

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

SECURITIES AND EXCHANGE  
COMMISSION,  
Plaintiff,

v.

CASE NO. 8:20-CV-325-T-35AEP

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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**DEFENDANT BRIAN DAVISON'S RESPONSE TO THE RECEIVER'S POST-  
HEARING SUBMISSION REGARDING SALES ACTIVITY IN FEBRUARY 2020**

Defendant Brian Davison (“Davison”) responds to the August 6, 2020 filing of the Receiver in this action (Docket Entry 169)<sup>1</sup> regarding sales by defendant Barry Rybicki of EquiAlt Fund debentures for which payment was received after February 3, 2020.

Notably, there is no evidence presented – or even allegation asserted – that *Davison* would continue any improper conduct absent an injunction. Indeed, as Exhibit 1 hereto reflects, by email dated Sunday, February 9, 2020, Davison stated: “**Capital Raising: Absolute hold** starting last Tuesday forward until further guidance.” (emphasis in original). In this email, Davison advised that on Thursday (February 6) he had spoken to counsel regarding the selling activity by BR Support Services LLC, and he advised that until there was specific direction from counsel not to engage in any fund-raising activity.<sup>2</sup>

Moreover, notably, even if the Receiver’s submissions show that some “investment funds were received on or after February 3<sup>rd</sup>” there is nothing to indicate that there was any fund-raising from investors or past investments processed after Davison sent out this email and informed the recipients of his discussions with counsel. Nor is there anything in the Receiver’s submission or exhibits thereto that affirmatively demonstrates there was any continued fundraising activity directed towards investors after February 3, 2020.

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<sup>1</sup> It is unclear why it is the Receiver, and not the SEC, that is filing these materials. It is not the Receiver that is the movant, or that needs to demonstrate affirmatively that there is a substantial likelihood of ongoing fraudulent conduct that would continue absent an injunction. Helping to establish an element of the preliminary injunction standard appears well outside the scope of the Order appointing the Receiver. *See* Docket Entry 11, ¶¶ 1-10.


<sup>2</sup> Davison was not part of any discussions that Rybicki might have had with separate counsel, which are represented to have occurred a few days earlier. *See* July 30, 2020 Oral Argument Transcript, at 52.

Consequently, regardless of what defendant Rybicki is accused of doing, the failure to show a likelihood that Davison would continue to allegedly commit violations – when the evidence shows he did exactly the opposite – counsels against an injunction.

/s/ Gerald D. Davis  
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# **EXHIBIT 1**

**From:** brian@equialt.com   
**Subject:** EquiAlt Capital Raising / Investor Relations - URGENT  
**Date:** February 9, 2020 at 4:39 PM  
**To:** Rebecca Wiebe becky@equialt.com, Cal Babbini cal@equialt.com, christos anastasopoulos christos@equialt.com, Ryan Rybicki ryan@equialt.com, ben@equialt.com  
**Cc:** Barry Rybicki barry@equialt.com



All,

Please read this slowly and completely.

I know that you are all aware that as of this last Thursday that EquiAlt is under legal advice to freeze all capital raising efforts totally. I know this is a shock and I will keep you all abreast of real actionable information as I know it and when a new layout is in place. We want to be legal, so that is what we are waiting on.

Here is what I know now:

We have a new legal specialist Mary Dunbar from the DLA Piper office in DC on our file as of Friday, whom I spoke with on Friday.

In my mind there are two areas to address:

**Capital Raising: Absolute hold** starting last Tuesday forward until further guidance. *A hold is a hold*, that is all for right now. *We are getting legal advise. Our policies are under review.* If this hold is unacceptable to any party we will just return any funds asap that may have come into our accounts since last Thursday and unwind whatever the expectation was. There is no conversation between us or the advisor until I am given guidance that I will pass on to you all within hours of me receiving it.

**Investor Relations: In research mode now.** I have crafted a variety of solutions to compensate current employees and service our existing investor base at a minimum while legal figures out the capital raising side. We will do nothing until legal gives us an answer. That is all. I would appreciate all investor calls dealt with in a professional matter, and I will have to find a way to compensate customer service activity later. We all want to take care of our customers, and I do not feel that regulatory bodies would disagree with that sentiment.

**I have no guess on if (legal) can solve the issues in 24 hours or a week. I just know people are "on it".**

Why are there not a clear cut answer today and what will happen?

I will let everyone know what I know, as soon as I know it. EquiAlt has five products, they have different regulatory guidelines than the others and we have existing relationships with entities with varying degrees of licensing apparently. Also, apparently some tasks are appropriate for salary and some are not. We are already under review for at least the year with the SEC. So, real actionable answers are not easy and fast. Please be patient in waiting for guidance and know that we are doing all we can with the latest legal advise we have at that time.

We will let you know when we know. Once we get answers from legal, **I will do all I can to incorporate the structure and personal we currently have.** I appreciate and respect all of you. I will do all I can to find a way through these issues and again - I will communicate the approved direction of EquiAlt as soon as I have it.

communicate the approved direction of EquiAlt as soon as I have it.

I appreciate everyone's patience for the next few days and I will make every effort to accommodate everyone in the new design.

Cordially,



**Brian Davison**  
Founder/CEO  
1.855.EquiAlt  
www.EquiAlt.com

 [Facebook](#)  [Twitter](#)

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