

**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;  
BARRY M. RYBICKI;  
EQUIALT LLC;  
EQUIALT FUND, LLC;  
EQUIALT FUND II, LLC;  
EQUIALT FUND III, LLC;  
EA SIP, LLC;

Defendants, and

128 E. DAVIS BLVD, LLC;  
310 78TH AVE, LLC;  
551 3D AVE S, LLC;  
604 WEST AZEELE, LLC;  
2101 W. CYPRESS, LLC;  
2112 W. KENNEDY BLVD, LLC;  
5123 E. BROADWAY AVE, LLC;  
BLUE WATERS TI, LLC;  
BNAZ, LLC;  
BR SUPPORT SERVICES, LLC;  
BUNGALOWS TI, LLC;  
CAPRI HAVEN, LLC;  
EA NY, LLC;  
EQUIALT 519 3RD AVE S., LLC;  
MCDONALD REVOCABLE LIVING TRUST;  
SILVER SANDS TI, LLC;  
TB OLDEST HOUSE EST. 1842, LLC;

Relief Defendants.

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**RECEIVER’S UNOPPOSED MOTION FOR LEAVE TO RETAIN COUNSEL**

Burton W. Wiand, as receiver over the assets of the above-captioned corporate defendants and relief defendants (the “**Receiver**” and the “**Receivership**” or “**Receivership Entities**”), moves the Court for leave to engage Johnson Pope Bokor Ruppel & Burns, LLP (“**Johnson Pope**”) on a contingency basis to investigate and pursue claims against law firms that provided services to EquiAlt, LLC (“**EquiAlt**”) or another Receivership Entity. The Receiver believes that (1) investigating and pursuing such claims would be in the best interests of the Receivership; (2) Johnson Pope would be effective counsel because, among other reasons, the firm has experience asserting claims against lawyers in connection with securities fraud and Ponzi schemes; and (3) the contingency fee arrangement attached as **Exhibit 1** is fair and reasonable.

**BACKGROUND**

This case was filed on February 11, 2020. On February 14, 2020, the Court entered a temporary restraining order and an asset freeze (Doc. 10) and an order appointing Mr. Wiand as Receiver over the Receivership Entities (Doc. 11) (the “**Appointing Order**”). The Court directed the Receiver to “[t]ake immediate possession of all property, assets and estates of every kind of the Corporate Defendants and Relief Defendants whatsoever and wheresoever located, including but not limited to all offices maintained by the Corporate Defendants and Relief Defendants, rights of action, books, papers, data processing records, evidences of debt, bank accounts, ... and all real property of the Corporate Defendants and Relief Defendants, wherever situated, and to administer such assets as is required in order to comply with the directions contained in [the Appointing Order], and to hold all other asset pending further order of this Court.” Doc. 11 ¶ 1.

The Court further directed the Receiver to “[i]nvestigate the manner in which the affairs of the Corporate Defendants and Relief Defendants were conducted and institute such actions and legal proceedings, for the benefit and on behalf of the Corporate Defendants and Relief Defendants

and their investors and other creditors as the Receiver deems necessary against those individuals, corporations, partnerships, associations and/or unincorporated organizations which the Receiver may claim have wrongfully, illegally or otherwise improperly misappropriated or transferred money or other proceeds directly or indirectly traceable from investors” in certain Receivership Entities. *Id.* ¶ 2. According to the Appointing Order, “the Receiver is authorized to solicit persons and entities ... to assist him in carrying out [his] duties and responsibilities,” but he must first obtain the Court’s authorization of the pertinent engagement. *Id.* ¶ 31 *see also* ¶ 5. The Appointing Order also requires the Receiver to “advise and seek the consent of the Court with respect to the institution of claims relating to vendors, professionals, investors, or financial institutions, or other litigation of a complex and significant nature that may involve commitment of significant assets or the incurrence of significant costs or expenses to the receivership.” *Id.* ¶ 3.

### **The EquiAlt Ponzi Scheme**

The SEC’s complaint charges the defendants with violations of the federal securities laws and regulations in connection with a real estate Ponzi scheme. The SEC alleges that from January 2010 to November 2019, EquiAlt raised more than \$170 million from approximately 1,100 individuals and entities to invest in three separate real estate funds. The SEC alleges that EquiAlt misrepresented the use of the proceeds of the investments and that defendants Davison and Rybicki, who controlled the operations of the corporate defendants, misappropriated monies from EquiAlt to the detriment of the investors.

As directed by the Court (*see* Doc. 11 ¶ 2), the Receiver is conducting an independent investigation of the Receivership Entities and their operations. Although his findings are preliminary, there is abundant evidence that supports the allegations that the defendants were operating a fraudulent investment scheme. The Receiver detailed this evidence in his First Interim

Report. *See* Doc. 84. While the Receiver's investigation is ongoing, he believes he has identified certain individuals and firms that may have liability to the Receivership Entities. As required by the Appointing Order, the Receiver moves the Court to authorize his engagement of Johnson Pope to further investigate certain of those individuals and firms, and if necessary and appropriate, to assert claims against them.

### **The Law Firms' Role in the Scheme**

The Receiver's investigation has revealed that several law firms provided legal services to the Receivership Entities. For example, during the relevant period, Fox Rothschild, LLP and DLA Piper, LLP (collectively the "**law firms**") provided legal services to almost all of the Receivership Entities. These services included forming Receivership Entities, drafting documents used to solicit investors, and providing advice concerning registration requirements and other matters. The lawyers represented EquiAlt and the funds it created on a continuous basis from their inception and were involved in almost every aspect of EquiAlt's business. In addition, the lawyers were also involved in numerous transactions where the principals of EquiAlt received significant personal benefits. The Receiver believes the law firms could have liability to the Receivership in connection with these activities, but his purpose in this motion is not to detail his entire investigation and contemplated litigation. Rather, he requests that the Court approve his engagement of Johnson Pope to further investigate and, if necessary and appropriate, pursue the Receivership's potential claims against the law firms. Those claims will be asserted in an appropriate forum through an independent action. They will not be litigated in this proceeding.

### **Johnson Pope and the Contingency Fee Arrangement**

As explained in Exhibit 1, Johnson Pope has substantial experience with litigation related to securities fraud and professional liability. Guy Burns, the firm's managing partner, will serve

as lead counsel for the Receiver. He has over 40 years of trial experience with over 100 trials in state and federal courts, as well as dozens of trials conducted before arbitration panels. He primarily represents plaintiffs in complex, business, commercial, securities, financial malpractice and consumer fraud litigation and in class actions, generally on a contingency fee basis. He has successfully represented plaintiffs in numerous disputes against brokerage firms, investment advisers, insurance companies, law firms, accounting firms and other corporate and financial institutions. Mr. Burns has represented clients who have record-setting awards and settlements totaling hundreds of millions of dollars. A description of his background is attached as **Exhibit 2**.

Mr. Burns has previously represented Mr. Wiand in connection with claims against a law firm arising from a securities fraud Ponzi scheme. Specifically, Mr. Wiand was appointed receiver over, in relevant part, certain hedge funds in *S.E.C. v. A. Nadel et al.*, Case No. 8:09-cv-0087-T-26TBM (M.D. Fla.). Holland & Knight LLP (“**H&K**”) provided legal services to the hedge funds and drafted private placement memoranda that included material misstatements and omissions. For example, the memoranda characterized Arthur Nadel, the Ponzi perpetrator, as an accomplished trader and investment manager, but in truth, he was a disbarred lawyer with no assets who most recently worked as a piano player in a jazz lounge. The memoranda were used to defraud investors in the hedge funds. Mr. Wiand thus asserted professional liability and other claims against H&K and one of the firm’s attorneys based on their role in the scheme. He hired Mr. Burns and Johnson Pope to litigate those claims on a contingency fee basis. A copy of the order (*Nadel* Doc. 175) approving that engagement is attached as **Exhibit 3**. H&K ultimately agreed to pay \$25 million in settlement of Mr. Wiand’s claims. A copy of the order (*Nadel* Doc. 922) approving that settlement is attached as **Exhibit 4**. Given the foregoing, the Receiver believes Mr. Burns and the

Johnson Pope firm are an excellent choice of counsel to represent the interests of the Receivership with respect to the EquiAlt law firms.

Although this case was filed in February 2020, the Receiver's appointment is still temporary because there has been no preliminary injunction hearing. In recognition of that fact and to preserve the Receivership's existing resources to ensure the largest possible recovery for creditors, including defrauded investors, the Receiver has negotiated a contingency fee arrangement with Johnson Pope. As explained in Exhibit 1, the applicable fee ranges from 10% for a pre-suit resolution to 20% for a pre-trial resolution (*i.e.*, 100 days or more before the trial date) and, finally, to 33% for a settlement within 100 days of trial or a successful verdict thereafter. The Receiver believes this sliding scale is appropriate because it will afford the Receivership a greater proportional recovery in the event of an early settlement while also compensating Johnson Pope fairly as the litigation increases in length and complexity. The arrangement caps the contingency fee at 20% for any recovery above \$10,000,000. Johnson Pope will advance costs subject to reimbursement from any recovery with the exception of costs associated with E-Hounds, the Receiver's technology consultants, and Yip Associates, the Receiver's forensic accountants. As with any contingency fee arrangement, Johnson Pope is only entitled to payment if it procures a successful resolution of the Receiver's potential claims. The Receiver believes this arrangement is fair and reasonable, given the value and complexity of those claims and the risks inherent in litigation. It will protect the funds already in the Receivership while allowing the Receiver to attempt to marshal additional funds through litigation, as directed and authorized by the Appointing Order.

### MEMORANDUM OF LAW

The Court’s power to supervise an equity receivership and to determine the appropriate actions to be taken in the administration of the receivership is extremely broad. *S.E.C. v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992); *S.E.C. v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986). The Court’s wide discretion derives from the inherent powers of an equity court to fashion relief. *Elliott*, 953 F.2d at 1566; *S.E.C. v. Safety Finance Service, Inc.*, 674 F.2d 368, 372 (5th Cir. 1982). A court imposing a receivership assumes custody and control of all assets and property of the receivership, and it has broad equitable authority to issue all orders necessary for the proper administration of the receivership estate. *See S.E.C. v. Credit Bancorp Ltd.*, 290 F.3d 80, 82-83 (2d Cir. 2002); *S.E.C. v. Wencke*, 622 F.2d 1363, 1370 (9th Cir. 1980). The court may enter such orders as may be appropriate and necessary for a receiver to fulfill his duty to preserve and maintain the property and funds within the receivership estate. *See, e.g., Official Comm. Of Unsecured Creditors of Worldcom, Inc. v. S.E.C.*, 467 F.3d 73, 81 (2d Cir. 2006). Any action taken by a district court in the exercise of its discretion is subject to great deference by appellate courts. *See United States v. Branch Coal*, 390 F.2d 7, 10 (3d Cir. 1969). Such discretion is especially important considering that one of the ultimate purposes of a receiver’s appointment is to provide a method of gathering, preserving, and ultimately liquidating assets to return funds to creditors. *See S.E.C. v. Safety Fin. Serv., Inc.*, 674 F.2d 368, 372 (5th Cir. 1982) (court overseeing equity receivership enjoys “wide discretionary power” related to its “concern for orderly administration”) (citations omitted).

As noted above, the Appointing Order directs the Receiver to “[i]nvestigate the manner in which the affairs of the Corporate Defendants and Relief Defendants were conducted....” Doc. 11 ¶ 2. It also authorizes the Receiver to “institute such actions and legal proceedings, for the benefit

and on behalf of the Corporate Defendants and Relief Defendants and their investors and other creditors as the Receiver deems necessary.” *Id.* Based on (1) the Court’s wide discretion, (2) the Receiver’s independent investigation into the matters discussed herein, (3) the skill and competency of Johnson Pope to prosecute those matters, and (4) the reasonableness of the contingency fee arrangement, the Receiver requests that the Court grant the Receiver leave to retain Johnson Pope to investigate and pursue potential claims against the law firms under the terms of the agreement attached as Exhibit 1.

**LOCAL RULE 3.01(G) CERTIFICATION**

Undersigned counsel for the Receiver has conferred with counsel for the SEC and the individual defendants and they do not oppose the relief requested in this motion.

Respectfully submitted,

**s/ Katherine C. Donlon**

Katherine C. Donlon, FBN 0066941

[kdonlon@wiandlaw.com](mailto:kdonlon@wiandlaw.com)

Jared J. Perez, FBN 0085192

[jperez@wiandlaw.com](mailto:jperez@wiandlaw.com)

R. Max McKinley, FBN 0119556

[mmckinley@wiandlaw.com](mailto:mmckinley@wiandlaw.com)

WIAND GUERRA KING P.A.

5505 West Gray Street

Tampa, Florida 33609

Tel.: (813) 347-5100

Fax: (813) 347-5198

*Counsel for Burton W. Wiand, Receiver*

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on June 26, 2020, I electronically filed the foregoing with the Clerk of this Court by using the CM/ECF system which will send notification of electronic filing to all counsel of record.

**/s Katherine C. Donlon**

Katherine C. Donlon

# **EXHIBIT 1**



**JOHNSON  
POPE**  
BOKOR  
RUPPEL &  
BURNS, LLP

COUNSELORS AT LAW

Guy M. Burns

TAMPA ■ CLEARWATER ■ ST. PETERSBURG

401 E. Jackson Street, Suite 3100  
Tampa, Florida 33602  
Post Office Box 1100  
Tampa, Florida 33601-1100  
Telephone (813) 225-2500  
Fax (813) 223-7118  
Email: GuyB@JPFirm.com

File No. 146692

June 18, 2020

**VIA EMAIL**

Burton W. Wiand, Receiver  
Wiand Guerra King

**Re:** EquiAlt Receivership-Legal Malpractice and Related Claims

Dear Mr. Wiand:

You have requested that I submit a proposed contingency fee agreement regarding a case to be filed by me and our firm as special litigation counsel for you as a Receiver EquiAlt Receivership. You have asked that we investigate claims of malpractice and other improper conduct by Paul Wassgren who, during the relevant period, was affiliated with the law firms of Fox Rothschild, LLP and DLA Piper, LLP (collectively “the Law Firms”). This case is to be filed in an appropriate jurisdiction and will seek to recover damages from Mr. Wassgren and the Law Firms on behalf of several receivership entities (collectively “the Funds”) that operated under the following names:

1. EquiAlt Fund, LLC; (aka EquiAlt Fund I, LLC);
2. EquiAlt Fund II, LLC;
3. EquiAlt Fund III, LLC;
4. EquiAlt Fund IV, LLC.

In addition, your receivership may be expanded to include the EquiAlt Qualified Opportunity Zone Fund, LP, the EquiAlt Secured Income Portfolio REIT, Inc., Evergreen S.I. Equities, LLC, and EASIP, LLC and/or any other investment funds operated by EquiAlt and/or its principals. In the event that your receivership is expanded to include these entities or other investment funds, our claim will be expanded, and the terms of this letter will extend to our services and compensation related to those additional funds and related claims.



June 18, 2020

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It appears from our initial review of the case and various documents that have been furnished to us, that a viable claim exists against Mr. Wassgren and the Law Firms for various causes of action mainly legal malpractice; breach of fiduciary duty; aiding, abetting or conspiring with EquiAlt, Inc., Brian Davison and associated persons to commit fraud in connection with the promotion and operation of the EquiAlt Funds. This summary list of causes of action is not intended to be all of the legal theories upon which recover may be based.

We will proceed with the preparation, and filing, of the suit against the Wassgren and The Law Firms on behalf of the Funds in an appropriate jurisdiction, and as necessary, retain local counsel who will be paid a portion of our fees, in which case we will continue as lead counsel. We will handle all aspects of the case through discovery and trial. We will be responsible for all necessary costs to prosecute the case with the exception of costs associated with the services of your accounting and tech support experts that have already been retained by you. We will be allowed to use the services of the accounting experts that you have already retained for purposes of lending litigation support and testimony in the prosecution of our case. Also, as Receiver you have retained the service of E-Hounds, a tech support and computer document control specialty firm, and we will have access to them, and documents maintained by them on any database. All other costs including non-accounting experts, will be paid for by us. In the event that no recovery is achieved, we will not seek reimbursement of the costs we advanced. If a recovery is made, the costs advanced will be reimbursed from the recovery.

We propose to proceed under the following contingency basis:

1. In the event that the case is settled after the demand is made and/or the filing of the Complaint, but before a response is filed by the defendants, our contingency fee will be 10% of any gross recovery.
2. After a response is filed and up until 100 days before the first scheduled trial date, any settlement is achieved our firm will receive 20% of any gross recovery.
3. For any recovery received after the period commencing 100 days before the first scheduled trial, our firm will be paid one third of any gross recovery for amounts up to an aggregate gross recovery of \$10 million, and our firm will be paid 20% of any aggregate gross recovery over \$10 million.
4. If an appeal is necessary, we will handle that appeal for an additional 5% of the gross amount of any recovery.



**JOHNSON POPE**  
BOKOR RUPPEL & BURNS, LLP

COUNSELORS AT LAW

TAMPA ■ CLEARWATER ■ ST. PETERSBURG

June 18, 2020

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We further agree that this agreement is subject to the approval of the U.S. District Court having jurisdiction over your receivership. When and if the Court approval is received, you will sign and return a copy of this letter to us. Until that occurs our agreement is not final, and we will not file suit, however, we will continue to work on the matter in preparation for the anticipated filing of the suit.

Thank you for considering us to work with you on this matter.

Yours very truly,

Guy M. Burns

Burton W. Wiand

GMB:kr

6156267

# **EXHIBIT 2**

## Guy M. Burns

### EXPERIENCE

In addition to being an award winning trial lawyer, Guy is the firm's managing partner. He has over 40 years of trial experience with over 100 trials in State and Federal Courts, as well as dozens of trials conducted before arbitration panels. He primarily represents plaintiffs in complex, business, commercial, securities, financial malpractice and consumer fraud litigation and in class actions, generally on a contingency fee basis. He also represents defendants in selected large, complex commercial disputes. He has successfully represented plaintiffs in numerous disputes against brokerage firms, investment advisers, insurance companies, law firms, accounting firms and other corporate and financial institutions. Guy has represented clients who have record-setting awards and settlements totaling hundreds of millions of dollars.

Guy has a long history of representing plaintiffs on a pro bono basis in numerous public interest cases in both State and Federal Courts. These cases have arisen out of discrimination based upon race, gender and sexual orientation. He has also represented plaintiffs in litigating constitutional claims relating to education, public housing, and global warming and excess greenhouse gas emissions.

For over 20 years Guy has been listed as one of the "Best Lawyers in America" for commercial and financial litigation, and he has regularly been named to the lists of "Florida's Legal Elite", "Bet the Company Trial Lawyers" and "Super Lawyers". He also has been named as "Lawyer of the Year" five times.

### DISTINCTIONS & MEMBERSHIPS

- *The Best Lawyers in America*® since 1999, in the fields of
  - Twice Named as "Bet the Company Lawyer"
  - Repeatedly Named as a SuperLawyer
  - Four Times Lawyer of the Year
- Association for Justices (formerly Association of Trial Lawyers of America)
- Florida Justice Association (formerly Florida Academy of Trial Lawyers)
- American Bar Association Member
- Hillsborough County Bar Association Member
- Petersburg Bar Association Member
- Admitted to The Florida Bar - 1973

### EDUCATION

- University of Missouri B.A. - 1970; J.D. - 1973



### MANAGING PARTNER

P: (813) 225-2500

F: (813) 223-7118

E: [GuyB@jpfirm.com](mailto:GuyB@jpfirm.com)

401 East Jackson Street  
 Tampa, FL, 33602  
 United States of America

# **EXHIBIT 3**

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

CASE NO: 8:09-cv-87-T-26TBM

ARTHUR NADEL; SCOOP CAPITAL, LLC;  
and SCOOP MANAGEMENT, INC.,

Defendants,

SCOOP REAL ESTATE, L.P.; VALHALLA  
INVESTMENT PARTNERS, L.P.; VALHALLA  
MANAGEMENT, INC.; VICTORY IRA FUND,  
LTD.; VICTORY FUND, LTD; VIKING IRA  
FUND, LLC; VIKING FUND, LLC; and  
VIKING MANAGEMENT, LLC,

Relief Defendants.

\_\_\_\_\_ /

**ORDER**

Upon due consideration of the court file, together with the Receiver’s submission, it is ordered and adjudged that the Receiver’s Motion for Leave to Retain Counsel (Dkt. 174) is granted. The Receiver, Burton W. Wiand, is authorized to retain the law firm of Johnson, Pope, Bokor, Ruppel & Burns, LLP, on a contingency basis for the limited purpose of pursuing claims by the entities in Receivership against Holland & Knight, LLP, and its partner, Scott R.

MacLeod. The Court specifically approves the contingency fee arrangement attached to the motion as exhibit A and finds that arrangement to be fair and reasonable and in the best interests of the Receivership entities.

**DONE AND ORDERED** at Tampa, Florida, on August 12, 2009.

*s/Richard A. Lazzara*  
\_\_\_\_\_  
**RICHARD A. LAZZARA**  
**UNITED STATES DISTRICT JUDGE**

**COPIES FURNISHED TO:**  
Counsel of Record

# **EXHIBIT 4**

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

Case No. 8:09-cv-87-T-26TBM

ARTHUR NADEL,  
SCOOP CAPITAL, LLC,  
SCOOP MANAGEMENT, INC.

Defendants,

SCOOP REAL ESTATE, L.P.,  
VALHALLA INVESTMENT PARTNERS, L.P.,  
VALHALLA MANAGEMENT, INC.,  
VICTORY IRA FUND, LTD,  
VICTORY FUND, LTD,  
VIKING IRA FUND, LLC,  
VIKING FIND, LLC, AND  
VIKING MANAGEMENT,

Relief Defendants.

ORDER APPROVING SETTLEMENT AGREEMENT

This matter having come before the Court on motion by Burton W. Wiand, as Receiver ("Receiver") for Scoop Capital, LLC; Scoop Management, Inc.; Scoop Real Estate, L.P.; Valhalla Investment Partners, L.P.; Victory IRA Fund, Ltd.; Victory Fund, Ltd.; Viking IRA Fund, LLC; Viking Fund LLC; Valhalla Management, Inc.; Viking Management, LLC; Venice Jet Center, LLC; Tradewind, LLC; Laurel Mountain Preserve, LLC; Laurel Preserve, LLC; Laurel Mountain Preserve Homeowners

Association, Inc.; Marguerite J. Nadel Revocable Trust UAD 8/2/07; Guy-Nadel Foundation, Inc.; Lime Avenue Enterprises, LLC; A Victorian Garden Florist, LLC; Viking Oil & Gas, LLC; Traders Investment Club; and Home Front Homes, LLC, and all other entities subject to receivership pursuant to the Court's orders appointing and reappointing Receiver and expanding receivership in the proceeding styled Securities & Exch. Comm'n v. Arthur Nadel, et al., Case No. 8:09-cv-87-T-26TBM (M.D. Fla.) (the "SEC Receivership Action") (collectively, the "Receivership Entities"), to approve the Settlement Agreement with Holland & Knight LLP and Scott R. MacLeod (collectively, "H&K") (Dkt. ~~77~~);

And due and proper notice of the motion having been given to all interested persons;

And the court having considered the moving papers and any other filings relating to the Receiver's motion;

**UPON DUE CONSIDERATION, it is ORDERED AND ADJUDGED that the Receiver's Motion to Approve Settlement (Dkt. ~~77~~) is GRANTED.**

IT IS FURTHER ORDERED that the Court specifically approves the written Settlement Agreement entered into between the Receiver and H&K that is attached to the Receiver's motion as Exhibit A (the "Settlement Agreement") and incorporated herein by reference;

IT IS FURTHER ORDERED that the Court finds that the settlement between the Receiver and H&K presented to the Court is a fair, equitable, reasonable, adequate, and

good faith settlement of all claims the Receivership estate and the Receivership Entities may have against H&K;

IT IS FURTHER ORDERED that the Receiver is authorized to enter into and complete the settlement with H&K in accordance with the requirements of the Settlement Agreement;

IT IS FURTHER ORDERED that the Receiver is authorized to pay Johnson Pope Bokor Ruppel & Burns the sum of \$6,333,333, plus the costs the Johnson Pope firm incurred in its representation of the Receiver from the funds the Receiver receives under his Settlement Agreement with H&K;

IT IS FURTHER ORDERED that the Court finds that the provisions of the Bar Order provided below are reasonable and necessary and that, in their absence, the settlement agreement, which is in the best interests of the Receivership and the investors, will not be consummated. A failure to consummate the settlement would interfere with and be prejudicial to the administration of the Receivership;

IT IS FURTHER ORDERED that all individuals or entities who invested money in a Receivership Entity, as well as all persons or entities who may have liability to the Receiver, the Receivership Entities, or such investors arising or resulting from the operations of any of the Receivership Entities or from the fraudulent scheme underlying the SEC Receivership Action, together with their respective heirs, trustees, executors, administrators, legal representatives, agents, successors and assigns, are permanently enjoined and barred from commencing or pursuing a claim, action or proceeding of any

kind and in any forum against H&K that directly or indirectly arises from or relates to the operation of the Receivership Entities or is in connection with any of the legal services that H&K performed in connection with the Receivership Entities, including the Relief Defendants, or the allegations of the SEC Receivership Action;<sup>1</sup>

IT IS FURTHER ORDERED that said injunction bars all claims against H&K for contribution, indemnity, or any other cause of action arising from the liability of any person or entity to the Receiver or to any of the Receivership Entities or their investors (including claims in which the injury is the liability to the Receiver or any of the Receivership Entities or their investors or where damages are calculated based on liability to the Receiver or any of the Receivership Entities or their investors), in whatever form and however denominated, and that such person or entity shall be entitled to such set-offs or judgment reductions as permitted by law, if any, as a result of said injunction;

IT IS FURTHER ORDERED that the releases included in the Settlement Agreement have been given in good faith, and that the Settlement Agreement therefore discharges H&K from all liability for contribution to any other tortfeasor pursuant to, at a minimum, Fla.Stat. § 768.31(5) and 15 U.S.C. § 78u-4(f)(7); and

IT IS FURTHER ORDERED that under the circumstances of this matter, including the need to bring finality to the resolution of potential claims between the

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<sup>1</sup> Without limitation of the foregoing language, this bar order applies to the action styled John V. Cloud, et al. v. Holland & Knight, et al., Case No. 09-12397 (Div. H), pending in the Circuit Court of the Thirteenth Judicial Circuit in and for Hillsborough County, Florida (the "Cloud Action"). The plaintiffs in the Cloud Action are hereby enjoined from further pursuing that action.

Receiver and H&K so that payment of the amount contemplated by their settlement can be made to the Receivership estate for the benefit of the defrauded investors with allowed claims, there is no just reason for delay of entry of a final judgment approving the Settlement Agreement. Accordingly, the Clerk of the court is directed to enter this Order as a final judgment.

DONE AND ORDERED at Tampa, Florida on this 2 day of OCTOBER 2012.



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**RICHARD A. LAZZARA**  
**UNITED STATES DISTRICT JUDGE**

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Counsel of Record