

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

Civil Action No.: 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.

**UNOPPOSED MOTION OF CERTAIN INVESTOR-CREDITORS OF THE
RECEIVERSHIP DEFENDANTS TO LIFT THE STAY AND MODIFY THE
INJUNCTION TO PERMIT MOVANTS TO PROSECUTE FRAUDULENT TRANSFER
CLAIMS DERIVATIVELY ON BEHALF OF THE RECEIVERSHIP ESTATE**

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I. INTRODUCTION

Now that the Receiver decided for economic reasons not to pursue claims on behalf of the Receivership Estate against Equiti Capital UK Limited f/k/a Divisa UK Limited (“Equiti UK”) and Equiti Armenia CJSC f/k/a Divisa AM CJSC (“Equiti AM”)¹ [ECF 423], a group of investors-creditors defrauded in the fraudulent trading and Ponzi scheme (collectively, the “Movants”) respectfully file this Motion and ask this Court to modify its September 11, 2020 Order (ECF 153) (“Receivership Order”), by entering an Order in the form of the Proposed Order filed herewith, to lift the stay imposed by the Receivership Order and authorize pursuit of fraudulent transfer claims, and related common law claims,² derivatively against Equiti UK and Equiti AM in the name of and on behalf of the Receivership Estate, and in the same capacity as the Receiver would be authorized to bring the claims. Movants are creditors of the Receivership Estate and victims of the fraud perpetrated by Mediatrix Capital Inc. (“Mediatrix”), Blue Isle³ and its principals⁴ (collectively, the “Receivership Defendants” or “Defendants”) with the participation and aid of Equiti UK and Equiti AM.

II. CERTIFICATE OF CONFERRAL

In seeking this relief, consistent with D.C. Colo. LCivR 7.1(a), Movants have conferred with all parties to this proceeding, including the Receiver, Plaintiff, U.S. Securities and Exchange

¹ In so far as Equiti acquired and succeeded to Divisa Capital Group and its subsidiaries, unless otherwise specified, Equiti refers to Divisa as well.

² In addition to claims for fraudulent transfer, the investor-creditors would bring a claim for unjust enrichment and seek imposition of a constructive trust.

³ Blue Isle Markets Inc. d/b/a Blue Isle FX (“Blue Isle 1”) was formed on about December 2, 2015 in Saint Vincent and the Grenadines as an International Business Company. Its successor Blue Isle Markets Ltd. (“Blue Isle 2”) was formed on September 11, 2017 in New Zealand. Blue Isle 1 and Blue Isle 2 are collectively referred to herein as “Blue Isle.”

⁴ The principals included Michael S. Young, Michael S. Stewart, and Bryant E. Sewall.

Commission (“SEC”), as well as all Defendants and Relief Defendants. With respect to the SEC, its counsel has advised it takes no position on this Motion. Further, in conferral with the Receiver and its counsel, Movants have been advised that the Receiver has no objection to the Motion. All Defendants and Relief Defendants, through their counsel, have likewise advised Movants’ counsel that they have no opposition to this motion.

III. BACKGROUND

A. Movants are Creditors of the Receivership Defendants.

As alleged and shown by the SEC in this action against the Receivership Defendants,⁴ the Receivership Defendants perpetrated a large-scale fraudulent foreign exchange trading (forex) Ponzi scheme against numerous investors by soliciting them to invest upwards of \$125 million with the Receivership Defendants. The Movants consist of 47 investors⁵ of the Receivership Defendants who invested approximately \$43.8 million (more than one third of the total amounts invested). The Receivership Defendants represented to the Movants and other investors that their money would be invested by Receivership Defendants using their algorithmic trading strategy in foreign exchange and metals, which they represented was highly successful and had returned large

⁵ The Movants are Dennis Sanchez, Michael Dietzen, Szab Investment Group S de RL de CV, Kimberly J. Dietzen, Michael R. Shea, Erin Shea, Boustrophedon International Ltd., Lifang Liu, Fuhua Ling, Justin Payne, Terry Harvey, Richard Jagerman, Richard Masselin, Oak Trust, Duffy Trust, Eagle Trust, Acorn Trust, Sly Family Trust, Tamara Sly Separate Property Trust, David Sly, Greg and Karen Sly, Helen S. Sly, Nelson Sly, James Ure, John and Amanda Blair, James Hyatt, Kevin Hyatt, Scott Burg, Kyle Henderson, Breitfuss Family Trust, David R. Motes, Johan Huwaert, Triumph Investment Fund, LLC, Pekka Mielonen, Dale Renz, Keinan Haas Partners, LLP, MSG Global Holdings, LLC, Robert J. Parfet Living Trust, Migration Investments, LLC, Payfurther 401K Trust, Phillip Bullock, Loretta and Evaldo Dupuy, Quality Capital Management Ltd. EFRBS, QCM Investments Ltd., Stephen Gould, William Strawbridge, and AD Canci Nominees PTY LTD.

and steady profits for their clients. In actuality, the Receivership Defendants misappropriated tens of millions of dollars and their trading consistently lost money. The Receivership Defendants concealed their misconduct by providing investors fraudulent trading statements reporting consistent profits and making Ponzi payments to investors seeking to redeem their funds.

In furtherance of their fraudulent aims, Receivership Defendants transferred more than \$74 million to Equiti UK and Equiti AM between September 2016 and March 2019. Receivership Defendant transfers were used to engage in excessive trading designed to profit Receivership Defendants, Equiti UK and Equiti AM via excessive commissions and fees and to generate the fraudulent account statements sent to investors to induce them to maintain or increase their investments. Movants seek authorization to pursue fraudulent transfer claims, and related common law claims derivatively against Equiti UK and Equiti AM in the name of and on behalf of the Receivership Estate to avoid the more than \$74 million of transfers Receivership Defendants made in furtherance of their Ponzi scheme and fraud.

B. The Receivership Order Contemplates that Only the Receiver May Avoid Fraudulent Transfers from the Receivership Estate.

The history of this proceeding is well known to the Court and the parties. On September 11, 2020, the Court issued the Receivership Order appointing Brick Kane of Robb Evans & Associates LLC as Receiver.⁶ In the Receivership Order (ECF 153), the Court granted the Receiver exclusive authority to pursue fraudulent transfer claims on behalf of the Receivership Estate, and enjoined others from doing so. Specifically, the Court found that the appointment of the Receiver

⁶ After the initial Receiver in this case passed away, on October 20, 2021, this Court granted the SEC's motion requesting appointment of a substitute Receiver through the entry of an Order substituting Mark Conlan of Gibbons P.C. as Receiver in this case, "to function under the terms and conditions of the existing [Receivership Order]." *See* ECF Nos. 283, 284.

in this action was “necessary and appropriate for the purposes of marshalling and preserving all assets of the Defendants (“Receivership Assets”) 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 estate of the Defendants (collectively, the “Recoverable Assets”). *See* ECF 153, Receivership Order at p. 1 (emphasis added). The Court took exclusive jurisdiction over the Recoverable Assets, which included the assets fraudulently transferred from, and any legal claims held by, the Receivership Estate. *Id.* at p. 2.

1. The Receiver Has the Powers and Duties to Sue for and Recover Fraudulent Transfers.

The Court defined “Receivership Property” and the “Receivership Estate” to include the Recoverable Assets, and granted the Receiver authority to sue for and collect, recover, receive, and take into possession from third parties all Receivership Property . . . to take any action, which prior to the entry of the [Receivership] Order, could have been taken by the officers, directors, partners, managers, trustees and agents of the Receivership Defendants . . . to take such action as necessary and appropriate for the preservation of Receivership or to prevent the dissipation or concealment of Receivership Property . . . and 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.” *Id.* at ¶ 4.

2. The Receivership Order Enjoins Others from Pursuing Receivership Property.

In addition to granting the Receiver authority to pursue assets fraudulently transferred from the Receivership Estate, the Receivership Order enjoined other creditors from pursuing those

assets. Specifically, the Receivership Order stays “[a]ll civil legal proceedings of any nature . . . involving: (a) the Receiver, in his capacity as Receiver; (b) any Receivership Property, wherever located; (c) any of the Receivership Defendants, including subsidiaries and partnerships or any of the Receiverships 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 a plaintiff, defendant, third-party plaintiff, third-party defendant or otherwise (such proceedings are hereinafter referred to as “Ancillary Proceedings”).” ECF 153 at ¶ 24.

The Receivership Order also provides that 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.” *Id.* at ¶ 25. Moreover, “[a]ll Ancillary Proceedings are stayed in in their entirety, and all Courts having any jurisdiction thereof are enjoined from taking or permitting any action until further Order of this Court.” *Id.* at ¶ 26. “Further, as to a cause of action accrued or accruing in favor of one or more of the Receivership 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.” *Id.*

Accordingly, the Receivership Order empowers the Receiver to bring fraudulent transfer claims against such third parties as Equiti UK and Equiti AM and enjoins creditors of the Receivership Estate from asserting fraudulent transfer claims, while tolling the statute of limitations.

C. The Receivership Estate Has Strong Claims Against Equiti UK and Equiti AM.

The Colorado Uniform Fraudulent Transfer Act (“UFTA”) provides that a transfer is fraudulent under two circumstances: (1) the debtor made the transfer or incurred the obligation with “with actual intent to hinder, delay, or defraud any creditor of the debtor (“Intentional Fraudulent Transfer”); or (2) the debtor made the transfer or incurred the obligation without receiving reasonably equivalent value and was engaged in “a business or transaction for which the remaining assets of the debtor were unreasonably small,” or “intended to incur or believed or reasonably believed he would incur, debts beyond his ability to pay as they became due.” *See, e.g.*, C.R.S. § 38-8-105(1)(a)-(b); *see also Klein v. Cornelius*, 786 F.3d 1310, 1321 (10th Cir. 2015) (transfers diminished debtors net worth while already negative).

There is no question that the Receivership Defendants acted with intent to “hinder, delay [and] defraud creditors” or that they were insolvent. Like the defendants in *Klein*, Receivership Defendants were engaged in a Ponzi scheme in which the former principals of the Receivership Defendants told investors the ventures were profitable and paid them with money gathered from other investors while misappropriating funds for themselves. *Cf.* ECF 1, Complaint at ¶¶ 1-2; *with Klein v. Cornelius*, 786 F.3d at 1320 (same).

The Receivership Defendants made significant fraudulent transfers to Equiti UK and Equiti AM. To effectuate the fraud on the investors, between September 2016 and September 2019, the Receivership Defendants transferred more than \$74 million to Equiti UK’s Wells Fargo bank account and Equiti AM’s Converse bank account. As the SEC’s complaint illustrates, and consistent with the evidence adduced in support of its Motion for Preliminary Injunction (ECF 35) the Receivership Defendants made those transfers “with intent to hinder, delay and defraud

creditors,” specifically the Blue Isle Creditors. The Receivership Defendants then used the transferred funds to engage in excessive and costly forex trading and used Equiti’s software platform to generate statements to investors that reported that currency trades were taking place but concealed the investors’ overwhelming losses from excessive fees and losing trades. Thus, Receivership Defendants’ transfers of investor funds to Equiti UK and Equiti AM were intended to sustain their Ponzi scheme and hinder and delay the discovery of Receivership Defendants’ fraud.

D. The Receiver Elected Not to Pursue Claims Belonging to the Receivership Estate Against Equiti UK and Equiti AM.

In a Report filed on May 1, 2023 [ECF 423] and in another report filed on July 28, 2023 [ECF 434], the Receiver stated that, after conducting diligence, the “Receiver has decided not to pursue litigation against Equiti.” *See* ECF 423 (First Quarterly 2023 Report of Receiver at p. 6); *see also* ECF 434 (Second Quarterly 2023 Report of Receiver at p. 6). The Receiver has explained its decision was based on economic considerations in using limited assets of the Receivership Estate to pursue these claims, whereas Movants’ counsel have now proposed to pursue the claims derivatively on a fully contingent basis.

To date, the Receivership Order has enjoined the Blue Isle Creditors from asserting fraudulent transfer claims against Equiti UK and Equiti AM. *See* ECF 153, Receivership Order at ¶ 25 (enjoining parties with notice of the Receivership Order from asserting claims related to Receivership Property, including claims based on fraudulent transfers from the Receivership Defendants).

Now that the Receiver has elected not to pursue the Receivership Estate’s fraudulent transfer claims against Equiti UK and Equiti AM, the Blue Isle Creditors seek authority from the

Court to assert these claims, and related common law claims, against Equiti UK and Equiti AM based on assets that the Receivership Defendants fraudulently transferred to Equiti UK and Equiti AM.

IV. DISCUSSION

A. Where Receivers Have Elected Not to Pursue Claims on Behalf of the Receivership Estate, Courts Presiding Over Receiverships Have Authorized Creditors to Pursue Abandoned Claims Derivatively.

Because the Receiver has elected not to pursue claims against Equiti UK and Equiti AM, the Court can grant the Blue Isle Creditors authority to assert fraudulent transfer claims, and related common law claims, without interfering with the Receivership Estate. U.S. District Courts presiding over federal equity receiverships have broad powers and wide discretion to determine relief in an equity receivership, which powers derive from the inherent powers of a court of equity to fashion relief. *SEC v. Wing*, 599 F.3d 1189, 1194 (10th Cir. 2010) (instructing same). This includes permitting creditors to pursue assets and claims that the receiver has elected not to pursue. *See, e.g., SEC v. Temme*, No. 4:11-CV-00655-ALM, 2019 WL 13077501 at *4 (E.D. Tex. Oct. 2, 2019); *CFTC v. Walsh*, No. 09-CV-1749 (GBD), 2022 WL 17665682, at *3 (S.D.N.Y. Sept. 19, 2022) (authorizing the receiver to abandon claims and assign abandoned claims); *Branch v. FDIC*, 825 F. Supp. 384, 406 (D. Mass. 1993) (explaining that where a receiver refuses to bring suit, a stockholder is free to sue even against the wishes of the receiver or in the absence of a demand to bring suit); *Landy v. FDIC*, 486 F.2d 139 (3d Cir. 1973) (instructing that “[t]o say that in every case the rule of exclusive power in the receiver is positive and admits no exception, would be to sacrifice substantial rights to matters of form”); *O’Connor v. Rhodes*, 79 F.2d 146, 148-49 (D.C. Cir. 1935) (authorizing creditor of failed bank to bring claims on a derivative basis to recover bank

funds and securities that Comptroller allegedly allowed to be paid on a preferential basis), *aff'd.*, *U.S. Shipping Board Merchant Fleet Corp. v. O'Connor*, 56 S. Ct. 517 (1936).⁷

For example, in *Temme*, after the receiver abandoned certain assets of the estate, defrauded creditors in a federal receivership case moved to have the assets transferred to a liquidation trust to try to salvage and monetize the abandoned assets for the benefit of the receivership estate. *SEC v. Temme*, 2019 WL 13077501, at *4. The movants believed that they could successfully marshal certain of the assets that were abandoned by the receiver and liquidate those assets for the further benefit of the claimants in the receivership entities. *Id.* at *3. Invoking its equitable powers, the court granted the motion of the movants stating that it was appropriate for them to approve the use of a liquidation trust for the movants “to attempt to salvage whatever value remained in the assets abandoned by the receiver.” *Id.*

⁷ Similarly, while federal district courts presiding over federal equity receiverships are not restricted by the dictates of bankruptcy, they may look to bankruptcy law for guidance; *See Temme*, No. 4:11-cv-00655-ALM, 2019 WL 13077501, at *3. As courts of equity, bankruptcy courts also, permit creditors to pursue claims of the estate that have been abandoned by a trustee. *See, e.g., In re Trailer Source, Inc.*, 555 F.3d 231, 236, 244-45 (6th Cir. 2009) (upholding district court order granting creditors standing to pursue fraudulent transfer claims for benefit of the estate); *In re Blume*, 625 B.R. 662, 673 (Bankr. E.D. Mich. 2021) (holding that creditor had standing to pursue abandoned claims); *Starzynski v. Sequoia Forest Industries*, 72 F.3d 816, 821 (10th Cir. 1995) (instructing in dicta that standing should be available to a creditor or creditors’ committee, with leave of court, to initiate avoidance or other actions when the trustee has not); *In re Ellicott Springs Resources, LLC*, 485 B.R. 626, 636 (Bankr. D. Colo. 2013) (instructing that a creditor or creditors’ committee has an implied right to pursue abandoned claims if the trustee fails to pursue the claims, or with consent of the trustee if the court finds that suit would be in the best interest of the estate).

B. The Receivership Order Should Be Modified to Permit the Blue Isle Creditors to Pursue Fraudulent Transfer Claims, and Related Common Law Claims, Derivatively in the Name of and on Behalf of the Receivership Estate Against Equiti UK and Equiti AM.

The Receivership Estate, comprising the claims and other assets of Receivership Defendant Blue Isle, has statutory authority to pursue fraudulent transfer claims against Equiti UK and Equiti AM. Under established precedent, the Court has the power and discretion to lift a receivership stay order under the *Wencke* test. *SEC v. Wing*, 599 F.3d 1189, 1197 (10th Cir. 2010) (applying test in *SEC v. Wencke*, 622 F.2d 1363 (9th Cir. 1980)). The three-part test for lifting a receivership stay consists of: (1) whether refusing to lift the stay genuinely preserves the status quo or whether the moving party will suffer substantial injury if not permitted to proceed; (2) the time in the course of the receivership at which the motion for relief from the stay is made; and (3) the merit of the moving party's underlying claim. *Id.* at 1196.

Movants seek only to modify the Receivership Order to assert claims derivatively on behalf of the Receivership Estate, acting in the same capacity as the Receiver, against Equiti UK and Equiti AM so that the status quo of the Receivership Estate's claims against other parties, and the Receivership Estate generally, will remain undisturbed. This more than satisfies the first prong of the *Wencke* test because the balance of the potential injury faced by the Receivership Estate far outweighs any disturbance to the status quo. *See U.S. v. Acorn Tech*, 429 F.3d 438, 443 (3d Cir. 2005); *see also SEC v. Provident Royalties*, No. 3:09-CV-1238-L, 2011 WL 2678840, at *3 (N.D. Tex. July 7, 2011) (finding in favor of lifting the stay even when the movant failed to make a persuasive case that substantial injury would result if not allowed to proceed on the claims).

The second prong of the *Wencke* test is satisfied because the time is also ripe – Movants waited to ask for permission to pursue the fraudulent transfer claims to allow the Receiver time to

determine if he would assert them, and he has now affirmed he will not. *See, e.g., Provident Royalties*, 2011 WL 2678840, at *3 (noting second *Wencke* factor is fact specific); *SEC v. Stanford Int'l Bank, Ltd., Inc.*, No. 3:09–CV–0298–N, 2011 WL 13180449, at *3 (N.D. Tex. May 6, 2011) (lifting a stay when the receivership was “relatively young” at “just over two years old”); *FTC v. 3R Bancorp*, No. 04 C 7177, 2005 WL 497784, at *3 (N.D. Ill. 2005) (maintaining stay where, unlike here, stay was in place for mere months); *See SEC v. Wencke*, 742 F.2d 1230, 1232 (9th Cir. 1984); *see, e.g., SEC v. Champion-Cain*, No. 3:19-cv-01628-LAB-AHG, 2022 WL 605755, at *2 (S.D. Cal. Feb. 28, 2022) (finding third prong satisfied where relevant law merely “suggest[ed]” that claims were colorable). For the reasons set forth above, the fraudulent transfer claims against Equiti UK and Equiti AM easily satisfy this standard. *See supra.*, Section III.C.

Further, as set forth above in Section IV.A., courts presiding over federal equity receiverships have inherent equitable powers, including the authority to permit creditors to pursue claims on behalf of a receivership estate. Simply put, a receivership does not divest a corporation’s creditors or shareholders of their right to assert a derivative action on behalf of the estate where the underlying claim has been abandoned, and they may do so, “where it would be a vain thing to make a demand upon [a receiver], and it is shown there is a necessity for a suit for the protection of the interests of creditors and thus, ‘a stockholder is free to sue.’” *Branch*, 825 F. Supp. at 402, 404-405 (instructing same and authorizing derivative suit), *Temme*, 2019 WL 13077501, at *4 (authorizing creditors to pursue, for benefit of the estate, assets abandoned by the receiver). *See also In re Trailer Source, Inc.*, 555 F.3d at 239-40, 242-44 (instructing same for bankruptcy as courts of equity, including permitting creditors to pursue avoidance actions not pursued by a

trustee, subject to court authorization to avoid the risk of interference with the administration of the estate by court and trustee).

Receivership courts typically grant authority to creditors to initiate actions, including to pursue fraudulent transfer claims, on behalf of the estate where: the receiver has abandoned the claims, or demand has been made upon the receiver to pursue the claims but the receiver declined, and action is necessary or would be beneficial to protect the interests of the estate and its creditors. *See, e.g., Temme*, 2019 WL 13077501, at *4 (authorizing creditors to pursue assets abandoned by the receiver where the investors believed they could marshal and monetize the assets). Demand is excused where it would be a “vain thing” to make a demand upon the receiver, or there is a necessity for a suit to protect the interests of creditors, in which case a creditor is free to sue even against the wishes of the receiver or in the absence of demand. *Branch*, 825 F. Supp. at 402, 404-405; *O’Connor v. Rhodes*, 79 F.2d at 148-49 (instructing same and that, “[t]o say that in every case the rule of exclusive power in the receiver is positive and admits to no exception would be to sacrifice substantial rights to matters of form. This is not a purpose for which courts are constituted.”).

Courts also find derivative suits to be beneficial when the cost-benefit analysis to the estate is structured to produce a net benefit to the estate. *See, e.g., Temme*, 2019 WL 13077501, at *4 (approving creditors to pursue abandoned assets where the cost of pursuing the assets would be paid entirely from proceeds realized on the assets). Courts also look favorably on derivative suits pursued on a contingency fee arrangement as they “easily” create a beneficial cost-benefit analysis because there will be no net loss to the estate, only potential net gain. *See also In re Blume*, 625 B.R. at 670-71 (finding proposed derivative claim to be pursued on a contingency fee arrangement

to ‘easily me[e]t’ a positive cost-benefit analysis for the estate). In addition, courts also look favorably on derivative claims which, if successful, could potentially generate substantial net value for the estate and its creditors. *Id.* (taking account of same in authorizing derivative claim by creditor).

Towards this end, Counsel to Movants have conferred with the Receiver and confirmed that Counsel would undertake the derivative action on behalf of the Receivership Estate on a contingency basis whereby counsel (Faegre) would advance all out-of-pocket costs as the action proceeds and would be reimbursed for costs and paid fees on a contingent basis only if there is recovery in the Derivative Action either by settlement or final judgment. Further, in the event of a settlement or final judgment in connection with this matter, the proceeds would be paid into the Receivership Estate. Thus, the Receivership Estate would not pay costs or fees unless recovery is obtained, and thus would have only potential upside. In recognition of the risks and time associated with their investigation and prosecution of the Derivative Claims and other claims Movants have against Equiti UK not included in the proposed Derivative Action, Movants’ counsel have provided terms of engagement to the Receiver to provide Movants’ counsel with repayment of costs and compensation if this Derivative action is successful. These terms are described in the Addendum (attached hereto as **Exhibit A**) and have been approved and accepted by the Receiver.

V. CONCLUSION

Accordingly, Movants respectfully request the Court modify the Receivership Order to lift the stay to allow the Blue Isle Creditors on a derivative basis in the name of the Receivership Estate to pursue fraudulent transfer claims, and related common law claims, against Equiti UK and Equiti AM.

Respectfully submitted this 4th day of April 2024.

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CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of April, 2024, a true and correct copy of the foregoing **UNOPPOSED MOTION OF CERTAIN INVESTOR-CREDITORS OF THE RECEIVERSHIP DEFENDANTS TO LIFT THE STAY AND MODIFY THE INJUNCTION TO PERMIT MOVANTS TO PROSECUTE FRAUDULENT TRANSFER CLAIMS DERIVATIVELY ON BEHALF OF THE RECEIVERSHIP ESTATE** was e-filed with the Court and e-served through CM/ECF which will send notification of such filing to all registered participants.

s/ Michael R. MacPhail

Michael R. MacPhail

EXHIBIT A

ADDENDUM

1. The Derivative Action asserting fraudulent transfer claims for the benefit of the Receivership Estate will be conducted on a contingency basis. Faegre Drinker Biddle & Reath LLP (“Faegre”) will advance all out-of-pocket costs as the action proceeds and will be reimbursed for costs and paid fees on a contingent basis only if there is recovery in the Derivative Action either by settlement or enforcement of a final judgment. The Receivership Estate will not pay costs or fees unless recovery is obtained, and thus will have only potential upside.

2. In undertaking this engagement, Faegre simultaneously represents certain individual creditors of the Receivership Estate (“Individual Blue Isle / Mediatrix Investors”) with direct claims against EUK (the “Direct Claims”).

3. To the extent the Derivative and Direct Claims will be pending simultaneously, regardless of the timing or sequence in which either action is reduced to judgment or settlement:

a. Faegre will consider costs incurred exclusively for the benefit of one action or the other (i.e., Direct or Derivative or both actions) in allocating costs to any settlement or judgment in each action as well as in the event of a potential Global Settlement resolving both actions simultaneously. Faegre will provide an accounting of costs and its allocation to the Receiver in connection with any settlement or judgment proceeds and will work in good faith to resolve any disputes regarding appropriate allocation.

b. In recognition of the risks and time associated with their investigation and prosecution of their Direct Claims, to the extent the Individual Blue Isle / Mediatrix Investors represented by Faegre in the Direct Claims obtain recovery prior to and independent of settlement or collection on a judgment in the Derivative Action, the

Receivership Estate will not as a result of that recovery reduce the pro rata claim amount of each Individual Blue Isle / Mediatrix Investor under a Receivership Distribution Plan that is ultimately proposed to and approved by the Court. But in any event, the Individual Blue Isle / Mediatrix Investors will receive the same percentage distribution as other creditors and will not receive more than 100% of their total investment losses unless a settlement or payment of a judgment results in all investors receiving a premium above 100% of investment losses pursuant to applicable law, which surplus premium in the Derivative Action, if any, would go to the Receivership Estate to be distributed according to the Receivership Distribution Plan that is ultimately proposed to and approved by the Court. If after a recovery is obtained on the Direct Claims, there is then a subsequent recovery in the Derivative Action, that recovery in the Derivative Action will go to the Receivership Estate to be distributed according to the Receivership Distribution Plan that is ultimately proposed to and approved by the Court, subject to the other provisions above regarding the pro rata claim amounts of the Blue Isle / Mediatrix Investors represented by Faegre.

c. With respect to any recovery in the Derivative Action, either by settlement or by collection on a judgment, prior to any recovery in the Direct Action, all costs allocated to the Derivative Action pursuant to Paragraph 3(a) above will first be reimbursed to Faegre (including costs relating to discovery and other consulting work done prior to commencing the action that inures to the benefit of all investors). Next, Faegre will receive 34% of the total recovery as a contingent fee for pursuing the action. After payment of all costs and the contingent fee, Faegre's existing

clients will receive the next monies until they have recovered 50% of their unreimbursed investment losses and then the remaining monies from the settlement or judgment will go to the Receivership Estate to be distributed according to the Receivership Distribution Plan that is ultimately proposed to and approved by the Court.

d. With respect to a Global Settlement resolving claims in both the Direct and Derivative Actions simultaneously, all costs will first be reimbursed to Faegre. Next, Faegre will receive 34% of the total recovery as a contingent fee for pursuing the action. After payment of all costs and the contingent fee, Faegre's existing clients will receive either 50% of the remaining monies or 50% of their unreimbursed investment losses, whichever is less, and then the remaining monies from the settlement or judgment will go to the Receivership Estate to be distributed according to the Receivership Distribution Plan that is ultimately proposed to and approved by the Court.

4. If there is any dispute regarding the allocation of monies received by settlement or judgment pursuant to the proposed Receivership Distribution Plan, the parties involved will first engage in mediation and then, if necessary, binding arbitration before a special master approved by the Court in order to resolve any allocation dispute.

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

Civil Action No.: 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.

**[PROPOSED] ORDER GRANTING MOTION OF CERTAIN INVESTOR-CREDITORS
OF THE RECEIVERSHIP DEFENDANTS TO LIFT THE STAY AND MODIFY THE
INJUNCTION TO PERMIT MOVANTS TO PROSECUTE FRAUDULENT TRANSFER
CLAIMS DERIVATIVELY ON BEHALF OF THE RECEIVERSHIP ESTATE**

This matter is before the Court on the Movants' Unopposed Motion of Certain Investor-Creditors of the Receivership Defendants to Lift the Stay and Modify the Injunction to Permit Movants to Prosecute Fraudulent Transfer Claims Derivatively on Behalf of the Receivership Estate. The Court having reviewed the file, hereby ORDERS:

The Movants' Unopposed Motion is hereby GRANTED and investor-creditors are hereby AUTHORIZED to pursue derivative fraudulent transfer and related claims against Equiti UK Limited (f/k/a Divisa UK Limited) and Equiti Armenia CJSC (f/k/a Divisa AM CJSC) in the name of and on behalf of the Receivership Estate ("Derivative Claims"), pursuant to the terms of

engagement as set forth in the addendum to the Motion (**Ex. A**) and in the same capacity as the Receiver would be authorized to bring the claims.

It is further ORDERED that the stay imposed by the Court's September 11, 2020 Order (ECF 153) is hereby LIFTED to the extent necessary for investor-creditors to pursue the Derivative Claims.

DATED this ____ day of _____, 2024.

BY THE COURT:

RAYMOND P. MOORE
United States District Court Judge