**Cc:** John D. Bernstein <[jdb@lgplaw.com](mailto:jdb@lgplaw.com)>; Mark E. Steiner <[MES@lgplaw.com](mailto:MES@lgplaw.com)>  
**Subject:** RE: Proposal - Unfreezing REIT and QOZ Accounts

Miguel - we understand that the SEC and Receiver are agreeable to unfreezing the BofA accounts for the REIT and QOZ since those entities are not subject to the receivership. However, as discussed on our call, we were waiting to hear back from you on our proposal before again following up with the SEC/Receiver. We understood you were going to speak to BofA about our proposal. Have you spoken to BofA? As an FYI, we have lined up an independent accounting firm to manage the accounts going forward.

Thanks.

Kent

**Kent C. Kolbig | Partner**

**Moses & Singer LLP**

The Chrysler Building, 405 Lexington Avenue

New York, New York 10174

t: 212.554.7822 | [kkolbig@mosessinger.com](mailto:kkolbig@mosessinger.com)

[www.mosessinger.com](http://www.mosessinger.com)

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**From:** Miguel Cordano [<mailto:MC@lgplaw.com>]

**Sent:** Friday, April 10, 2020 9:43 PM

**To:** Kent C. Kolbig <[kkolbig@MOESSINGER.COM](mailto:kkolbig@MOESSINGER.COM)>; Howard A. Fischer <[hfisher@MOESSINGER.COM](mailto:hfisher@MOESSINGER.COM)>

**Cc:** John D. Bernstein <[jdb@lgplaw.com](mailto:jdb@lgplaw.com)>; Mark E. Steiner <[MES@lgplaw.com](mailto:MES@lgplaw.com)>

**Subject:** RE: Proposal - Unfreezing REIT and QOZ Accounts

Hello Kent and Howard,

Any updates on the status of your agreement with the SEC and the Receiver over the accounts referenced below?

Regards,

Miguel



**Miguel Cordano**

Shareholder

**LIEBLER, GONZALEZ & PORTUONDO**

44 West Flagler Street | Courthouse Tower 25th Floor | Miami, FL 33130 | Tel: (305) 379-0400 | Fax (305) 379-9626 | Email: [MC@lgplaw.com](mailto:MC@lgplaw.com) | Web: [www.lgplaw.com](http://www.lgplaw.com)

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**From:** Kent C. Kolbig <[kkolbig@MOESSINGER.COM](mailto:kkolbig@MOESSINGER.COM)>

**Sent:** Monday, April 6, 2020 11:12 PM

**To:** John D. Bernstein <[jdb@lgplaw.com](mailto:jdb@lgplaw.com)>; Miguel Cordano <[MC@lgplaw.com](mailto:MC@lgplaw.com)>

**Cc:** Howard A. Fischer <[hfisher@MOESSINGER.COM](mailto:hfisher@MOESSINGER.COM)>

**Subject:** Proposal - Unfreezing REIT and QOZ Accounts

John/Miguel – Further to our call last week, below are the parameters of the proposal we discussed about unfreezing the BofA accounts relating to the REIT and QOZ, which are not subject to the receivership. We look forward to hearing from you and are available to speak, as needed.

Regards,

Kent

**UNFREEZING AND CONTINUE USE OF CERTAIN ACCOUNTS PROPOSAL**

1. Accounts to be unfrozen (the “Released Accounts”) are those that relate solely to entities that are NOT subject to the receivership and that need not have been frozen by Bank of America (“BofA”) pursuant to the Court Order dated February 14, 2020.
2. Such Released Accounts relate to the following entities:
  - a. EquiAlt Qualified Opportunity Zone Fund, LP (“QOZ”)
  - b. EquiAlt Secured Income Portfolio REIT, Inc. (“REIT”)
  - c. EquiAlt Holdings LLC (the sponsor of the QOZ and REIT)
  - d. EquiAlt Property Management LLC (the manager of the QOZ and REIT)
3. These exact accounts constituting the Released Accounts that are to be unfrozen that relate to the foregoing entities is to be confirmed as our client is not currently in possession of that information.
4. REIT and QOZ transactions will be processed and authorized by an independent third party accounting firm (“Independent CPA”).
5. Independent CPA will become sole authorized signatory on Released Accounts. Independent CPA will have online access to Released Accounts.
6. Brian Davison will not have any authorization, signing authority or control over Released Accounts.
7. Sole purpose of unfreezing the Released Accounts is to permit the REIT and QOZ, which are not subject to the receivership, to continue to operate.
8. BofA confirms to not close the Released Accounts after such accounts are unfrozen.
9. Unfreezing of the Released Accounts will be subject to the Court entering an order authorizing the Released Accounts to be unfrozen as outlined above (“Unfreezing Order”). The SEC and Receivership will consent to the Unfreezing Order or not otherwise object.

10. Unfreezing Order shall provide that BofA shall incur no liability for complying with the terms of such as it relates to the activity in the Released Accounts from the date of such order forward.

**Kent C. Kolbig | Partner**

**Moses & Singer LLP**

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New York, New York 10174

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