UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,	
Plaintiff,	
v.	**Case No. 1:15-cv-659-JMS-MJD**
VEROS PARTNERS, INC, MATTHEW D. HAAB, JEFFERY B. RISINGER, VEROS FARM LOAN HOLDING LLC, TOBIN J. SENEFELD, FARMGROWCAP LLC, PINCAP LLC, and	
Defendants,	
PIN FINANCIAL LLC,	
Relief Defendant.	

RECEIVER'S RESPONSE TO THE INVESTORS' AMENDED MOTION TO STAY AND OBJECTION TO INTERIM DISTRIBUTION METHODOLOGY

Comes now the Receiver, by counsel, in response to the Investors' Amended Motion to Stay and Objection to Interim Distribution Methodology ("Objecting Investors"), filed on December 7, 2016. The Receiver's response is as follows:

1. On April 22, 2015, the Plaintiff, Unites States Securities and Exchange Commission ("SEC"), filed its Complaint [Filing No. 1] in this action and a Motion for Temporary Restraining Order, Asset Freeze and Other Relief [Filing No. 3]. Thereafter, the Court entered a Temporary Restraining Order.

2. On May 1, 2015, an Agreed Order Appointing Receiver ("Agreed Order") [Filing No. 34] was entered appointing William E. Wendling, Jr. to serve without bond as the Receiver over Veros Farm Loan Holdings LLC ("VFLH"), FarmGrowCap LLC ("FarmGrowCap"), PinCap LLC ("PinCap"), and all private offerings in which Defendant Veros Partners controls investor funds ("Private Offerings").

3. The Agreed Order charged the Receiver with the responsibility to:

> c. To manage, control, operate and maintain the Receivership Estates and hold in his possession, custody and control all Receivership Property, pending further Order of this Court;
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> d. To use Receivership Property for the benefit of the Receivership Estates, making payments and disbursements and incurring expenses as may be necessary or advisable in the ordinary course of business in discharging his duties as Receiver;
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> 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;
>
> f. To take such action as necessary and appropriate for the preservation of Receivership Property or to prevent the dissipation or concealment of Receivership Property;
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> …
>
> k. To take such other action as may be approved by this Court.
>
> ***Agreed Order, Paragraph 8*** **[**Filing No. 34, at ECF p. 5]

4. On August 29, 2016, the Receiver filed a Motion for Authority to Make Interim Distributions to Investors of Veros Farm Loan Holding LLC and Farm Grow Cap LLC (the "Motion"). [Filing No. 259]. The Court approved the Motion on September 12, 2016, permitting the Receiver to move forward with his distribution plan. [Filing No. 269].

5. On October 21, 2016, some of the Veros Farm Loan Holding and Farm Grow Cap investors filed an Investors Motion to Stay and Objection to Interim Distribution Methodology [Filing No. 284]. Subsequent to this filing, the Receiver worked with the Objecting Investors and their counsel in an attempt to understand their concerns and to see if an agreed resolution could be reached. The investors even withdrew their initial motion on November 21, 2016 [Filing No. 302]. However, on December 7, 2016, the Investors refiled their Amended Motion to Stay and Objection to Distribution Methodology [Filing No. 312].

6. The Amended Motion objects to the methodology the Receiver, his accountants and the SEC have formulated to determine total investor losses and the allocation of such loss to each investor and the payment of a pro rata interim distribution of $3,000,0000, asserting that the Receiver's plan is neither fair nor reasonable. Their objection suggests that the "Receiver proposes a complex, administratively burdensome, unnecessarily expensive and unjust plan whereby the Receiver will attempt to "claw back" monies previously distributed to Farm Loan investors in 2012 and 2013". [Filing No. 312, at ECF p. 5]. The Receiver finds this odd when the Objecting Investors have not seen the details of the Receiver's distribution plan. However, the Objecting Investors are apparently concerned about "claw back" provisions.

7. Additionally, the Objecting Investors request that the Court transfer from the Receivership the activity regarding the collection and distribution of assets and distributions of Veros Farm Loan Holding and Farm Grow Cap to the investors.

8. In response to the Receiver's plan, the Objecting Investors submitted alternate distribution methodologies for consideration.

9. The Receiver met, on a number of occasions, with investor Andre Guillaume, the apparent spokesman of the Objecting Investors, and, at times, with the investors' attorney to discuss the possibility of resolving this matter. During the first few meetings the Receiver explained his methodology and plan for making the $3,000,000 interim distribution. provided examples of how it would be implemented. The Objecting investors responded by objecting to any methodology that included a "claw back" position. They stated in general terms that their plan was more equitable, but did not present specific examples of how their methodology would work. After repeated requests for a demonstrative exhibit showing how their interim $3,000,000 distribution plan would be implemented Mr. Guillaume contacted the Receiver and said that he was having defendant, Matt Haab, send a farm loan investor repayment summary to the Receiver and his accountant that would specifically show how the implementation of their plan would more fair to each investor in the 2014 Farm Grow Cap offering. The distribution amount of $3,000,000 was not used in that spread sheet, or any subsequent iterations of the spreadsheet, which made it virtually impossible to compare the plans. Thus, a significant amount of time was expended by the Receiver and his accountant to find a way to compare the two distribution plans. In addition to the complexity of trying to compare the plans, the Receiver has concerns that some, if not all, the Objecting Investors, and others, now have confidential information about all farm loan investors since individual investors were named and amounts of their investments and receipts were clearly identified in the spreadsheets.

10. The Receiver, the SEC, and even certain Veros Farm Loan Holding and Farm Grow Cap investors themselves, disagree with the Objecting Investors proposed distribution

methodologies which do **not** consider "claw backs". The methodologies proposed by the Objecting Investors, despite their assertions to the contrary, are complex and unmanageable. Furthermore, they do not treat all investors either equally or fairly. In addition, the Objecting Investors' Amended Motion makes reference to the fact that a certain majority of farm loan investors agree with the methodology offered as support for the Court to adopt their position. However, the Receiver has been contacted by a number of farm loan investors that do not agree with the proposed plan. In fact, at least two farm loan investors told the Receiver that they wanted to remain anonymous, but wanted the Receiver to know that they felt they were being unduly pressured into agreeing to the Objecting Investors' plan.

11. Where the assets in "receivership are insufficient to fully repay the investors, equality is equity." S.E.C. v. Wealth Mgmt. LLC, 628 F.3d 323, 333 (7th Cir. 2010). Distribution of assets on a pro rata basis ensures that investors with substantively similar claims to repayment receive proportionately equal distributions. S.E.C. v. Wealth Mgmt. LLC, 628 F.3d 323, 333 (7th Cir. 2010). Moreover, incorporating an element of "claw back" in the methodology of determining losses and allocating payment of claims to aggrieved investor in a Ponzi Scheme is a common practice. See Wiand v. Morgan, 919 F. Supp. 2d 1342, 1348 (M.D. Fla. 2013) (finding that role of Receiver in Ponzi Scheme was to bring suit against Ponzi Scheme investors to recover payments in excess of amounts invested). In this case, it was clear at the inception of the Receivership that earlier investors were paid their profits by later investors. Thus, the Receiver proceeded with the administration of the Receivership knowing that pursuing "claw backs" would most likely be a significant factor in calculating investors claims and payments to investors, specifically, the 2014 FGC investors.

12. The Receiver was granted authority [Filing No. 76] by the Court to hire Blue & Co., LLC (Blue), an accounting firm, to assist with the administration of the Receivership Estate. One of the primary assignments the Receiver asked Blue to perform was a forensic accounting of the Defendants' operation of several investor groups they created for the purpose of making short term farming loans starting in 2012 and continuing through 2014. The 2013 offering is Veros Farm Loan Holding (VFLH) and the 2014 offering was called Farm Grow Cap (FGC).

13. Based upon the allegations contained in the SEC's Complaint, and the Receiver's initial review of the Veros accounting, Blue was specifically asked to determine whether 2013 VFLH investor funds were used to pay off earlier 2012 farm loan investors' profits and whether 2014 FGC investors funds were used to pay 2013 VFLH investors.

14. Upon investigation, Blue determined that 2013 VFLH investor money was used to pay the 2012 investors and, likewise, 2014 FGC investor money was used to pay 2013 VFLH investors. This was done without appropriate disclosures to the investors that their investment funds were going to be used to make earlier investors profitable.

15. In the deposition of the defendant Matt Haab, he explained that money from the 2013 VFLH was used to pay the 2012 investors' and, likewise, 2014 FGC investor money was used to pay 2013 VFLH investors [Filing No. 191-1, at ECF pp. 30-41]. With that in mind, Blue determined what each 2012 investor invested in the farm loan offerings. Blue then calculated what each investor collected from the 2012 farm loans and how much each 2012 investor received from the 2013 VFLH investors to make the 2012 offering profitable. Likewise, Blue has determined what each investor in the 2013 VFLH offering invested and how much was paid to each investor, including how much each investor received from the 2014 FGC investors to make the 2013 VFLH investors profitable. (This information is set forth in the Declaration of Jarit T. Loughmiller [Filing

No. 318], of Blue & Company attached hereto). Blue also determined what each 2014 FGC investor invested and calculated how much each investor was paid on his or her investment prior to the Receivership.

16. A Ponzi scheme is defined as "[a] fraudulent investment scheme in which money contributed by later investors generates artificially high dividends for the original investors, whose example attracts even larger investments." In re Whitley, No. 10-10426, 2012 WL 170135, at *3 (Bankr. M.D.N.C. Jan. 19, 2012). Based upon the forensic accounting, these farm loan investments during the relevant period present as a Ponzi Scheme. Therefore, the Receiver's methodology for determining loss allocation and payment, which includes the use of "claw back", is reasonable.

17. In a normal "claw back" situation the Receiver would determine how much a 2012 investor received in profit that was actually obtained from the 2013 VFLH investors. The Receiver would then demand that the 2012 investor's "profit" be returned to the Receivership Estate and distribute it to the 2013 VFLH investors. It would be the same for those 2013 VFLH investors that received a false "profit" via money obtained from 2014 FGC investors. The Receiver would "claw back" the 2013 VFLH investor's "profit" and distribute it to the 2014 FGC investors. Generally, the effort to pursue "claw backs" would involve litigation against each investor that received a false profit if he or she was unwilling to return the fictitious profit.

18. The Objecting Investors claim that if the Receiver pursues 2012 and 2013 "claw back" it will be "complex, administratively burdensome, unnecessary expensive and unjust. That is incorrect. In fact, the situation in this case is unique because the "claw backs" are readily available through account adjustments. As opposed to a traditional claw back, in which the Receiver would need to potentially engage in litigation to recover false profits, the Receiver can

collect these unique "claw backs" through a series of accounting adjustments labeled "Roll Forward Reductions" and "Claw Back Reductions". [1]

19. As more fully described in the Declaration of Jarit T. Loughmiller [Filing No. 318], determining the actual investment and payment to each individual investor has been completed and reveals that a significant number of the 2012 and 2013 VFLH investors invested their false profits into the next year investments. Thus, these "Roll Forward" funds include false profits, which are subject to "claw back," through an accounting adjustment or Roll Forward Adjustment. In this case, a substantial number of earlier investors "Rolled Forward" their investments to the next year Veros investments. The Receiver can make accounting adjustments with these roll forward investors to recover their false profits from earlier years (2012 and 2013) without having to file lawsuits to "claw back" money owed to the Receivership estate. (However, here are a few investors in 2012 and 2013 who did not "roll over" their investments and collected false profits that the Receiver intends to pursue).

20. The Objecting Investors contend that determining what the "Roll Forward" dollar amount is and how it should be used in calculating loss allocation and payment to the individual investors will be expensive and burdensome so it should not be considered is misguided. The simple fact is that these calculations have already been completed. Early in the receivership Blue and Company began its forensic accounting of the Veros Farm Loan holdings and Farm Grow Cap Offerings. The examination determined that later investor funds were utilized to pay earlier investor profits. These results previously prepared are ready to be used in allocating accounting adjustments and determining appropriate distribution payments to the investors. In fact, the

[1] A Roll Forward Adjustment is for funds rolled forward from one investment to the next investment. A Claw Back Adjustment is for funds that include a false profit that are withdrawn and then at a later time are reinvested in whole or in part in the next investment. In either case, the investor's account can be adjusted to reduce the account balance by the amount of false profits.

amount and break down of all of the accounting adjustments, both Claw Back Reductions and Roll Forward Reductions, are as follows:

- 2012 Offering (Claw Back Reductions) - $383,135.43
- 2013 Offering (Claw Back Reductions) - $300,990.04
- 2013 Offering (Roll-Forward Reductions) - $823,395.67
- 2014 Bridge (Claw Back Reductions) - $62,373.70
- 2014 Bridge (Roll-Forward Reductions) - $34,382.47

Total: $1,604,277.30

The amount of these accounting adjustments are significant and failure to consider them creates inequity and unfairness to many investors.

21. Although the recovery of the majority "claw backs" are accomplished through mere accounting adjustments, those adjustments are meaningful and important. For example, assume that there are two investors that invested in the 2014 FGC offering. One investor participated in the earlier farm loan offerings and rolled forward $25,000 of what he or she thought were profits and contributed actual cash of $100,000 for a total of $125,000. Meanwhile, the other investor did not participate in earlier investments and contributed $125,000 of actual cash. Without accounting adjustments for false profits, when percentage of loss is determined both investors will be treated the same and when the Receiver distributes payment both will receive the same payment. This is simply not equitable since the first investor did not actually invest $125,000. Not only would the first investor get the same payment as the other investor, but his payment also reduced the pool of funds for other investors. Multiply the effect of this by the number of investors that rolled forward approximately $1,600,000 of non-existent profits and it is apparent on its face that these "claw backs" through accounting adjustments are very significant and should not be ignored.

22. The Objecting Investors want to eliminate the "claw back" element, whether either by an accounting adjustment or a traditional "claw back", of the Receiver's claims payment formula by arguing the use of latter investors' money to repay earlier investors should somehow be overlooked because the Receivership was ultimately able to collect on the loans. They recognize that the investors in the 2012 and 2013 VFLH offerings were paid a profit with newer investor money, but wish to simply ignore it. The Objecting Investors contend that the 2014 FGC investors lost money as a result of bad loans to 2014 FGC farming operations, with the exception of the RJ Williams 2013 loan, and Receivership expenses. It appears that they have devised a special method of distribution whereby new 2014 FGC investors only receive a payment that considers the fact that some of their investment money went to pay the 2013 VFLH investors because of the delinquent Williams loan. Thereafter, these new investors are then treated the same as the other 2014 FGC investors. However, that does not treat others fairly because there is nothing more than a reshuffle of funds that effect investors that rolled their fictitious profits into the 2014 FGC investment. Quite frankly, the methodologies they suggest picks winners and losers. Conversely, the methodology proposed by the Receiver treats all investors equally.

23. Moreover, the Objecting Investors reasoning is flawed in the following ways:

a. The Receivership Methodology is designed to ensure FGC investors receive their fair and equitable share of the Receivership's recovery proceeds. This methodology is necessary to account for all false profit (i.e., the interest payments in excess of principal contributions) realized by investors in the 2012 and 2013 Offerings, as funded by later investor capital. These allegations are outlined in the SEC's initial complaint, and is detailed in the declaration (attached hereto) of the Receiver's accountant hired on this matter.

b. The Receivership Methodology recalculates the total dollars raised by investors (through either the 2012, 2013, 2014 Bridge Loan and 2014 Offerings), traces the payments received by such investors (in exchange for their investment in one of the aforementioned funds) and ensures investors only receive payment up to, but not beyond, their capital contribution (i.e., no false profits). To the extent investors have received proceeds in excess of their principal contributions, which was in fact the case in the 2012, 2013 and 2014 Bridge Loan Offerings, such payments will serve as reductions to the corresponding investor's remaining capital account in the 2014 Offering (FGC).

c. As mentioned above, however, in more detail here, the unique circumstances with respect to this Ponzi scheme investigation, is the fact that the majority of earlier investors (i.e., in the 2012 Offering and 2013 Offering), subsequently remained participants in the 2014 Offering (FGC). This phenomenon allows the Receiver to recoup these false profits (i.e., the interest proceeds) with limited additional efforts, beyond seeking the Court's approval to do so, for a substantial number of investors by a series of accounting adjustments in the form of Claw Back Adjustments or Roll Forward Adjustments. This enables the Receiver to re-allocate the proceeds to ensure no earlier investor stands to benefit by receiving payments, beyond their capital contribution, at the expense of subsequent investor's dollars (i.e., later funds investor dollars paying off earlier funds investors). By allowing the aforementioned accounting adjustments, the Receiver is effectively positioned to bring approximately $1.6

million of additional Receivership proceeds into play and distributed to the FGC investors.

d. While the majority of investors remain as participants in the 2014 Offering, there are a select number of investors who participated in one of or multiple of the 2012, 2013, of 2014 Bridge Loan and subsequently did not participate in the 2014 Offering (FGC). For such individuals, additional action will be required and pursued by the Receiver to recover their portion of the false profits by way of a traditional "Claw Back". It is critical to note that such traditional Claw Backs related to these investors would only result in additional recoveries of approximate $180,000.00. Thus, approximately 90% of the false profits (i.e. the aforementioned $1.6 million) can be recovered with minimal additional administrative burden on the Receivership.

e. Beyond the additional amount of proceeds the Receivership methodology generates for re-distribution, perhaps the most crucial factor is that all investors are treated in an equal fashion, whereas the Objecting Investors proposed methodology tend to favor one investor group over another).

f. The 2012 investors got free use of the 2013 investors' money until the 2012 loans were paid.

g. The 2013 farm loan payments (Williams Farms, Pin Cap Guarantee, Boyer, Kirbach) and the 2014 farm loan payments (Williams Farms actual payments including the outstanding $255,000, Crossroads, Kirbach, Boyer, Blue Crop Group ($255,000)) were all collected through the efforts of the Receiver.

h. Finally, if the court approves the Receiver's methodology and proposed distribution of $3 million, all other future distributions will be made in the percentages established. However, should the court elect to follow the Objecting Investors' methodology, it appears that further distributions may not follow the same payment percentages for individuals that would be used in an initial distribution. In essence, if the court elects to choose the Objecting Investors' methodology, it seems that there is a likelihood the next distribution amounts would also have to be approved by the court, because the percentages for each investor may change.

24. A majority of Objecting Investors appear to stand to gain more from their own proposal than the Receiver's proposal.

25. The Declaration of Jarit Loughmiller [Filing No. 318] sets forth in detail the Receiver's methodology for distributing the interim $3,000,000 and every dollar thereafter.

26. Although the Receiver's current proposed distribution plan is limited to $3,000,000, it is anticipated that the Receivership may be completed in the near future and future additional distributions will be made.[2]

27. The Receiver's methodology provides that all investors will be treated equally and receive the same percentage payment on the balance due. That percentage can easily be applied to any and all later distributions beyond the initial $3,000,000. While the Objecting Investors do not support the Receiver's plan, an equitable will not necessarily be a plan favored by every

[2] The Receive presently has $3.8 million in the FGC account and expects to collect an additional $350,000. Additionally, there is some possibility of settlement despite the Williams Bankruptcy and also possible collection through traditional Claw Back.

individual. However, this uniform, equal treatment of investors is fair and reasonable and supported not only by the Receiver but also the SEC.

WHEREFORE, the Receiver, by counsel, respectfully requests that the Court overrule the objection and motion to stay, and for all other relief just and proper in the premises.

Respectfully submitted,

By */s/ Anne Hensley Poindexter*

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Certificate of Service

I hereby certify that on December 21, 2016, a copy of the foregoing ***Receiver's Response to the Investors' Amended Motion to Stay and Objection to Interim Distribution Methodology*** was filed electronically. Notice of this filing will be made on all ECF-registered counsel by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

s/Anne Hensley Poindexter .

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