

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No.: 1:19-cv-02594-RM-SKC

UNITED STATES SECURITIES  
AND EXCHANGE COMMISSION,

Plaintiff,

v.

MEDIATRIX CAPITAL INC. *et al.*,

Defendants,

and

MEDIATRIX CAPITAL FUND LTD *et al.*,

Relief Defendants.

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**UNOPPOSED MOTION OF RECEIVER FOR AN ORDER AUTHORIZING  
RECEIVER TO INVEST RECEIVERSHIP FUNDS**

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Pursuant to paragraph 4(k) of the Order Appointing Receiver [ECF No. 153] (“Appointment Order”), Mark B. Conlan, the Court-appointed receiver (“Receiver”) hereby moves this Court (“Motion”) for an Order authorizing the Receiver to: (i) deposit Receivership Funds (as defined below) with Wilmington Trust, N.A. (“WTNA”), and/or its affiliated entities, including Manufacturers & Traders Trust Company (also known as “M&T Bank,” and together “WTNA/M&T Bank”),<sup>1</sup> (ii) purchase short-maturity United States government debt in the form of

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<sup>1</sup> Wilmington Trust is a registered service mark used in connection with various fiduciary and non-fiduciary services offered by certain subsidiaries of M&T Bank Corporation including, but not limited to, Manufacturers & Traders Trust Company (M&T Bank), Wilmington Trust Company (WTC) operating in Delaware only, Wilmington Trust, N.A. (WTNA), Wilmington Trust Investment Advisors, Inc.

T-Bills with such funds pending further order of the Court as to the ultimate disposition of the Receivership Funds, and (iii) in connection with the foregoing, enter into and sign WTNA's Escrow Agreement, a copy of which is attached hereto as Exhibit A (the "Escrow Agreement"). In support of his motion, the Receiver respectfully states as follows:

**I. BACKGROUND**

*A. Receivership Estate's Current Cash Position*

As detailed in the Receiver's quarterly reports to the Court, the Receiver is currently holding approximately \$24 million in cash in bank accounts established by the Receiver. Those funds are held in two segregated accounts. As of December 31, 2022, the first account (the "Proceeds Account") had a balance of \$12,874,477.87. That account holds the net proceeds from the liquidation of the defendants' various assets and litigation settlements. As of December 31, 2022, the second account (the "Investor Account, and with the Proceeds Account, the "Receivership Funds") had a balance of \$11,180,935.06. That account holds the net proceeds of Blue Isle's Equiti UK account funds that were transferred to the Receiver pursuant to the Court's Order [ECF No. 331] granting plaintiff Securities and Exchange Commission's *Motion to Modify Asset Freeze to Permit the Transfer of Funds, Including Certain Disputed Funds, from Equiti UK Capital Limited to the Receiver* [ECF No. 295]. Upon information and belief, the defendants in this case have no interest in the segregated funds held in the Investor Account, which the Receiver believes to be purely investor funds, that is, funds invested in accounts by investors and not

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(WTIA), Wilmington Funds Management Corporation (WFMC), and Wilmington Trust Investment Management, LLC (WTIM).

proceeds of the Mediatrix group of affiliates' business activity. Together, the Receivership Funds totaled \$24,055,412.93 as of December 31, 2022.

B. *Case Status*

Although originally scheduled to begin on April 11, 2022, Defendants Michael Stewart's and Bryan Sewall's criminal trial is currently scheduled to commence on November 27, 2023. *See United States v. Stewart, et al.*, 1:21-cr-034-WJM (D. Colo). Since those defendants had been criminally charged in that case for conduct similar to that alleged by the United States Securities and Exchange Commission, this Court agreed to stay civil discovery in this case regarding allegations of fraud pending the disposition of the criminal case. Further extensions were granted given the continuance of the criminal trial to November 27, 2023. On January 18, 2023, this Court entered the Order on [Defendants'] *Unopposed Motion for Extension of Case Deadlines* [ECF No. 395] extending all deadlines in the civil case, the latest extended deadline being July 1, 2024, the dispositive motion deadline.

In light of the current status of the criminal case and this case, and the possibility of appeals in either or both of those cases, the Receiver anticipates that the Receivership Funds will likely continue to be held by the Receivership Estate<sup>2</sup> for a year or more. During the time that the funds are held in the Receivership Estate, the Receiver respectfully submits that buying, and holding to maturity (or such shorter periods as the exigencies of this case may require), short-term Treasury Bills issued by the United States Government of various time lengths ("T-Bills") achieves multiple important objectives, including: (i) increasing the Receiver's ability to earn positive interest on

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<sup>2</sup> Capitalized terms not defined herein have the meaning ascribed to such terms in the Appointment Order.

the Receivership Funds by virtue of income generated from the T-Bills, and (ii) increasing the security of the funds held by the Receiver, while imposing relatively *de minimis* expenses or burden on the receivership estate.

For the reasons set forth herein, and pending this Court's determination on the ultimate disposition of the Receivership Funds, the Receiver submits that it is in the Receivership Estate's best interest for the Court to authorize the Receiver to (i) open accounts at M&T Bank, (ii) purchase and hold T-Bills in an escrow account to be managed by WTNA as escrow agent, and (iii) enter into the Escrow Agreement.

## **II. SHORT-MATURITY UNITED STATES GOVERNMENT DEBT**

The Appointment Order, *inter alia*, briefly sets forth a framework under which the Receiver is to manage the Receivership Funds. Specifically, the Appointment Order provides that:

27. The Receiver shall establish one or more custodial accounts at a federally insured bank to receive and hold all cash equivalent Receivership Property (the "Receivership Funds").

28. The Receiver's deposit account shall include in its name the words "Receiver's Account" together with the name of this litigation.

29. The Receiver may, without further order of this Court, transfer, compromise, or otherwise dispose of any Receivership Property, other than real estate on terms and in the manner the Receiver deems most beneficial to the Receivership Estate, and with due regard to the true and proper value of such Receivership Property.

(Appointment Order, at 13). Further, the Appointment Order directs the Receiver:

4(k). To take such other action as may be approved by the Court.

(Appointment Order, at 5).

Consistent with these duties under the Appointment Order, the Receiver respectfully submits that the funds to be deposited in the M&T Bank accounts should be held in a fashion that satisfies, to the greatest extent practicable, the following objectives: (i) maintaining the security of the funds in the Receivership Estate; (ii) minimizing expenses; (iii) maintaining reasonable liquidity, such that this Court's prospective orders regarding the further management and disposition of Receivership Funds can be promptly executed; and (iv) generating at least some returns for the benefit of the Receivership Estate. In the Receiver's view, buying T-Bills satisfies the four objectives set forth above for the following reasons.

First, T-Bills are debt obligations issued by the United States Government to raise cash needed to fund its operations and help finance the federal deficit that are backed by the full faith and credit of the United States. Meanwhile, cash deposited at a financial institution, including M&T Bank, is generally only insured up to \$250,000. *See* 12 U.S.C. § 1821(e). Accordingly, in the unlikely event a financial institution fails, deposits in excess of \$250,000 may be impaired or unrecoverable. Buying T-Bills thus enhances the security of funds in the Receivership Estate.

Second, WTNA has agreed to cap its annual escrow administrative fee at \$4,000 and M&T Bank charges a small fee of up to 0.1% for purchasing T-Bills through its platform. There are no other fees or other costs to buy or sell these instruments. Even after accounting for WTNA/M&T Bank's fees, the interest rate currently being offered by M&T Bank on corporate deposit accounts (3.65%) should yield the Receivership Estate approximately \$875,000 a year (on \$24 million) and with the interest rate on T-Bills currently exceeding 4.00% APY that should result in meaningful income flowing to the Receivership Estate, making the fees charged quite *de minimis* when viewed

in context. Thus, the Receiver submits that the foregoing fees are reasonable and consistent with the Receiver's obligations under the Appointment Order.

Third, while T-Bills are less liquid than pure cash, they are considered to be one of the most liquid fixed income investments available. *See In re Treasury Secs. Auction Antitrust Litig.*, 2021 WL 1226670, \*25 (S.D.N.Y. Mar. 31, 2021) (“The U.S. Treasury securities market is the world's deepest, most liquid, and most important securities market”); *see also United States v. Bloom*, 846 F.3d 243, 246 (7th Cir. 2017) (citing 17 C.F.R. § 1.25 limiting investments to highly liquid, highly rated securities, such as U.S. Treasury Bills). Therefore, if necessary and authorized by this Court, the Receiver expects that he would be able to promptly sell the T-Bills for cash at prevailing market prices if a need for cash arises. T-Bills are available with 4, 8, 13, 17, 26, and 52 week maturities with varying interest rates. The Receiver intends to manage yield and the Receivership Estate's liquidity needs by staggering T-Bills with varying short-term maturity lengths, likely with lengths of three months or less each. T-Bills with a maturity of three months or less are generally considered to be cash equivalents. *See* ASC § 230.<sup>3</sup> In addition to the ability to sell some of the T-Bills in the market, by including 1-month maturity T-Bills in the Receivership Estate's portfolio, it will ensure that the Receiver will have an opportunity every month to permit some of the T-Bills to mature and not purchase additional T-Bills, thereby granting the Receiver regular and relatively

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<sup>3</sup> ASC 230 is the section of Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC) regarding Statements of Cash Flows.

frequent opportunities to return some portion of the Receivership Funds to a cash position in the M&T Bank accounts if circumstances warrant.<sup>4</sup>

Fourth, the Receiver submits that buying T-Bills will generate income for the benefit of the Receivership Estate in the form of better interest returns. While the yield on the T-Bills is relatively modest and fluctuates, it represents income to the Receivership Estate that is in excess of the 2.5% APY earned on funds at the Receiver's current bank.<sup>5</sup> The income generated from the T-Bills will directly benefit the Receivership Estate and all parties in interest. In the case of *SEC v. Ahmed, et al.*, Case No. 3:15-cv-00675 (JBA), the United States District Court for the District of Connecticut recently granted a similar motion by the receiver in that case. *See id.* at ECF Nos. 2301 (motion) and 2304 (order).

For the reasons stated above, the Receiver submits that purchasing T-Bills with funds to be deposited in the M&T Bank accounts would benefit the Receivership Estate and is consistent with the Receiver's obligations under the Appointment Order.

### **III. THE ESCROW AGREEMENT**

As a condition to opening an account with a trust company, WTNA requires that the Receiver enter into an Escrow Agreement that sets forth the terms of and conditions for the parties'

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<sup>4</sup>The Receiver notes that, if this Court directs the Receiver to transfer funds out of the M&T Bank accounts, such transfers would only occur after the T-Bills mature at various intervals absent further order from this Court authorizing the sale of the T-Bills prior to maturity.

<sup>5</sup>The Receiver notes that other instruments issued by the United States Government have higher yields. However, these higher interest rate instruments also have longer maturities. As it is uncertain when the Receiver will be directed to take action with respect to the ultimate disposition of the Receivership Funds, the Receiver submits that holding T-Bills ranging from 1-3 months is appropriate under the circumstances. Holding longer maturity instruments may delay the Receiver in effectuating future orders of this Court concerning the liquidation of Receivership Funds in the M&T Bank account and/or require the Receiver to sell the instruments at a possible loss that could be avoided by holding such longer term instruments to maturity.

relationship, including how written directions (withdrawals) are to be made, authorized signatures for the accounts, the account fee structure, and applicable interest rate on deposit accounts.

The Escrow Agreement has two provisions that need to be brought to the Court's attention, an indemnification clause and a grant of a security interest, both of which are intended to protect WTNA in its capacity as escrow agent. First, the indemnification provision (§ 3.1) is intended to protect WTNA in the event it is sued or threatened with suit in its capacity as escrow agent. After careful consideration, the Receiver views the risk of WTNA ever being subject to such a claim to be very remote. WTNA has agreed to cap the Receiver's indemnification obligation to interest accrued and credited by the bank to the Receiver with the following negotiated language that the Receiver believes is adequate given the *de minimis* risk associated with a single party escrow:

Notwithstanding the foregoing, in no event shall the Receiver's indemnification obligation hereunder exceed the amount of any interest accrued and credited by the Escrow Agent on the principal amount of the Escrow Property. In no event shall the Escrow Property deposited by the Receiver be subject to and/or be chargeable with this indemnification obligation.

Second, as security for the Receiver's obligations under the Escrow Agreement, Section 3.4(b) of the Escrow Agreement provides for the grant of a security interest in favor of WTNA as escrow agent. Like the indemnification provision, WTNA has agreed to limit the reach of the security interest to interest actually accrued and credited to the Receivership Funds only. Neither the Indemnification clause nor the grant of the security interest reach or attach to the Receivership Funds principal.

Given those modifications, the Receiver believes that the terms of Escrow Agreement are reasonable.



#### **IV. RELIEF REQUESTED**

The Appointment Order does not specifically confer upon the Receiver the authority to invest cash held in the Receivership Estate. However, paragraph 4(k) of the Appointment Order provides that the Receiver may “take such other action as may be approved by this Court.” (Appointment Order, at 5). Accordingly, and pursuant to paragraph 4(k), the Receiver moves for an order authorizing the Receiver to enter into and sign the Escrow Agreement and to purchase T-Bills under the following parameters:

1. After reserving not less than \$500,000 in cash, the Receiver may use up to 100% of the remaining funds in the WTNA/M&T Bank accounts to purchase T-Bills;
2. Upon any T-Bill maturing, the Receiver may instruct WTNA/M&T Bank to purchase additional T-Bills using funds in the WTNA/M&T Bank accounts; and,

If this Court authorizes the Receiver to purchase T-Bills, the Receiver will summarize the Receivership Estate’s T-Bill holdings and report on the income generated from the T-Bills in his quarterly status reports.

#### **V. DUTY TO CONFER PURSUANT TO D.C. COLO. LCivR 7.1(a)**

Counsel for the SEC, Defendant Michael S. Stewart and Defendants Mediatrix Capital Inc., Blue Isle Markets Inc., Blue Isle Markets Ltd., Bryant E. Sewall, and Hanna Ohonkova Sewall have all advised the Receiver’s counsel that their clients do not oppose the relief sought in the Motion.

Counsel for Defendant Michael Young and Relief Defendants Maria Young, West Beach LLC, Salve Regina Trust, TF Alliance, LLC, Casa Conejo LLC, and Hase Haus, LLC (collectively, the “Young Defendants”) advised the Receiver’s counsel on January 25, 2023 that the Young

Defendants do not object to this Motion, so long as the Receiver keeps at least \$500,000 in liquid funds available, which the Receiver has agreed to do.

Relief Defendant Victoria Stewart has not responded to the Receiver's request on this motion.

**WHEREFORE**, for the foregoing reasons, the Receiver respectfully requests that the Court:

- A. Grant the Motion in its entirety;
- B. Authorize the Receiver to enter into and sign the Escrow Agreement;
- C. Authorize the Receiver to deposit Receivership Funds with WTNA/M&T Bank;
- D. Authorize the Receiver, after reserving \$500,000 in liquid cash in the Proceeds Account as requested by the Young Defendants, to purchase up to 100% of the remaining Receivership Funds in the M&T Bank accounts to purchase T-Bills, and further authorize the Receiver to purchase additional T-Bills from such accounts upon any T-Bill maturing; and
- E. Grant such other and further relief as this Court deems just and proper.

Respectfully submitted,

Dated: January 27, 2023

**GIBBONS P.C.**

/s/ Dale E. Barney  
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*Counsel to Mark B. Conlan, as Receiver*

**CERTIFICATE OF SERVICE**

I hereby certify that on January 27, 2023, I caused the foregoing to be electronically filed by means of the CM/ECF system.

Further, I certify that a copy of the foregoing, together with the Proposed Order, was served on the same date, upon the following counsel of record via the Court's CM/ECF system and/or via email:

**VIA CM/ECF and EMAIL**

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Further, I certify that a copy of the foregoing was served on the same date upon the following non-CM/ECF participant by regular U.S. Mail: Aaron Stewart, 23800 North 73rd Place, Scottsdale, AZ 85255.

/s/ Dale E. Barney  
Dale E. Barney, Esq.

# **EXHIBIT A**



## ESCROW AGREEMENT

This Escrow Agreement dated this \_\_\_ day of January \_\_, 2023 (the “**Escrow Agreement**”), is entered into by and among Mark B. Conlan, in his capacity as the court appointed receiver in the case captioned *SEC v. Mediatrix Capital Inc., et al.*, in the United States District Court for the District of Colorado (“**District Court**”), Case No. 19-cv-2594 (D. Colo.), a (the “**Receiver**”, and Wilmington Trust, National Association, as escrow agent (“**Escrow Agent**”).

### RECITALS

**WHEREAS**, by *Complaint and Jury Demand* filed on September 12, 2019, the United States Securities and Exchange Commission (“**SEC**”) commenced a civil action in the District Court against defendants Michael S. Young (“**Young**”), Michael S. Stewart (“**Stewart**”), Bryant E. Sewall (“**Sewall**”, and with Young and Stewart, the “**Individual Defendants**”), Mediatrix Capital Inc. (“**Mediatrix Capital**”), Blue Isle Markets Inc. (“**Blue Isle 1**”), and Blue Isle Markets Ltd. (“**Blue Isle 2**”, and with Mediatrix Capital and Blue Isle 1, the “**Entity Defendants**”); and against Relief Defendants Mediatrix Capital Fund Ltd., Island Technologies LLC, West Beach LLC, Salve Regina Trust, TF Alliance, LLC, Casa Conejo LLC, Hase Haus, LLC, DCC Islands Foundation, Keystone Business Trust, Weinzell, LLC, The 1989 Foundation, Mediatrix Capital PR LLC, Mediatrix Capital, LLC, Blue Isle Markets Inc. (Cayman Islands), Michael C. Baker, Walter C. Young III, Arual LP, Victoria M. Stewart, Maria C. Young, and Hanna Ohonkova Sewall (collectively, the “**Relief Defendants**”); and

**WHEREAS**, by *Order Appointing Receiver* entered on September 11, 2020 [ECF No. 153] (the “**Appointment Order**”), a copy of which is attached hereto as Exhibit E, the District Court appointed Brick Kane of Robb Evans & Associates LLC was appointed as the receiver over the (1) Entity Defendants; (2) the Receivership Assets (as defined in the Appointment Order) of the Individual Defendants; and (3) the Recoverable Assets (as defined in the Appointment Order) of the Relief Defendants; and

**WHEREAS**, by text order entered on October 20, 2021 [ECF No. 284], Mark B. Conlan of Gibbons P.C. was appointed as the substitute receiver to function under the same terms and conditions set forth in the Appointment Order; and

**WHEREAS**, pursuant to the Appointment Order, the District Court has exclusive jurisdiction over the assets of the Individual Defendants, the Entity Defendants and the Recoverable Assets of the Relief Defendants, including the Escrow Property (as defined below); and

**WHEREAS**, pursuant to paragraph 33 of the Appointment Order, the Receiver has taken all necessary steps to treat the receivership funds, including the Escrow Property, as a “Qualified Settlement Fund” within the meaning of Treasury Regulation Section 1.468B-1(a) and -1(c), and the Receiver is the administrator of the Qualified Settlement Fund consistent with Treasury Regulation Section 1.468B-2(k)(3)(i).

**NOW, THEREFORE**, in consideration of the premises, and further consideration of the covenants set forth hereafter, it is hereby agreed mutually as follows:

**ARTICLE 1  
ESCROW DEPOSIT**

1.1. Receipt of Escrow Property.

(a) Upon execution of this Escrow Agreement by each of the parties hereto, Receiver shall deposit [\$ \_\_\_\_\_] into a United States Dollar denominated accounts or subaccounts (the “**Escrow Accounts**”) established by the Escrow Agent at the direction of the Receiver. The Escrow Accounts are set forth below:

Manufacturers & Traders Trust Co.  
ABA# 031100092  
A/C# [\_\_\_\_\_]   
A/C Name: *SEC v. Mediatrix*, Receiver’s Acct.  
Attn: Global Capital Markets

Manufacturers & Traders Trust Co.  
ABA# 031100092  
A/C# [\_\_\_\_\_]   
A/C Name: *SEC v Mediatrix Inv*, Receiver’s Act  
Attn: Global Capital Markets

(b) The Escrow Agent will hold the deposit in the Escrow Account, together with all investments thereof and all interest accumulated thereon and proceeds therefrom (the “**Escrow Property**”), in escrow upon the terms and conditions set forth in this Escrow Agreement and shall not disburse funds from the Escrow Account except as provided herein.

1.2. Investments.

(a) The Escrow Agent shall invest the Escrow Property in accordance with the written instructions provided to the Escrow Agent and signed by the Receiver in such investments (i) as shall from time to time be selected by the Receiver and (ii) be investments the Escrow Agent is able to hold. The Receiver has initially selected to deposit and invest the Escrow Property, including any and all interest and investment income, in the M&T Bank Corporate Deposit Account (the “**Deposit Account**”), which is further described herein on Exhibit D. In the absence of written investment instructions from the Receiver, the Escrow Agent shall hold the Escrow Property un-invested, without interest thereon. For the avoidance of doubt, any investment earnings and income on the Escrow Property shall become part of the Escrow Property, and shall be disbursed in accordance with Section 1.3 below. The Escrow Agent shall make no disbursement, investment or other use of funds until and unless it has collected funds. The Escrow Agent shall not be liable for collection items until such proceeds have been received or the Federal Reserve has given the Escrow Agent credit for the funds.

(b) The Escrow Agent is hereby authorized and directed to sell or redeem any such investments as it deems necessary to make any payments or distributions required under this Escrow Agreement. The Escrow Agent shall have no responsibility or liability for any loss which may result from any investment or sale of investment made pursuant to this Escrow Agreement. The Escrow Agent is hereby authorized, in making or disposing of any investment permitted by this Escrow Agreement, to deal with itself (in its individual capacity) or with any one or more of its affiliates, whether it or any such affiliate is acting as agent of the Escrow Agent or for any third person or dealing as principal for its own account. The Parties acknowledge that the Escrow Agent is not providing investment supervision, recommendations, or advice.

(c) In the event that market conditions are such that negative interest applies to amounts deposited with the Escrow Agent, the Escrow Agent shall not be responsible for the payment of such negative interest.

### 1.3. Disbursements.

(a) The Receiver shall provide direction to Escrow Agent of any disbursement of Escrow Property and all directions shall be in writing (a “**Written Direction**” and as used herein, the term “**Written Direction**” may refer, variably, to a writing substantially in the form of Exhibit A. It is expected that disbursements of Escrow Property will happen quarterly. Disbursements under this Section 1.3 shall be made within three (3) Business Days after the Escrow Agent’s receipt of a Written Direction.

(b) In the event that Escrow Agent makes any payment to any other party pursuant to this Escrow Agreement and for any reason such payment (or any portion thereof) is required to be returned to the Escrow Account or another party or is subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a receiver, trustee or other party under any bankruptcy or insolvency law, other federal or state law, common law or equitable doctrine, then the recipient shall repay to the Escrow Agent upon written request the amount so paid to it.

(c) The Escrow Agent shall, in its sole discretion, comply with judgments or orders issued or process entered by the District Court with respect to the Escrow Property, including without limitation any attachment, levy or garnishment, without any obligation to determine such court's jurisdiction in the matter and in accordance with its normal business practices. If the Escrow Agent complies with any such judgment, order or process, then Escrow Agent shall not be liable to the Receiver or any other person by reason of such compliance, regardless of the final disposition of any such judgment, order or process.

(d) The Receiver understands and agrees that the Escrow Agent shall have no obligation or duty to act upon a Written Direction<sup>1</sup> delivered to the Escrow Agent for the disbursement of Escrow Property under this Escrow Agreement if such Written Direction is not (i) in writing, (ii) signed by, in the case of the Receiver, any individual designated by the Receiver on Exhibit B hereto (each such individual an “**Authorized Representative**”), and (iii) delivered to, and able to be authenticated by, the Escrow Agent in accordance with Section 1.5.

(e) The Escrow Agent shall provide the Receiver with online view only access to see monthly statements and the activity in the Escrow Account.

(f) The Receiver may specify in a Written Direction whether the Escrow Property shall be disbursed by way of wire transfer or check. If the written notice for the disbursement of funds does not so specify the disbursement means, the Escrow Agent may disburse the Escrow Property by any means chosen by the Escrow Agent.

(g) If none of the Escrow Property has been disbursed within three (3) years from the date hereof, the Escrow Agent shall be entitled, at its sole discretion, to return the Escrow Property to the Receiver after which this Escrow Agreement shall terminate in accordance with Section 1.7 below.

### 1.4. Written Direction and Other Instruction.

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(a) With respect to any Written Direction or any other notice, direction or other instruction required to be delivered by the Receiver to the Escrow Agent under this Escrow Agreement, the Escrow Agent is authorized to follow and rely upon any and all such instructions given to it from time to time if the Escrow Agent believes, in good faith, that such instruction is genuine and to have been signed by an Authorized Representative of such the Receiver. The Escrow Agent shall have no duty or obligation to verify that the person who sent such instruction is, in fact, a person duly authorized to give instructions on behalf of the Receiver, other than to verify that the signature of the Authorized Representative on any such instruction appears to be the signature of such person. The Receiver acknowledges and agrees that it is fully informed of the protections and risks associated with the various methods of transmitting instructions to the Escrow Agent, and that there may be more secure methods of transmitting instructions other than the method selected by such Receiver. The Escrow Agent shall have no responsibility or liability for any loss which may result from:

(i) any action taken or not taken by the Escrow Agent in good faith reliance on any such signatures or instructions;

(ii) the Receiver's reliance upon or use of any particular method of delivering instructions to the Escrow Agent, including the risk of interception of such instruction and misuse by third parties; or

(iii) any officer or named Authorized Representative acting as directed under an incumbency certificate such as Exhibit B delivered hereunder prior to actual receipt by the Escrow Agent of a more current incumbency certificate or an updated Exhibit B and a reasonable time for the Escrow Agent to act upon such updated or more current certificate or Exhibit B.

(b) The Receiver may, at any time, update Exhibit B by signing and submitting to the Escrow Agent an updated Exhibit B. Any updated Exhibit B shall not be effective unless the Escrow Agent countersigns a copy thereof. The Escrow Agent shall be entitled to a reasonable time to act to implement any changes on an updated Exhibit B.

#### 1.5. Delivery and Authentication of Written Direction.

(a) A Written Direction must be delivered to the Escrow Agent by one of the delivery methods set forth in Section 4.3.

(b) The Receiver and the Escrow Agent hereby agree that the following security procedures will be used to verify the authenticity of a Written Direction delivered by the Receiver to the Escrow Agent under this Escrow Agreement:

(i) The Written Direction must include the name and signature of the person delivering the disbursement request to the Escrow Agent. The Escrow Agent will check that the name and signature of the person identified on the Written Direction appears to be the same as the name and signature of an Authorized Representative;

(ii) The Escrow Agent will make a telephone call to an Authorized Representative purporting to deliver the Written Direction (which Authorized Representative may be the same as the Authorized Representative who delivered the Written Direction) at any telephone number for such Authorized Representative as set forth on Exhibit B, as applicable, to obtain oral confirmation of delivery of the Written Direction; and



(iii) If the Written Direction is sent by email to the Escrow Agent, the Escrow Agent also shall review such email address to verify that it appears to have been sent from an email address for an Authorized Representative as set forth on Exhibit B, or from an email address for a person authorized under Exhibit B, to email a Written Direction to the Escrow Agent on behalf of the Authorized Representative).

(c) The Receiver acknowledges and agrees that given his particular circumstances, including the nature of his business, the size, type and frequency of his instructions, transactions and files, internal procedures and systems, the alternative security procedures offered by the Escrow Agent and the security procedures in general use by other customers and banks similarly situated, the security procedures set forth in this Section 1.5 are a commercially reasonable method of verifying the authenticity of a payment order in a Written Direction.

(d) The Escrow Agent is authorized to execute, and the Receiver expressly agrees to be bound by any payment order in a Written Direction issued in its name (and associated funds transfer) (i) that is accepted by the Escrow Agent in accordance with the security procedures set forth in this Section 1.5, whether or not authorized by the Receiver, and to debit the Escrow Account for the amount of the payment order. Notwithstanding anything else, the Escrow Agent shall be deemed to have acted in good faith and without negligence, gross negligence or misconduct if the Escrow Agent is authorized to execute the payment order under this Section 1.5. Any action taken by the Escrow Agent pursuant to this Section 1.5 prior to the Escrow Agent's actual receipt and acknowledgement of a notice of revocation, cancellation or amendment of a Written Direction shall not be affected by such notice of revocation, cancellation or amendment of a Written Direction.

(e) The security procedures set forth in this Section 1.5 are intended to verify the authenticity of payment orders provided to the Escrow Agent and are not designed to, and do not, detect errors in the transmission or content of any payment order. The Escrow Agent is not responsible for detecting an error in the payment order, regardless of whether the Receiver believes the error was apparent, and the Escrow Agent is not liable for any losses arising from any failure to detect an error.

(f) When instructed to credit or pay a party by both name and a unique numeric or alphanumeric identifier (e.g. ABA number or account number), the Escrow Agent, and any other banks participating in the funds transfer, may rely solely on the unique identifier, even if it identifies a party different than the party named. The Receiver agrees to be bound by the rules of any funds transfer network used in connection with any payment order accepted by the Escrow Agent hereunder.

(g) The Escrow Agent shall not make any payment requested under this Escrow Agreement if it is unable to validate the authenticity of the request by the security procedures set forth in this Section 1.5. The Escrow Agent's inability to confirm a payment order may result in a delay or failure to act on that payment order. Notwithstanding anything else in this Escrow Agreement, the Escrow Agent shall not be required to treat a payment order as having been received until the Escrow Agent has authenticated it pursuant to the security procedures in this Section 1.5 and shall not be liable or responsible for any losses arising in relation to such delay or failure to act.

#### 1.6. Income Tax Allocation and Reporting.

(a) Pursuant to the Appointment Order, the receivership funds are treated as held within a "Qualified Settlement Fund" within the meaning of Treasury Regulation Section 1.468B-1(a) and -1(c), and the Receiver is the administrator of the Qualified Settlement Fund consistent with Treasury Regulation Section 1.468B-2(k)(3)(i).

(b) The Receiver agrees that, for tax reporting purposes, the Escrow Property shall be deemed to be the property of the Receiver and all interest and other income from investment of the Escrow Property shall, as of the end of each calendar year and to the extent required by the Internal Revenue Service, be reported as having been earned by such Receiver, whether or not such income was disbursed during such calendar year. Notwithstanding anything to the contrary herein, the Escrow Agent shall have no duty to prepare or file any Federal or state tax report or return with respect to the Escrow Property, except for the delivery and filing of tax information reporting forms required to be delivered and filed with the Internal Revenue Service. With respect to the preparation, delivery and filing of such required tax information reporting forms and all matters pertaining to the reporting of earnings on the Escrow Property, the Escrow Agent shall be entitled to request and receive written instructions from the Receiver, and the Escrow Agent shall be entitled to rely conclusively and without further inquiry on such written instructions. With respect to any other payments made under this Escrow Agreement, the Escrow Agent shall not be deemed the payer and shall have no responsibility for performing tax reporting. The Escrow Agent's function of making such payments is solely ministerial and upon express direction of the Receiver.

(c) Prior to the execution of this Escrow Agreement, or within two days thereafter, the Receiver shall provide the Escrow Agent with certified tax identification numbers by furnishing appropriate forms W-9 or W-8 and such other forms and documents that the Escrow Agent may request. The Receiver understands that if such tax reporting documentation is not provided and certified to the Escrow Agent, the Escrow Agent may be required by the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, to withhold a portion of any interest or other income earned on the investment of the Escrow Property.

(d) To the extent that the Escrow Agent becomes liable for the payment of any taxes in respect of income derived from the investment of the Escrow Property, the Escrow Agent shall satisfy such liability to the extent possible from the Escrow Property. The Receiver hereby indemnifies, defends and holds the Escrow Agent harmless from and against any tax, late payment, interest, penalty or other cost or expense that may be assessed against the Escrow Agent on or with respect to the Escrow Property only and the investment thereof unless such tax, late payment, interest, penalty or other expense was finally adjudicated to have been directly caused by the gross negligence or willful misconduct of the Escrow Agent. The indemnification provided by this Section 1.6(c) is in addition to the indemnification provided in Section 3.1 and shall survive the resignation or removal of the Escrow Agent and the termination of this Escrow Agreement.

1.7. Termination. Unless extended in writing by the Receiver and Escrow Agent, this Escrow Agreement shall terminate on December 31, 2025, at which time the Escrow Agent is authorized and directed to disburse the Escrow Property in accordance with Section 1.3 (Disbursements) and this Escrow Agreement shall be of no further force and effect, except that the provisions of Sections 1.6 (Tax Allocation and Reporting), 3.1 (Indemnification) and 3.2 (Limitation of Liability) hereof shall survive termination.

## ARTICLE 2 DUTIES OF THE ESCROW AGENT

2.1. Scope of Responsibility. Notwithstanding any provision to the contrary, the Escrow Agent is obligated only to perform the duties expressly and specifically set forth in this Escrow Agreement, which shall be deemed purely ministerial in nature. Under no circumstances will the Escrow Agent be deemed to be a fiduciary to the Receiver or any other person under this Escrow Agreement or otherwise. The Escrow Agent will not be responsible or liable for the failure of the Receiver to perform in accordance with this Escrow Agreement. The Escrow Agent shall neither be responsible for, nor chargeable with, knowledge of the terms and conditions of any other agreement, instrument, or document other than this Escrow

Agreement, whether or not an original or a copy of such documents have been provided to the Escrow Agent; and the Escrow Agent shall have no duty to know or inquire as to the performance or nonperformance of any provision of any such agreement, instrument, or document. References in this Escrow Agreement to any other agreement, instrument, or document are for the convenience of the parties and the Escrow Agent has no duties or obligations with respect thereto. The Escrow Agent acts hereunder as escrow agent only, and is not responsible or liable in any manner whatsoever for the sufficiency, correctness, genuineness or validity of the subject matter of this Escrow Agreement or any part thereof. The Escrow Agent shall have no responsibilities (except as expressly set forth herein) as to the validity, sufficiency, value, genuineness, ownership or transferability of the Escrow Property, written instructions, or any other documents in connection therewith, and will not be regarded as making nor be required to make, any representations thereto. This Escrow Agreement sets forth all matters pertinent to the escrow contemplated hereunder, and no additional obligations of the Escrow Agent shall be inferred or implied from the terms of this Escrow Agreement, any other agreement or otherwise.

2.2. Rights of the Escrow Agent. No provision of this Escrow Agreement shall require the Escrow Agent to expend or risk its own funds or otherwise incur any financial liability or potential financial liability in the performance of its duties or the exercise of its rights under this Escrow Agreement. The Escrow Agent shall not be obligated to take any legal action or to commence any proceedings in connection with this Escrow Agreement or any property held hereunder or to appear in, prosecute or defend in any such legal action or proceedings. The Escrow Agent shall be protected in acting upon any written instruction, notice, request, waiver, consent, certificate, receipt, authorization, power of attorney or other paper or document which the Escrow Agent in good faith believes to be genuine and what it purports, to be, including, but not limited to, items directing investment or non-investment of funds, items requesting or authorizing release, disbursement or retainage of the subject matter of this Escrow Agreement and items amending the terms of this Escrow Agreement.

2.3. Attorneys and Agents. The Escrow Agent shall be entitled to rely on and shall not be liable for any action taken or omitted to be taken by the Escrow Agent in accordance with the advice of counsel or other professionals retained or consulted by the Escrow Agent. The Escrow Agent shall be reimbursed as set forth in Section 3.1 for any and all compensation (fees, expenses and other costs) paid and/or reimbursed to such counsel and/or professionals. The Escrow Agent may perform any and all of its duties through its agents, representatives, attorneys, custodians, and/or nominees and shall not be responsible for the acts or omissions of such agents, representatives, attorneys, custodians or nominees appointed with due care.

2.4. Right Not Duty Undertaken. The permissive rights of the Escrow Agent to do things enumerated in this Escrow Agreement shall not be construed as duties.

### ARTICLE 3 PROVISIONS CONCERNING THE ESCROW AGENT

3.1. Indemnification. The Receiver hereby indemnifies and defends the Escrow Agent and its directors, officers, employees and agents (collectively, the “**Indemnified Parties**”), and holds the Indemnified Parties harmless from any and against all liabilities, losses, actions, suits or proceedings at law or in equity, and any other expenses, fees or charges of any character or nature, (including, without limitation, negative interest, attorney's fees and expenses and the costs of enforcement of this Escrow Agreement or any provision thereof), which an Indemnified Party may incur or with which it may be threatened by reason of acting as or on behalf of the Escrow Agent under this Escrow Agreement or arising out of the existence of the Escrow Account, except to the extent the same shall be have been finally adjudicated to have been

directly caused by the Escrow Agent's gross negligence or willful misconduct. The Escrow Agent shall have a first lien against the Escrow Account to secure the obligations of the parties hereunder. The terms of this paragraph shall survive termination of this Escrow Agreement. Notwithstanding the foregoing, in no event shall the Receiver's indemnification obligation hereunder exceed the amount of any interest accrued and credited by the Escrow Agent on the principal amount of the Escrow Property. In no event shall the Escrow Property deposited by the Receiver be subject to and/or be chargeable with this indemnification obligation.

3.2. Limitation of Liability. THE ESCROW AGENT SHALL NOT BE LIABLE, DIRECTLY OR INDIRECTLY, FOR ANY (I) DAMAGES, LOSSES OR EXPENSES ARISING OUT OF OR IN CONNECTION WITH THIS ESCROW AGREEMENT, THE ESCROW ACCOUNT, THE ESCROW PROPERTY, OR THE SERVICES PROVIDED HEREUNDER, OTHER THAN DAMAGES, LOSSES OR EXPENSES WHICH HAVE BEEN FINALLY ADJUDICATED TO HAVE DIRECTLY RESULTED FROM THE ESCROW AGENT'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, (II) SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES OR LOSSES OF ANY KIND WHATSOEVER (INCLUDING WITHOUT LIMITATION LOST PROFITS), EVEN IF THE ESCROW AGENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES AND REGARDLESS OF THE FORM OF ACTION, OR (III) ANY AMOUNT IN EXCESS OF THE VALUE OF THE ESCROW PROPERTY.

3.3. Resignation or Removal. The Escrow Agent may, at any time, resign as escrow agent hereunder by furnishing written notice of its resignation to the Receiver. At such time, all fees and expenses to which the Escrow Agent is entitled shall be immediately due and payable to Escrow Agent. The Receiver may remove the Escrow Agent by furnishing to the Escrow Agent a written notice of its removal along with payment of all fees and expenses to which it is entitled through the date of termination. Such resignation or removal, as the case may be, shall be effective thirty (30) days after the delivery of such notice or upon the earlier appointment of a successor, and the Escrow Agent's sole responsibility thereafter shall be to safely keep the Escrow Property and to deliver the same to a successor escrow agent as shall be appointed by the Receiver, as evidenced by a joint written notice filed with the Escrow Agent or in accordance with a court order. If the Receiver has failed to appoint a successor escrow agent prior to the expiration of thirty (30) days following the delivery of such notice of resignation or removal, the Escrow Agent shall be entitled, at its sole discretion and at the expense of the Receiver, to (a) return the Escrow Property to the Receiver, or (b) petition the District Court for the appointment of a successor escrow agent or for other appropriate relief, and any such resulting appointment shall be binding upon the Receiver.

3.4. Compensation. (a) The Escrow Agent shall be entitled to compensation for its services as stated in the fee schedule attached hereto as Exhibit C, which compensation shall be paid by the Receiver. Such compensation is intended for the Escrow Agent's services as contemplated by this Escrow Agreement. In addition to such compensation, in the event that the conditions for the disbursement of funds under this Escrow Agreement are not fulfilled, or the Escrow Agent renders any service not contemplated in this Escrow Agreement, or there is any assignment of interest in the subject matter of this Escrow Agreement, or any material modification hereof, or if any material controversy arises hereunder, or the Escrow Agent is made a party to any litigation pertaining to this Escrow Agreement or the subject matter hereof, then the Escrow Agent shall be compensated for such extraordinary services and any services or work performed by Escrow Agent in connection with any delay, controversy, litigation or event, and reimbursed for all costs and expenses, including reasonable attorneys' fees and expenses, occasioned by any such delay, controversy, litigation or event. If any amount due to the Escrow Agent hereunder is not paid within thirty (30) days of the date due, the Escrow Agent in its sole discretion may charge interest on such amount up to the highest rate permitted by applicable law.

(b) As security for the due and punctual performance of any and all of the Receiver's obligations to the Escrow Agent hereunder, now or hereafter arising, the Receiver, individually and collectively, hereby pledge, assign and grant to the Escrow Agent a continuing security interest in, and a lien on and right of setoff against any interest actually accrued and credited to the Escrow Property only and all distributions thereon, investments thereof or additions thereto as a result of the investment of Escrow Property. If any fees, expenses or costs incurred by, or any obligations owed to, the Escrow Agent hereunder are not promptly paid when due, the Escrow Agent may reimburse itself therefor from the actual interest accrued and credited to the Escrow Property only, and may sell, convey or otherwise dispose of any such accrued interest for such purpose. The security interest and setoff rights of the Escrow Agent set forth above shall at all times be valid, perfected and enforceable by the Escrow Agent against the Receiver and all third parties in accordance with the terms of this Escrow Agreement.

The terms of this Section 3.4 shall survive termination of this Escrow Agreement.

3.5. Disagreements. If any conflict, disagreement or dispute arises between, among, or involving any of the parties hereto concerning the meaning or validity of any provision hereunder or concerning any other matter relating to this Escrow Agreement, or the Escrow Agent is in doubt as to the action to be taken hereunder, the Escrow Agent may, at its option, refuse to act until the Escrow Agent (a) receives a final non-appealable order of the District Court directing delivery of the Escrow Property or (b) receives a written instruction, executed by each of the parties involved in such disagreement or dispute, in a form reasonably acceptable to the Escrow Agent, directing delivery of the Escrow Property. The Escrow Agent will be entitled to act on any such written instruction or final, non-appealable order of the District Court without further question, inquiry or consent. The Escrow Agent may file an interpleader action in the District Court, and upon the filing thereof, the Escrow Agent will be relieved of all liability as to the Escrow Property and will be entitled to recover reasonable and documented out-of-pocket attorneys' fees, expenses and other costs incurred in commencing and maintaining any such interpleader action. In the event the Escrow Agent receives conflicting instructions hereunder, the Escrow Agent shall be fully protected in refraining from acting until such conflict is resolved to the satisfaction of the Escrow Agent.

3.6. Merger or Consolidation. Any corporation or association into which the Escrow Agent may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer all or substantially all of its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which the Escrow Agent is a party, shall be and become the successor escrow agent under this Escrow Agreement and shall have and succeed to the rights, powers, duties, immunities and privileges as its predecessor, without the execution or filing of any instrument or paper or the performance of any further act.

3.7. Attachment of Escrow Property; Compliance with Legal Orders. In the event that any Escrow Property shall be attached, garnished or levied upon by any court order, or the delivery thereof shall be stayed or enjoined by an order of a court, or any order, judgment or decree shall be made or entered by any court order affecting the Escrow Property, after providing the Receiver no less than fifteen (15) days written notice, the Escrow Agent is hereby expressly authorized, in its sole discretion, to respond as it deems appropriate or to comply with all writs, orders or decrees so entered or issued, or which it is advised by legal counsel of its own choosing is binding upon it, whether with or without jurisdiction. In the event that the Escrow Agent obeys or complies with any such writ, order or decree it shall not be liable to the Receiver or to any other person, firm or corporation, should, by reason of such compliance notwithstanding, such writ, order or decree be subsequently reversed, modified, annulled, set aside or vacated.

3.8. Force Majeure. The Escrow Agent shall not be responsible or liable for any failure or delay in the performance of its obligation under this Escrow Agreement arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control, including, without limitation, acts of God; earthquakes; fire; flood; wars; acts of terrorism; civil or military disturbances; sabotage; epidemic; riots; interruptions; loss or malfunctions of utilities including but not limited to, computer (hardware or software), payment systems, or communications services; hacking, cyber-attacks or other unauthorized infiltration of Escrow Agent's information technology infrastructure; accidents; labor disputes; acts of civil or military authority or governmental action; it being understood that the Escrow Agent shall use commercially reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as reasonably practicable under the circumstances.

3.9. Compliance with Legal Orders. The Escrow Agent shall be entitled to consult with legal counsel in the event that a question or dispute arises with regard to the construction of any of the provisions hereof, and shall incur no liability and shall be fully protected in acting in accordance with the advice or opinion of such counsel.

3.10. No Financial Obligation. The Escrow Agent shall not be required to use its own funds in the performance of any of its obligations or duties or the exercise of any of its rights or powers, and shall not be required to take any action which, in the Escrow Agent's sole and absolute judgment, could involve it in expense or liability unless furnished with security and indemnity which it deems, in its sole and absolute discretion, to be satisfactory.

#### **ARTICLE 4 MISCELLANEOUS**

4.1. Successors and Assigns. This Escrow Agreement shall be binding on and inure to the benefit of the Receiver and the Escrow Agent and their respective successors and permitted assigns. No other persons shall have any rights under this Escrow Agreement. No assignment of the interest of any of the Receiver and the Escrow Agent shall be binding unless and until written notice of such assignment shall be delivered to the other party and the Escrow Agent and shall require the prior written consent of the other party and the Escrow Agent (such consent not to be unreasonably withheld).

4.2. Escheat. The Receiver is aware that under applicable state law, property which is presumed abandoned may under certain circumstances escheat to the applicable state. The Escrow Agent shall have no liability to the Receiver or any other party, should any or all of the Escrow Property escheat by operation of law.

4.3. Notices. All notices, requests, demands, and other communications required under this Escrow Agreement shall be in writing, in English, and shall be deemed to have been duly given if delivered (i) personally, (ii) by facsimile transmission with written confirmation of receipt, (iii) by overnight delivery with a reputable national overnight delivery service, (iv) by mail or by certified mail, return receipt requested, and postage prepaid, or (v) by electronic transmission; including by way of e-mail (as long as such email is accompanied by a PDF or similar version of the relevant document bearing the signature of an Authorized Representative for the party sending the notice) with email confirmation of receipt. If any notice is mailed, it shall be deemed given five business days after the date such notice is deposited in the United States mail. If notice is given to a party, it shall be given at the address for such party set forth below. It shall be the responsibility of the Receiver to notify the Escrow Agent in writing of any name or address changes. In the case of communications delivered to the Escrow Agent, such communications shall be deemed to have been given on the date received by the Escrow Agent.

If to the Receiver:

GIBBONS P.C.  
One Gateway Center  
Newark, NJ 07102  
Attention: Mark B. Conlan  
Dale E. Barney  
Telephone: 973-596-4500  
Facsimile: 973-596-0545  
Email address: [mconlan@gibbonslaw.com](mailto:mconlan@gibbonslaw.com)  
[dbarney@gibbonslaw.com](mailto:dbarney@gibbonslaw.com)

with a copy to:

UNITED STATES SECURITIES AND EXCHANGE COMMISSION  
Denver Regional Office  
1961 Stout St., Suite 1700, Denver, CO 80294  
Attn: Mark L. Williams  
Sharan Lieberman  
Senior Trial Counsel  
Phone: (303) 844-1027  
Fax: (303) 297-3529  
Email address: [williamsml@sec.gov](mailto:williamsml@sec.gov)  
[liebermans@sec.gov](mailto:liebermans@sec.gov)

If to the Escrow Agent:

Wilmington Trust, National Association  
Corporate Client Services  
1100 N. Market Street  
Wilmington, DE 19890  
Attn: Haley Owen  
Telephone: 302-636-6592  
Email address: [howen@wilmingtontrust.com](mailto:howen@wilmingtontrust.com)

4.4. Governing Law. This Escrow Agreement shall be governed by and construed in accordance with the laws of the State of Delaware without regard to any laws relating to choice of laws (whether of the State of Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Delaware.

4.5. Venue. The Receiver and the Escrow Agent hereby consent to the non-exclusive personal jurisdiction of the courts located in New Castle County in the State of Delaware in the event of a dispute arising out of or under this Escrow Agreement. The Receiver and the Escrow Agent hereby irrevocably waives any objection to the laying of the venue of any suit, action or proceeding and irrevocably submits to the exclusive jurisdiction of such court in such suit, action or proceeding.

4.6. Entire Agreement. This Escrow Agreement and the exhibits hereto set forth the entire agreement and understanding of the parties related to the Escrow Property and supersedes all prior agreements and understandings, oral or written. If the District Court declares a provision invalid, it will be ineffective only

to the extent of the invalidity, so that the remainder of the provision and Escrow Agreement will continue in full force and effect. In the event of any direct conflict of the terms of this Escrow Agreement with the terms of an order of the District Court, the terms of the District Court order shall control and prevail. This Escrow Agreement is not intended to confer upon any person other than the parties hereto any rights or remedies.

4.7. Amendment. This Escrow Agreement may be extended, amended, modified, supplemented, superseded, rescinded, or canceled only by a written instrument executed by the Receiver and the Escrow Agent; provided that Exhibit B, as applicable, may be amended at any time in accordance with Section 1.4.

4.8. Waivers. The failure of any party to this Escrow Agreement at any time or times to require performance of any provision under this Escrow Agreement shall in no manner affect the right at a later time to enforce the same performance. A waiver by any party to this Escrow Agreement of any such condition or breach of any term, covenant, representation, or warranty contained in this Escrow Agreement, in any one or more instances, shall neither be construed as a further or continuing waiver of any such condition or breach nor a waiver of any other condition or breach of any other term, covenant, representation, or warranty contained in this Escrow Agreement.

4.9. Interpretation. Section headings of this Escrow Agreement have been inserted for convenience of reference only and shall in no way restrict or otherwise modify any of the terms or provisions of this Escrow Agreement. Unless otherwise indicated by the context, the singular shall include the plural and the plural shall include the singular. Any references to an Exhibit is a reference to an Exhibit of this Escrow Agreement.

4.10. Electronic Signatures; Facsimile Signatures; Counterparts. This Escrow Agreement may be executed in one or more counterparts. Such execution of counterparts may occur by manual signature, electronic signature, facsimile signature, manual signature transmitted by means of facsimile transmission or manual signature contained in an imaged document attached to an email transmission, and any such execution that is not by manual signature shall have the same legal effect, validity and enforceability as a manual signature. Each such counterpart executed in accordance with the foregoing shall be deemed an original, with all such counterparts together constituting one and the same instrument. The exchange of executed copies of this Escrow Agreement or of executed signature pages to this Escrow Agreement by electronic transmission, facsimile transmission or as an imaged document attached to an email transmission shall constitute effective execution and delivery hereof. Any copy of this Escrow Agreement which is fully executed and transmitted in accordance with the terms hereof may be used for all purposes in lieu of a manually executed copy of this Escrow Agreement and shall have the same legal effect, validity and enforceability as if executed by manual signature.

4.11. Waiver of Jury Trial. **THE RECEIVER AND THE ESCROW AGENT EXPRESSLY WAIVE THE RIGHT TO TRIAL BY JURY IN RESOLVING ANY CLAIM OR COUNTERCLAIM RELATING TO OR ARISING OUT OF THIS ESCROW AGREEMENT.**

4.12. Business Day. Any day other than a Saturday, a Sunday or any day which is a federal holiday or any day on which banking institutions or District Court are authorized or obligated by law, regulation or executive order to remain closed.



[The remainder of this page left intentionally blank.]

IN WITNESS WHEREOF, this Escrow Agreement has been duly executed as of the date first written above.

RECEIVER

By: \_\_\_\_\_  
Name:  
Mark B. Conlan  
Title: Receiver, *SEC v. Mediatrix Inc., et al.*  
Date: January \_\_, 2023

WILMINGTON TRUST, NATIONAL  
ASSOCIATION, as Escrow Agent

By: \_\_\_\_\_  
Name: Haley Owen  
Title: Assistant Vice President  
Date: January , 2023



**EXHIBIT A**

**Form of Written Direction**

*[Form to be provided by Receiver provided that any alternative form contain substantially all information in the table below]*

**Example for reference purposes only:**

[date]  
 Wilmington Trust, National Association  
 Corporate Client Services  
 1100 N. Market Street  
 Wilmington, DE 19890  
 Attention: SEC Receivership Escrow Administrator

**Re: Escrow Account No.: [##], [escrow account name]**

Ladies and Gentlemen:

Reference is made to the Escrow Agreement, dated as of \_\_\_\_\_, 20\_\_ entered into by and among [\_\_\_\_\_] (“**Receiver**”), and WILMINGTON TRUST, NATIONAL ASSOCIATION, a national banking association, as escrow agent (the “**Escrow Agent**”). Capitalized terms defined in the Escrow Agreement shall have the same meanings when used herein. This letter is a [ ] Written Direction referred to in Section [ ] of the Escrow Agreement.

[ ] hereby instructs the Escrow Agent to release the funds in the Escrow Account in the amounts, and to the account(s), as follows:

Amount:	
Beneficiary Bank Name:	
Beneficiary Bank Address Line 1:	
Beneficiary Bank Address Line 2:	
Beneficiary Bank Address Line 3:	
ABA#:	
SWIFT#:	
Beneficiary Account Title:	
Beneficiary Account No./IBAN:	
Beneficiary Address	



Line 1:	
Beneficiary Address Line 2:	
Beneficiary Address Line 3:	
Additional Information:	

**[RECEIVER]**

By: \_\_\_\_\_  
Name:  
Title:  
Date:



**EXHIBIT B**

**CERTIFICATE AS TO AUTHORIZED SIGNATURES  
OF RECEIVER**

Receiver hereby designates each of the following persons as its Authorized Representative for purposes of this Escrow Agreement, and confirms that the title, contact information and specimen signature of each such person as set forth below is true and correct. Each such Authorized Representative is authorized to initiate and approve transactions of all types for the Escrow Account established under this Escrow Agreement to which this Exhibit B is attached, on behalf of Receiver.

<b>Name (print):</b>	Mark B. Conlan
<b>Specimen Signature:</b>	
<b>Title:</b>	Receiver
<b>Telephone Number (required):</b> <i>If more than one, list all</i>	Office: 973-596-4545 Cell: <b>REDACTED</b> Home: Other:
<b>E-mail (required):</b> <i>If more than one, list all</i>	Email 1: mconlan@gibbonslaw.com Email 2:
<b>Facsimile:</b>	973-639-6356

<b>Name (print):</b>	Thomas J. Cafferty
<b>Specimen Signature:</b>	
<b>Title:</b>	General Counsel, Gibbons P.C.
<b>Telephone Number (required):</b> <i>If more than one, list all</i>	Office: 973-596-4863 Cell: <b>REDACTED</b> Home: <b>REDACTED</b> Other:
<b>E-mail (required):</b> <i>If more than one, list all</i>	Email 1: tcafferty@gibbonslaw.com Email 2:
<b>Facsimile:</b>	973-639-6267

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**COMPLETE BELOW TO UPDATE EXHIBIT B**

If the Receiver wishes to change the names or details of any of its Authorized Representatives, the Receiver must complete, sign and send to Escrow Agent an updated copy of this Exhibit B-1 with such changes.



Any updated Exhibit B shall be effective once signed by the Receiver and Escrow Agent and shall entirely supersede and replace any prior Exhibit B attached to this Escrow Agreement or submitted to Escrow Agent.

**RECEIVER**

By: \_\_\_\_\_  
Name: Mark B. Conlan  
Title: Receiver, *SEC v. Mediatix Inc., et al.*  
Date: January \_\_, 2023

**WILMINGTON TRUST, NATIONAL ASSOCIATION**

By: \_\_\_\_\_  
Name:  
Title:  
Date:

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*Internal Use Only:*

- Updated details of Authorized Representatives completed in full
- Signed by a representative of the Receiver per relevant board resolutions/certificate of incumbency on file (if relevant).
- Call-back performed to the Receiver to confirm authenticity of updated Exhibit B:

Person Called: \_\_\_\_\_ Date of Call: \_\_\_\_\_ Time of Call: \_\_\_\_ am/pm

Reviewed by (name): \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_



**EXHIBIT C**

**Fees of Escrow Agent**

**Acceptance Fee:**

**Waived**

Initial Fees as they relate to Wilmington Trust, N.A. acting in the capacity of Escrow Agent – includes review of the Escrow Agreement; acceptance of the Escrow appointment; setting up of Escrow Account(s) and accounting records; and coordination of receipt of funds for deposit to the Escrow Account(s). **Acceptance Fee payable prior to, or within one business day after, the Escrow Agreement is executed by all parties.**

**Escrow Agent Administration Fee:**

**\$4,000**

For ordinary administrative services by Escrow Agent – includes daily routine account management; investment transactions; cash transaction processing (including wire and check processing); monitoring claim notices pursuant to the agreement; disbursement of funds in accordance with the agreement; and mailing of trust account statements to all applicable parties. This fee shall be payable annually on the anniversary of the date of the account agreement so long as the account remains open.

***Wilmington Trust, N.A.'s fees are based on the following assumptions:***

- Number of Escrow Accounts to be established: Two (2)
- Estimated Term of Escrow Agreement: TBD
- Investment of Escrow Property in: TBD

**Out-of-Pocket Expenses:**

**Billed At Cost**



**EXHIBIT D**

**Agency and Custody Account Direction  
For Cash Balances  
Manufacturers & Traders Trust Company Deposit Accounts**

Direction to use the following Manufacturers & Traders Trust Company (also known as M&T Bank) Deposit Account for Cash Balances for the escrow account or accounts (the “Deposit Account”) established under this Escrow Agreement to which this Exhibit D is attached.

You are hereby directed to deposit, as indicated below, or as the Receiver shall direct further in writing, from time to time, all Escrow Property in the following deposit account of M&T Bank:

**M&T Corporate Deposit Account**

The Receiver acknowledges that amounts on deposit in the M&T Bank Deposit Account are insured, subject to FDIC deposit insurance coverage to the extent permitted by FDIC rules. The agreed upon annual interest rate with respect to the M&T Corporate Deposit Account is 3.65%. The annual interest rate with respect to each of these deposit accounts is (i) variable and subject to change, and (ii) will be set by Manufacturers and Traders Trust Company at its discretion without reference to any index, formula or schedule.

The Receiver acknowledges that he has full power to direct investments of the Escrow Property. The Receiver understands that he may change this direction at any time and that it shall continue in effect until revoked or modified by Receiver by written notice to the Escrow Agent.





**EXHIBIT E**

**Appointment Order**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:19-cv-02594-RM-SKC

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

MEDIATRIX CAPITAL INC., et al.,

Defendants,

and

MEDIATRIX CAPITAL FUND LTD., et al.,

Relief Defendants.

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**ORDER APPOINTING RECEIVER**

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**WHEREAS** this matter has come before this Court upon Plaintiff U.S. Securities and Exchange Commission’s (“Commission”) motion to appoint a receiver in the above-captioned action; and,

**WHEREAS** the Court finds that, based on the record in these proceedings, the appointment of a receiver in this action is necessary and appropriate for the purposes of marshaling and preserving all assets of the Defendants (“Receivership Assets”) and those assets of the Relief Defendants that: (a) are attributable to funds derived from investors or clients of the Defendants; (b) are held in constructive trust for the Defendants; (c) were fraudulently transferred by the Defendants; and/or (d) may otherwise be includable as assets of the estates of the Defendants (collectively, the “Recoverable Assets”); and,

**WHEREAS** this Court has subject matter jurisdiction over this action and personal jurisdiction over the Defendants and Relief Defendants, and venue properly lies in this district.

**NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

This Court hereby takes exclusive jurisdiction over the assets, of whatever kind and wherever situated, of the following Defendants: Michael S. Young; Michael S. Stewart; Bryant E. Sewall (the “Individual Defendants”); and Mediatrix Capital Inc.; Blue Isle Markets Inc.; and Blue Isle Markets Ltd. (the “Entity Defendants” and together with the Individual Defendants, the “Receivership Defendants”) and of the Recoverable Assets of the following Relief Defendants: Mediatrix Capital Fund Ltd.; Island Technologies LLC; West Beach LLC; Salve Regina Trust; TF Alliance, LLC; Casa Conejo LLC; Hase Haus, LLC; DCC Islands Foundation; Keystone Business Trust; Weinzell, LLC, The 1989 Foundation, Mediatrix Capital PR LLC, Mediatrix Capital, LLC; Blue Isle Markets Inc. (Cayman Islands) (the “Entity Receivership Relief Defendants” or the “Entity Relief Defendants”); and Victoria M. Stewart; Maria C. Young; and Hanna Ohonkova Sewall (collectively with the Entity Relief Defendants, the “Receivership Relief Defendants”), not including those assets previously excluded from the asset freeze. (*See* ECF Nos. 101, 103 (“permitting the individual defendants to open separate bank accounts that will remain unfrozen for current living expenses”).)

Until further Order of this Court, Brick Kane of Robb Evans & Associates LLC is hereby appointed to serve without bond as receiver (the “Receiver”) over the (1) Entity Defendants; (2) the Receivership Assets of the Individual Defendants; and (3) the Recoverable Assets of the Receivership Relief Defendants.

**I. General Powers and Duties of Receiver**

1. The Receiver shall have all powers, authorities, rights and privileges heretofore possessed by the officers, directors, managers and general and limited partners of the Receivership Defendants and the Receivership Relief Defendants under applicable state and federal law, by the governing charters, by-laws, articles and/or agreements in addition to all powers and authority of a receiver at equity, and all powers conferred upon a receiver by the provisions of 28 U.S.C. §§ 754, 959 and 1692, and Federal Rule of Civil Procedure 66.

2. The trustees, directors, officers, managers, employees, investment advisors, accountants, attorneys and other agents of the Receivership Defendants and Receivership Relief Defendants are hereby dismissed and the powers of any general partners, directors and/or managers are hereby suspended. Such persons and entities shall have no authority with respect to the Receivership Defendants' or Receivership Relief Defendants' operations or assets, except to the extent as may hereafter be expressly granted by the Receiver. The Receiver shall assume and control the operation of the Entity Receivership Defendants and the Entity Relief Defendants and shall pursue and preserve all of their claims.

3. No person holding or claiming any position of any sort with any of the Receivership Defendants or Receivership Relief Defendants shall possess any authority to act by or on behalf of any of the Receivership Defendants or and Receivership Relief Defendants.

4. Subject to the specific provisions in Sections III through XIV, below, the Receiver shall have the following general powers and duties:

- A. To use reasonable efforts to determine the nature, location and value of all property interests of the Receivership Defendants and of the Receivership Relief Defendants Recoverable Assets, including, but not limited to, monies, funds, securities, credits, effects, goods, chattels, lands, premises, leases, claims, rights and other assets, together with all rents, profits, dividends, interest or other income attributable thereto, of whatever kind, which the Receivership Defendants and Receivership Relief Defendants own, possess, have a beneficial interest in, or control directly or indirectly (“Receivership Property” or, collectively, the “Receivership Estate”);
- B. To take custody, control and possession of all Receivership Property and records relevant thereto from the Receivership Defendants and Receivership Relief Defendants; to sue for and collect, recover, receive and take into possession from third parties all Receivership Property and records relevant thereto;
- C. To manage, control, operate and maintain the Receivership Estate and hold in his possession, custody and control all Receivership Property, pending further Order of this Court;
- D. To use Receivership Property for the benefit of the Receivership Estate, making payments and disbursements and incurring expenses as may be necessary or advisable in the ordinary course of business in discharging its duties as Receiver;
- E. To take any action which, prior to the entry of this Order, could have been taken by the officers, directors, partners, managers, trustees and agents of the Receivership Defendants and Receivership Relief Defendants;
- F. To engage and employ persons in his discretion to assist him in carrying out his duties and responsibilities hereunder, including, but not limited to, accountants, attorneys, securities traders, registered representatives, financial or business advisers, liquidating agents, real estate agents, forensic experts, brokers, traders or auctioneers;
- G. To take such action as necessary and appropriate for the preservation of Receivership Property or to prevent the dissipation or concealment of Receivership Property;
- H. The Receiver is authorized to issue subpoenas for documents and testimony consistent with the Federal Rules of Civil Procedure;

- I. To bring such legal actions based on law or equity in any state, federal, or foreign court as the Receiver deems necessary or appropriate in discharging his duties as Receiver;
- J. To pursue, resist and defend all suits, actions, claims and demands which may now be pending or which may be brought by or asserted against the Receivership Property or the Receivership Estate; and,
- K. To take such other action as may be approved by this Court.

## **II. Access to Information**

5. The Receivership Defendants and Receivership Relief Defendants and the past and/or present officers, directors, agents, managers, general and limited partners, trustees, attorneys, accountants and employees of the Entity Receivership Defendants and the Entity Receivership Relief Defendants, as well as those acting in their place, are hereby ordered and directed to preserve and turn over to the Receiver forthwith all paper and electronic information of, and/or relating to, the Receivership Defendants, Receivership Relief Defendants, and/or all Receivership Property; such information shall include but not be limited to books, records, documents, accounts and all other instruments and papers.

6. Within ten (10) days of the entry of this Order, the Receivership Defendants and Receivership Relief Defendants shall file with the Court and serve upon the Receiver and the Commission a sworn statement, listing: (a) the identity, location and estimated value of all Receivership Property; (b) all employees (and job titles thereof), other personnel, attorneys, accountants and any other agents or contractors of the Receivership Defendants and Receivership Relief Defendants; and, (c) the names, addresses and amounts of claims of all known creditors of the Receivership Defendants and Receivership Relief Defendants. These filings may supplement and need not duplicate the accountings provided by Receivership Defendants and the

Receivership Relief Defendants in response to the September 13, 2019, Order Granting Plaintiff's Motion for an Ex Parte Asset Freeze, Temporary Restraining Order, Order to Show Cause, and other Emergency Relief (ECF No. 10). (*See* ECF No. 28.)

7. Within thirty (30) days of the entry of this Order, the Receivership Defendants and Receivership Relief Defendants shall file with the Court and serve upon the Receiver and the Commission a sworn statement and accounting, with complete documentation, covering the period from January 1, 2017 to the present:

- A. Of all Receivership Property, wherever located, held by or in the name of the Receivership Defendants or Receivership Relief Defendants, or in which any of them, directly or indirectly, has or had any beneficial interest, or over which any of them maintained or maintains and/or exercised or exercises control, including, but not limited to: (a) all securities, investments, funds, real estate, automobiles, jewelry and other assets, stating the location of each; and (b) any and all accounts, including all funds held in such accounts, with any bank, brokerage or other financial institution held by, in the name of, or for the benefit of any of them, directly or indirectly, or over which any of them maintained or maintains and/or exercised or exercises any direct or indirect control, or in which any of them had or has a direct or indirect beneficial interest, including the account statements from each bank, brokerage or other financial institution;
- B. Identifying every account at every bank, brokerage or other financial institution: (a) over which Receivership Defendants or Receivership Relief Defendants have signatory authority; and (b) opened by, in the name of, or for the benefit of, or used by, the Receivership Defendants or Receivership Relief Defendants;
- C. Identifying all credit, bank, charge, debit or other deferred payment card issued to or used by each Receivership Defendant and Receivership Relief Defendant, including but not limited to the issuing institution, the card or account number(s), all persons or entities to which a card was issued and/or with authority to use a card, the balance of each account and/or card as of the most recent billing statement, and all statements for the last twelve months;

- D. Of all assets received by any of them from any person or entity, including the value, location, and disposition of any assets so received;
- E. Of all funds received by the Receivership Defendants and Receivership Relief Defendants, and each of them, in any way related, directly or indirectly, to the conduct alleged in the Commission's Complaint. The submission must clearly identify, among other things, all investors, the securities they purchased, the date and amount of their investments, and the current location of such funds;
- G. Of all expenditures exceeding \$1,000 made by any of them, including those made on their behalf by any person or entity; and
- H. Of all transfers of assets made by any of them.

8. Within thirty (30) days of the entry of this Order, the Receivership Defendants and Receivership Relief Defendants shall provide to the Receiver and the Commission copies of the Receivership Defendants' and Receivership Relief Defendants' federal income tax returns for 2016-2019, with all relevant and necessary underlying documentation.

9. The Individual Receivership Defendants and individual Receivership Relief Defendants, and the Entity Receivership Defendants' and Entity Receivership Relief Defendants' past and/or present officers, directors, agents, attorneys, managers, shareholders, employees, accountants, debtors, creditors, managers and general and limited partners, and other appropriate persons or entities shall answer under oath to the Receiver all questions which the Receiver may put to them and produce all documents as required by the Receiver regarding the business of the Receivership Defendants and Receivership Relief Defendants, or any other matter relevant to the operation or administration of the receivership or the collection of funds due to the Receivership Defendants and Receivership Relief Defendants. In the event that the Receiver deems it necessary to require the appearance of the aforementioned persons or entities, the Receiver shall make its discovery requests in accordance with the Federal Rules of Civil Procedure.



10. The Receiver has the authority to issue subpoenas to compel testimony of persons or production of records, consistent with the Federal Rules of Civil Procedure and applicable Local Rules, except for the provisions of Federal Rule of Civil Procedure 26(d)(1), concerning any subject matter within the powers and duties granted by this Order.

11. The Receivership Defendants and Receivership Relief Defendants are required to assist the Receiver in fulfilling his duties and obligations. As such, they must respond promptly and truthfully to all requests for information and documents from the Receiver.

### **III. Access to Books, Records and Accounts**

12. The Receiver is authorized to take immediate possession of all assets, bank accounts or other financial accounts, books and records and all other documents or instruments relating to the Receivership Defendants and Receivership Relief Defendants not specifically excluded from this Order (*see* ECF Nos. 101, 103). All persons and entities having control, custody or possession of any Receivership Property are hereby directed to turn such property over to the Receiver.

13. The Receivership Defendants and Receivership Relief Defendants, as well as their agents, servants, employees, attorneys, any persons acting for or on behalf of the Receivership Defendants and Receivership Relief Defendants, and any persons receiving notice of this Order by personal service, facsimile transmission or otherwise, having possession of the property, business, books, records, accounts or assets of the Receivership Defendants and Receivership Relief Defendants are hereby directed to deliver the same to the Receiver, his agents and/or employees.

14. All banks, brokerage firms, financial institutions, and other persons or entities

which have possession, custody or control of any assets or funds held by, in the name of, or for the benefit of, directly or indirectly, and of the Receivership Defendants or Receivership Relief Defendants that receive actual notice of this Order by personal service, facsimile transmission or otherwise shall:

- A. Not liquidate, transfer, sell, convey or otherwise transfer any assets, securities, funds, or accounts in the name of or for the benefit of the Receivership Defendants and Receivership Relief Defendants except upon instructions from the Receiver;
- B. Not exercise any form of set-off, alleged set-off, lien, or any form of self-help whatsoever, or refuse to transfer any funds or assets to the Receiver's control without the permission of this Court;
- C. Within five (5) business days of receipt of that notice, file with the Court and serve on the Receiver and counsel for the Commission a certified statement setting forth, with respect to each such account or other asset, the balance in the account or description of the assets as of the close of business on the date of receipt of the notice; and,
- D. Cooperate expeditiously in providing information and transferring funds, assets and accounts to the Receiver or at the direction of the Receiver.

#### **IV. Access to Real and Personal Property**

15. The Receiver is authorized to take immediate possession of all personal property of the Receivership Defendants and of the Relief Defendants, to the extent such personal property is a Recoverable Asset, wherever located, including but not limited to electronically stored information, computers, laptops, hard drives, external storage drives, and any other such memory, media or electronic storage devices, books, papers, data processing records, evidence of indebtedness, bank records and accounts, savings records and accounts, brokerage records and accounts, certificates of deposit, stocks, bonds, debentures, and other securities and investments, contracts, mortgages, furniture, office supplies and equipment.

16. The Receiver is authorized to take immediate possession of all real property of the Receivership Defendants and of the Receivership Relief Defendants to the extent such real property is a Recoverable Asset, wherever located, including but not limited to all ownership and leasehold interests and fixtures. Notwithstanding this authority, the Receiver shall not take any actions to dispossess Defendants of their primary residences (Michael Young: 5406 S. Cottonwood Ct., Greenwood Village, CO; Michael Stewart: 8082 E. Arroyo Hondo Rd., Scottsdale, AZ; Bryant Sewall: apartment in Ukraine) until at least ninety (90) days after entry of this order and after obtaining approval from the Court. Upon receiving actual notice of this Order by personal service, facsimile transmission or otherwise, all persons other than law enforcement officials acting within the course and scope of their official duties, are (without the express written permission of the Receiver) prohibited from: (a) entering such premises; (b) removing anything from such premises; or, (c) destroying, concealing or erasing anything on such premises.

17. Upon the request of the Receiver, the United States Marshal Service, in any judicial district, is hereby ordered to assist the Receiver in carrying out his duties to take possession, custody and control of, or identify the location of, any assets, records or other materials consisting of Receivership Property and belonging to the Receivership Estate.

#### **V. Notice to Third Parties**

18. The Receiver shall promptly give notice of his appointment to all known officers, directors, agents, employees, shareholders, creditors, debtors, managers and general and limited partners of the Receivership Defendants and Receivership Relief Defendants, as the Receiver deems necessary or advisable to effectuate the operation of the receivership.

19. All persons and entities owing any obligation, debt, or distribution with respect to an ownership interest to any Receivership Defendant or Receivership Relief Defendant shall, until further ordered by this Court, pay all such obligations in accordance with the terms thereof to the Receiver and its receipt for such payments shall have the same force and effect as if the Receivership Defendant or Receivership Relief Defendant had received such payment.

20. In furtherance of his responsibilities in this matter, the Receiver is authorized to communicate with, and/or serve this Order upon, any person, entity or government office that he deems appropriate to inform them of the status of this matter and/or the financial condition of the Receivership Estates. All government offices which maintain public files of security interests in real and personal property shall, consistent with such office's applicable procedures, record this Order upon the request of the Receiver or the Commission.

#### **VI. Injunction against Interference with Receiver**

21. The Receivership Defendants and Receivership Relief Defendants and all persons receiving notice of this Order by personal service, facsimile or otherwise, are hereby restrained and enjoined from directly or indirectly taking any action or causing any action to be taken, without the express written agreement of the Receiver, which would:

- A. Interfere with the Receiver's efforts to take control, possession, or management of any Receivership Property; such prohibited actions include but are not limited to, using self-help or executing or issuing or causing the execution or issuance of any court attachment, subpoena, replevin, execution, or other process for the purpose of impounding or taking possession of or interfering with or creating or enforcing a lien upon any Receivership Property;
- B. Hinder, obstruct or otherwise interfere with the Receiver in the performance of his duties; such prohibited actions include but are not limited to, concealing, destroying or altering records or information;

- C. Dissipate or otherwise diminish the value of any Receivership Property; such prohibited actions include but are not limited to, releasing claims or disposing, transferring, exchanging, assigning or in any way conveying any Receivership Property, enforcing judgments, assessments or claims against any Receivership Property or any Receivership Defendant or Receivership Relief Defendant, attempting to modify, cancel, terminate, call, extinguish, revoke or accelerate (the due date), of any lease, loan, mortgage, indebtedness, security agreement or other agreement executed by any Receivership Defendant or and Receivership Relief Defendant or which otherwise affects any Receivership Property; or,
- D. Interfere with or harass the Receiver, or interfere in any manner with the exclusive jurisdiction of this Court over the Receivership Property or the Receivership Estate.

22. The Receivership Defendants and Receivership Relief Defendants shall cooperate with and assist the Receiver in the performance of his duties.

23. The Receiver shall promptly notify the Court and Commission counsel of any failure or apparent failure of any person or entity to comply in any way with the terms of this Order.

## **VII. Stay of Litigation**

24. As set forth in detail below, the following proceedings, excluding the instant proceeding and all police or regulatory actions and actions of the Commission related to the above-captioned enforcement action, are stayed until further Order of this Court:

All civil legal proceedings of any nature, including, but not limited to, bankruptcy proceedings, arbitration proceedings, foreclosure actions, default proceedings, or other actions of any nature involving: (a) the Receiver, in his capacity as Receiver; (b) any Receivership Property, wherever located; (c) any of the Receivership Defendants and Receivership Relief Defendants, including subsidiaries and partnerships; or, (d) any of the Receivership Defendants' and Receivership Relief Defendants' past or present officers, directors, managers, agents, or general or limited partners sued for, or in connection with, any action taken by them while acting in such capacity of any nature, whether as plaintiff, defendant, third-party plaintiff, third-party defendant, or otherwise (such proceedings are hereinafter referred to as "Ancillary Proceedings").

25. The parties to any and all Ancillary Proceedings are enjoined from commencing or continuing any such legal proceeding, or from taking any action, in connection with any such proceeding, including, but not limited to, the issuance or employment of process.

26. All Ancillary Proceedings are stayed in their entirety, and all Courts having any jurisdiction thereof are enjoined from taking or permitting any action until further Order of this Court. Further, as to a cause of action accrued or accruing in favor of one or more of the Receivership Defendants or Receivership Relief Defendants against a third person or party, any applicable statute of limitation is tolled during the period in which this injunction against commencement of legal proceedings is in effect as to that cause of action.

#### **VIII. Managing Assets**

27. The Receiver shall establish one or more custodial accounts at a federally insured bank to receive and hold all cash equivalent Receivership Property (the “Receivership Funds”).

28. The Receiver’s deposit account shall include in its account name the words “Receiver's Account” together with the name of this litigation.

29. The Receiver may, without further Order of this Court, transfer, compromise, or otherwise dispose of any Receivership Property, other than real estate on terms and in the manner the Receiver deems most beneficial to the Receivership Estate, and with due regard to the true and proper value of such Receivership Property.

30. Subject to Paragraph 32, immediately below, the Receiver is authorized to locate, list for sale or lease, engage a broker for sale or lease, cause the sale or lease, and take all necessary and reasonable actions to cause the sale or lease of all real property in the Receivership Estate, either at public or private sale, on terms and in the manner the Receiver deems most

beneficial to the Receivership Estate, and with due regard to the true and proper value of such real property.

31. Upon further Order of this Court, pursuant to such procedures as may be required by this Court and additional authority such as 28 U.S.C. §§ 2001 and 2004, the Receiver will be authorized to sell, and transfer clear title to, all real property in the Receivership Estate.

32. The Receiver is authorized to take all actions to manage, maintain, and/or wind-down business operations of the Receivership Estate, including making legally required payments to creditors, employees, and agents of the Receivership Estate and communicating with vendors, investors, governmental and regulatory authorities, and others, as appropriate.

33. The Receiver shall take all necessary steps to enable the Receivership Funds to obtain and maintain the status of a taxable “Settlement Fund,” within the meaning of Section 468B of the Internal Revenue Code and of the regulations, when applicable. The Receiver shall be designated the administrator of the Settlement Fund, pursuant to Treas. Reg. § 1.468B-2(k)(3)(i), and shall satisfy the administrative requirements imposed by Treas. Reg. § 1.468B-2, including but not limited to (a) obtaining a taxpayer identification number, (b) timely filing applicable federal, state, and local tax returns and paying taxes reported thereon, and (c) satisfying any information, reporting or withholding requirements imposed on distributions from the Settlement Fund. The Receiver shall cause the Settlement Fund to pay taxes in a manner consistent with treatment of the Settlement Fund as a “Qualified Settlement Fund.” The Receivership Defendants shall cooperate with the Receiver in fulfilling the Settlement Funds’ obligations under Treas. Reg. § 1.468B-2.

### **IX. Investigate and Prosecute Claims**

34. Subject to the requirement, in Section VIII above, that leave of this Court is required to resume or commence certain litigation, the Receiver is authorized, empowered and directed to investigate, prosecute, defend, intervene in or otherwise participate in, compromise, and/or adjust actions in any state, federal or foreign court or proceeding of any kind as may in his discretion, and in consultation with Commission counsel, be advisable or proper to recover and/or conserve Receivership Property.

35. The receiver has a continuing duty to ensure that there are no conflicts of interest between the Receiver, his Retained Personnel (as that term is defined below), and the Receivership Estate.

### **X. Liability of Receiver**

36. Until further Order of this Court, the Receiver shall not be required to post bond or give an undertaking of any type in connection with his fiduciary obligations in this matter.

37. The Receiver and his agents, acting within the scope of such agency (“Retained Personnel”) are entitled to rely on all outstanding rules of law and Orders of this Court and shall not be liable to anyone for their own good faith compliance with any order, rule, law, judgment, or decree. In no event shall the Receiver or Retained Personnel be liable to anyone for their good faith compliance with their duties and responsibilities as Receiver or Retained Personnel.

38. This Court shall retain jurisdiction over any action filed against the Receiver or Retained Personnel based upon acts or omissions committed in their representative capacities.

39. In the event the Receiver decides to resign, the Receiver shall first give written notice to the Commission’s counsel of record and the Court of its intention, and the resignation



shall not be effective until the Court appoints a successor. The Receiver shall then follow such instructions as the Court may provide.

### **XI. Recommendations and Reports**

40. Within thirty (30) days after the end of each calendar quarter, the Receiver shall file and serve a full report and accounting of the Receivership Estate (the “Quarterly Status Report”), reflecting (to the best of the Receiver’s knowledge as of the period covered by the report) the existence, value, and location of all Receivership Property, and of the extent of liabilities, both those claimed to exist by others and those the Receiver believes to be legal obligations of the Receivership Estate.

41. The Quarterly Status Report shall contain the following:

- A. A summary of the operations of the Receiver;
- B. The amount of cash on hand, the amount and nature of accrued administrative expenses, and the amount of unencumbered funds in the estate;
- C. A schedule of all the Receiver’s receipts and disbursements (attached as Exhibit A to the Quarterly Status Report), with one column for the quarterly period covered and a second column for the entire duration of the receivership;
- D. A description of all known Receivership Property, including approximate or actual valuations, anticipated or proposed dispositions, and reasons for retaining assets where no disposition is intended;
- E. A description of liquidated and unliquidated claims held by the Receivership Estate, including the need for forensic and/or investigatory resources; approximate valuations of claims; and anticipated or proposed methods of enforcing such claims (including likelihood of success in: (i) reducing the claims to judgment; and, (ii) collecting such judgments);
- F. A list of all known creditors with their addresses and the amounts of their claims; and,

- G. The Receiver's recommendations for a continuation or discontinuation of the receivership and the reasons for the recommendations.

## **XII. Fees, Expenses, and Accountings**

42. Subject to Paragraphs 43-49 immediately below, the Receiver need not obtain Court approval prior to the disbursement of Receivership Funds for expenses in the ordinary course of the administration and operation of the receivership. Further, prior Court approval is not required for payments of applicable federal, state or local taxes.

43. Subject to Paragraph 44 immediately below, the Receiver is authorized to solicit persons and entities ("Retained Personnel") to assist him in carrying out the duties and responsibilities described in this Order. The Receiver shall not engage any Retained Personnel without first advising the Commission, and will not engage any outside lawyers or law firms without first obtaining an Order of the Court authorizing such engagement.

44. The Receiver and Retained Personnel are entitled to reasonable compensation and expense reimbursement from the Receivership Estates as described in the "Billing Instructions for Receivers in Civil Actions Commenced by the U.S. Securities and Exchange Commission" (the "Billing Instructions") agreed to by the Receiver. Such compensation shall require the prior approval of the Court.

45. Within seventy-five (75) days after the end of each calendar quarter, the Receiver shall apply to the Court for compensation and expense reimbursement from the Receivership Funds (the "Quarterly Fee Applications"). At least thirty (30) days prior to filing each Quarterly Fee Application with the Court, the Receiver will serve upon counsel for the Commission a complete copy of the proposed Application, together with all exhibits and relevant billing information in a format to be provided by Commission staff.

46. All Quarterly Fee Applications will be interim and will be subject to cost benefit and final reviews at the close of the receivership. At the close of the receivership, the Receiver will file a final fee application, describing in detail the costs and benefits associated with all litigation and other actions pursued by the Receiver during the course of the receivership.

47. Quarterly Fee Applications may be subject to a holdback in the amount of 20% of the amount of fees and expenses for each application filed with the Court. The total amounts held back during the course of the receivership will be paid out at the discretion of the Court as part of the final fee application submitted at the close of the receivership.

48. Each Quarterly Fee Application shall:

- A. Comply with the terms of the Billing Instructions agreed to by the Receiver; and,
- B. Contain representations (in addition to the Certification required by the Billing Instructions) that: (i) the fees and expenses included therein were incurred in the best interests of the Receivership Estate; and, (ii) with the exception of the Billing Instructions, the Receiver has not entered into any agreement, written or oral, express or implied, with any person or entity concerning the amount of compensation paid or to be paid from the Receivership Estate, or any sharing thereof.

49. At the close of the Receivership, the Receiver shall submit a Final Accounting, in a format to be provided by SEC staff, as well as the Receiver's final application for compensation and expense reimbursement.

**IT IS SO ORDERED, this 11th day of September, 2020**

BY THE COURT:



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RAYMOND P. MOORE  
United States District Judge

The following transaction was entered on 10/20/2021 at 10:30 AM MDT and filed on 10/20/2021

**Case Name:** United States Securities and Exchange Commission v. Mediatrix Capital Inc. et al  
**Case Number:** [1:19-cv-02594-RM-SKC](#)  
**Filer:**  
**Document Number:** 284(No document attached)

**Docket Text:**

**ORDER: Before the Court is Plaintiff's Unopposed Motion for Appointment of a Substitute Receiver [283], requesting an order substituting Mark Conlan of Gibbons P.C. as Receiver in this case, to function under the terms and conditions of the existing Order Appointing Receiver [153]. The Motion is GRANTED. SO ORDERED by Judge Raymond P. Moore on 10/19/2021. (Text Only Entry)(rmsec )**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No.: 1:19-cv-02594-RM-SKC

UNITED STATES SECURITIES  
AND EXCHANGE COMMISSION,

Plaintiff,

v.

MEDIATRIX CAPITAL INC. *et al.*,

Defendants,

and

MEDIATRIX CAPITAL FUND LTD *et al.*,

Relief Defendants.

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**ORDER GRANTING MOTION OF RECEIVER FOR AN ORDER AUTHORIZING  
RECEIVER TO INVEST RECEIVERSHIP FUNDS**

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The *Unopposed Motion of Receiver for an Order Authorizing Receiver to Invest Receivership Funds* [ECF No. 397] (the “Motion”) filed by Mark B. Conlan, the Court-appointed receiver in this case (the “Receiver”), came before the Honorable Raymond P. Moore, United States District Judge; and the Court, having fully considered the Motion and all pleadings and papers filed in support thereof, and oppositions or responses to the Motion, if any, and good cause appearing therefor,

**IT IS HEREBY ORDERED** that:

1. The Motion and relief sought therein is **GRANTED**; and

2. The Receiver is authorized to execute and enter into the agreement substantially in the form of Escrow Agreement<sup>6</sup> attached to the Motion; and
3. The Receiver is authorized to deposit the Receivership Funds with WTNA/M&T Bank; and
4. After reserving \$500,000 in cash in the Proceeds Account as requested by the Young Defendants, the Receiver is authorized to use up to 100% of the remaining Receivership Funds in the M&T Bank accounts to purchase T-Bills; and
5. The Receiver is authorized to purchase additional T-Bills from such accounts upon any T-Bill maturing.

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<sup>6</sup> Capitalized terms not defined herein have the meaning ascribed to such terms in the Motion.