

1 HOLLAND & KNIGHT LLP
2 Kristina S. Azlin (SBN 235238)
3 kristina.azlin@hklaw.com
4 400 South Hope Street, 8th Floor
5 Los Angeles, California 90071
6 Telephone 213.896.2400
7 Facsimile 213.896.2450

8 Jose A. Casal (*pro hac vice*)
9 jose.casal@hklaw.com
10 701 Brickell Avenue, Suite 3300
11 Miami, Florida 33131
12 Telephone 305.789.7736

13 *Attorneys for Josias Dewey, Court-appointed*
14 *Receiver for Receivership Entities*

15 **UNITED STATES DISTRICT COURT**
16 **CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

17 SECURITIES AND EXCHANGE
18 COMMISSION,

19 Plaintiff,

20 vs.

21 TITANIUM BLOCKCHAIN
22 INFRASTRUCTURE SERVICES,
23 INC.; EHI INTERNETWORK AND
24 SYSTEMS MANAGEMENT, INC.
25 aka EHI-INSM, INC.; and MICHAEL
26 ALAN STOLLERY aka MICHAEL
27 STOLLAIRE,

28 Defendants.

Case No. 18-cv-4315 DSF (JPRx)

**MOTION FOR APPROVAL OF
RECEIVER’S PROPOSED
DISTRIBUTION PLAN**

Date: May 16, 2022

Time: 1:30 p.m.

Ctrm: 7D

Judge: Hon. Dale S. Fischer

Holland & Knight LLP
400 South Hope Street, 8th Floor
Los Angeles, CA 90071
Tel: 213.896.2400
Fax: 213.896.2450

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Holland & Knight LLP
400 South Hope Street, 8th Floor
Los Angeles, CA 90071
Tel: 213.896.2400
Fax: 213.896.2450

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400 South Hope Street, 8th Floor
Los Angeles, CA 90071
Tel: 213.896.2400
Fax: 213.896.2450

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400 South Hope Street, 8th Floor
Los Angeles, CA 90071
Tel: 213.896.2400
Fax: 213.896.2450

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Holland & Knight LLP
400 South Hope Street, 8th Floor
Los Angeles, CA 90071
Tel: 213.896.2400
Fax: 213.896.2450

1 **I. INTRODUCTION**

2 Josias N. Dewey, the Court appointed Receiver for the estates of Defendant
3 Titanium Blockchain Infrastructure Services Inc. and its subsidiaries and/or affiliates
4 (collectively, the “Receivership Entity”), hereby submits this Motion for Approval of
5 Receiver’s Proposed Distribution Plan (the “Motion”). The Receiver’s proposed
6 distribution plan is attached hereto as Exhibit 1 (“Receiver’s Distribution Plan”).

7 On May 23, 2018, the Court entered a Temporary Restraining Order (the “TRO”
8 and Orders (1) Freezing Assets; (2) Prohibiting the Destruction or Alteration of
9 Documents; (3) Granting Expedited Discovery; (4) Requiring Accountings; and (5)
10 Appointing a Temporary Receiver (the “Temporary Receivership Order”), appointing
11 Josias N. Dewey as temporary receiver for the Receivership Entity. (Dkt. 2.)

12 On May 30, 2018, the Court entered the Permanent Receivership Order (Dkt. 48)
13 (together with the Temporary Receivership Order, collectively, the “Receivership
14 Order”). The Defendants consented to the entry of the Permanent Receivership Order.
15 (*See* Dkt. 47.)

16 **II. CLAIMS ALLOWANCE PROCESS**

17 **A. The Claims Process**

18 On July 28, 2020, the Receiver submitted a Notice of Motion and Motion for
19 Approval of Claims Process and Bar Date. (Dkt. 94) (“Claims Process Motion”). On
20 August 21, 2020, the Court granted the Claims Process Motion, including approving
21 the use of tokenized validation methods on the ethereum blockchain. (Dkt. 96)
22 (“Claims Process Order”).

23 Due to the complex technical requirements of this novel system, the Receiver
24 and the Securities and Exchange Commission (“SEC”) jointly stipulated for additional
25 time in verifying an estimated 21,000 potential claimants. (Dkt. 98.) The Court agreed,
26 extending the claims period for potential claimants of the Receivership Entity to 180
27 calendar days following publication of the Claims Process Notice. (Dkt. 101.) The
28 Court also granted the Receiver’s motion to appoint RCB Fund Services LLC (“RFS”)

Holland & Knight LLP
400 South Hope Street, 8th Floor
Los Angeles, CA 90071
Tel: 213.896.2400
Fax: 213.896.2450

1 as a claims administrator in an effort to efficiently, and cost-effectively identify
2 potential claims in the complex weave of blockchain transactions. (*See* Dkt. 100.)

3 The Receiver sent notice to potential claimants by both (i) publication and (ii)
4 direct email. (*See* Dkt. 102.) On February 12, 2021, the Receiver published initial
5 Notice of the Claims Process and Bar Date on PR Newswire and Twitter. *Id.* On
6 March 2, 2021, the Receiver sent the same Notice to potential claimants whose email
7 addresses were known. *Id.* Such notices sent a detailed description of the case, eligible
8 claimants and the claims process, information on how to submit a claim, link to the
9 claims process website, and the deadline to submit a claim—set for August 11, 2021
10 (the “Bar Date”). *See id.*

11 Web traffic analytics indicate the PR Newswire publication of the Notice
12 reached a total potential audience of 150 million individuals in the first month of
13 publication. During that time, 275 individual sources around the internet posted the
14 Notice in its entirety, known as “exact match pickups.” These sources include Yahoo!
15 Finance, the Associated Press, and Seeking Alpha (one of the largest crowd-sourced
16 content services for financial markets and information). The PR Newswire publication
17 of the Notice was also distributed to approximately 1,000 Associated Press outlets,
18 including C-SPAN, FoxNews.com, CBS News Radio, the New York Times, and
19 CNBC. The sole Twitter post with a link to the Notice reached an average potential
20 audience of 5,086 individuals. From February 12 to March 10, 2021, the PR Newswire
21 post received roughly 9,000 views and hits, comprised of approximately 512 “media”
22 views and 7,000 “public” views, among others.

23 On February 27, 2021, the claims portal went live. Within the first 48 hours, the
24 portal received claims originating from 23 different countries. Given the vast success,
25 the Receiver continued to publish reminder publications throughout the claims period
26 until the Bar Date. *See id.*

Holland & Knight LLP
400 South Hope Street, 8th Floor
Los Angeles, CA 90071
Tel: 213.896.2400
Fax: 213.896.2450

1 **B. Preliminary Processing and Determination of Allowed and**
2 **Disallowed Claims.**

3 As detailed in the Claims Process Status Notice, the Receiver, claims
4 administrator RFS, and Holland & Knight LLP (“Counsel”) have worked diligently to
5 test, validate, and ultimately deploy an automated validation-based claims process
6 system (the “Claims Portal”). (See Dkt. 102.) The Claims Portal involves using the
7 public record of the transactions—the virtual ERC-20 cryptocurrency token transfers
8 which exist on the Ethereum blockchain network (“Ethereum Network”)—to validate
9 the legitimacy of claims and prevent fraudulent or duplicative claims. The Ethereum
10 Network is the decentralized transaction ledger on which Ether, one of the world’s most
11 popular cryptocurrencies, exists. The Ethereum Network reflects the transactions
12 occurring insofar as it is, in and of itself, a ledger of transactions. The Claims Portal
13 also solicited additional information from claimants with complicated transaction
14 histories or those involving cryptocurrency exchanges. *Id.* However, the information
15 needed to determine a claimant’s eligibility was mostly available via the Ethereum
16 Network used by TBIS. *Id.*

17 Taking together the publicly available information on the Ethereum Network and
18 supplemental information submitted by potential claimants, the Receiver was able to
19 catalog all transactions, dates, senders, and recipients of TBIS’s securities (“BAR” and
20 “TBAR”). Unfortunately, most of this information is also available to anyone else via
21 the Ethereum Network’s public blockchain—creating a risk that bad actors could use
22 the same information to submit fraudulent claims.

23 Consequently, the Receiver created a system that could verify a claimant’s
24 control over an address using a purpose-build Ethereum ERC-20 “control” token (the
25 “Control Token”). After a claimant enters sufficient information in the Claims Portal,
26 the Receiver could automatically send a Control Token to the claimant’s Ethereum
27 address. The web portal then instructed the Claimant to prove control over the claimed
28 address by sending the Control Token back to the Receiver. Failure to prove control

1 within a defined period would result in an automatic email notice to the claimant,
2 denying the claim and stating the grounds for denial. The aforementioned process is
3 consistent with the Court’s Claims Process Order. (See Dkt. 96.)

4 **C. Non-Investor Claims**

5 Vendors, service providers, employees and other non-investor claimants filed
6 claims against the Receivership Entity totaling six (“Non-Investor Claimants”). At this
7 time, the Receiver has not made a determination whether to allow such claims;
8 however, he will do so pursuant to the Receiver’s Distribution Plan. The Non-Investor
9 Claimants’ allowed claims will have priority and be paid in full at the first distribution
10 (“Initial Distribution”).

11 **D. BAR and TBAR Investor Claims**

12 This group of claimants consists of two classes of investors: (1) those induced
13 into purchasing BAR or TBAR directly from TBIS, or its agents and (2) those who
14 purchased BAR or TBAR from someone other than TBIS, or its agents (“Investor
15 Claimants”). The Claims Portal went live on February 27, 2021 and remained open
16 until 11:59 p.m. Pacific Time on the Bar Date. As of March 21, 2022, 618 Investor
17 Claims submitted through the Claims Portal cleared validation, meaning the claims
18 process deemed them to be legitimate claims arising from the purchase or acquisition
19 of TBIS securities—BAR or TBAR (“Allowed Claims”). The “Allowed Amount” is
20 the amount at which a Claim is allowed calculated pursuant to the net investment
21 method.¹ An additional 305 claims had been created, but not yet finalized, meaning the
22 claimants still had to take additional steps to finish the claims submission (e.g., upload
23 documentation). Lastly, 23 claimants have objected to the Receiver’s claim
24 determination and are currently under review.

25 Each Investor Claimant will receive a *pro rata* share of the Claimant’s Allowed
26 Amount, based on the Receivership Entity’s available assets (“Available Assets”) after
27

28 ¹ A more detailed description of the Allowed Amount calculation is set forth in the
Distribution Plan.

1 payment of the Initial Distribution and reserving funds for administrative expenses.
2 “Administrative Expenses” may include but are not limited to Receiver’s fees,
3 professionals’ fees, taxes, and expected operating reserves. The Receiver will distribute
4 verified Investor Claims in the second distribution (“Second Distribution”).

5 **III. ARGUMENT**

6 **A. This Court Enjoys Broad Discretion in the Administration of Claims**
7 **against Fiduciary-Administered Estates.**

8 This Court, sitting in equity and having authority over a fiduciary estate res, is
9 vested with wide discretion to enter orders approving the claims process and the plan
10 for disposition of assets. “The power of a district court to impose a receivership or grant
11 other forms of ancillary relief does not in the first instance depend on a statutory grant
12 of power from the securities laws. Rather, the authority derives from the inherent power
13 of a court of equity to fashion effective relief.” *SEC v. Wencke*, 622 F.2d 1363, 1369
14 (9th Cir. 1980). The “primary purpose of” court-created fiduciary estates “is to promote
15 orderly and efficient administration of the estate by the district court for the benefit of
16 creditors.” *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986). As the appointment of
17 fiduciaries is authorized by this Court’s equitable powers, so too is any distribution of
18 assets to be undertaken equitably and fairly. *SEC v. Elliot*, 953 F.2d 1560, 1569
19 (11th Cir. 1992).

20 Moreover, district courts have broad power to determine the appropriate method
21 of administering a fiduciary estate. As the Ninth Circuit has explained:

22 A district court’s power to supervise an ... [estate] ... and to determine
23 appropriate action to be taken in the administration of the [estate] is
24 extremely broad. The district court has broad powers and wide
25 discretion to determine the appropriate relief

26 *SEC v. Cap. Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005); *see also SEC v.*
27 *Topworth Int’l, Ltd.*, 205 F.3d 1107, 1115 (9th Cir. 1999) (“This court affords ‘broad
28 deference to the [district] court’s supervisory role and ‘we generally uphold reasonable

1 procedures instituted by the district court that serve th[e] purpose’ of orderly and
2 efficient administration of the [estate] for the benefit of creditors.”). That broad
3 authority “arises out of the fact that most receiverships involve multiple parties and
4 complex transactions.” *Hardy*, 803 F.2d at 1037. In sum, the district court sits in equity
5 and has “the authority to approve any plan provided it is ‘fair and reasonable.’” *SEC v.*
6 *Byers*, 637 F. Supp. 2d 166, 174–75 (S.D.N.Y. 2009) (quoting *SEC v. Wang*,
7 944 F.2d 80, 81 (2d Cir. 1991)).

8 **B. A Pro Rata Distribution Based on Net Investment Is Appropriate for**
9 **Similarly Situated Claimants.**

10 In equity receiverships, courts routinely approve distribution plans that treat
11 similarly situated claimants equally. *See, e.g., Cap. Consultants*, 397 F.3d at 378
12 (describing net claim calculus as “an administratively workable and equitable method
13 of allocating the limited assets of a receivership”); *Topworth*, 205 F.3d at 1116; *In re*
14 *Tedlock Cattle Co*, 552 F.2d 1351, 1354 (9th Cir. 1977); *SEC v. Wealth Mgmt. LLC*,
15 628 F.3d 323, 332–33 (7th Cir. 2010); *SEC v. Infinity Grp.*, 226 F. App’x 217, 218
16 (3d Cir. 2007). Courts favor *pro rata* distributions where “the funds of the defrauded
17 victims were commingled and where victims were similarly situation with respect to
18 their relationship to the defrauders.” *SEC v. Credit Bancorp, Ltd.*, 290 F.3d 80, 88–89
19 (2d Cir. 2002). The methodology in the proposed Plan is consistent with this approach.

20 Here, Claimants invested in TBIS’s BAR or TBAR tokens either through
21 directly purchasing the tokens from TBIS in its initial coin offering or by purchasing
22 the tokens on secondary markets. In either event, Claimants are similarly situated
23 because they all invested in TBIS unregistered securities. The revelation of TBIS’s
24 fraudulent misrepresentations about commercial relationships and future demand for
25 TBIS services ultimately caused the value of Claimants’ investments to plummet to
26 nearly zero. (*See Dkt. 94 at 3–4.*) In sum, a *pro rata* distribution is appropriate here
27 because Claimants purchased TBIS unregistered securities and were harmed as a result
28 of the company’s fraud.

1 The Receiver’s method for calculating the amount of Allowed Claims based on
2 net investment is also consistent with relevant authority. Courts routinely approve *pro*
3 *rata* distributions based on claimants’ net investment. A claimant’s net investment
4 equals the amount of consideration paid into the scheme by the claimant minus the total
5 amount of revenue realized by the claimant arising from the scheme. *See Cap.*
6 *Consultants*, 397 F.3d at 737; *CFTC v. Capitalstreet Fin., LLC*, 2010 WL 2572349 at
7 *3 (W.D.N.C. June 18, 2010). *Pro rata* distributions based on net investment is
8 equitable because it ensures all investors who suffered an out-of-pocket loss receive
9 compensation from the Receivership Entity. *See CFTC v. Barki*, 2009 WL 3839389, at
10 *1–2 (W.D.N.C. Nov. 12, 2009) (favoring net loss method because it compensates
11 large percentage of defrauded investors); *see also Byers*, 637 F. Supp. 2d at 182 (same).
12 The net investment method also ensures that compensation is proportional to the size
13 of investors’ losses.

14 Here, consistent with these authorities, the Receiver has factored in any
15 compensation returned to Claimants in determining the Allowed Amount. Specifically,
16 the Claimants submitted claim forms with their principal investments in TBIS tokens.
17 The investments were then validated by the Claims Portal and through publicly
18 available data on the Ethereum blockchain. Finally, the Receiver deducted any
19 subsequent sales of TBIS unregistered securities Claimants made (if any) from the
20 Claimants’ principal investment in order to determine the Allowed Amount.

21 As previously mentioned, the Receiver will make a First Distribution to satisfy
22 Non-Investor Claims and set aside a reserve fund for Administrative Expenses.
23 Thereafter, a Second Distribution will be made to the Investor Claimants in full
24 satisfaction and release of their Allowed Claims. If there are still assets available,
25 Investor Claimants will receive an equitable amount based on their Net Remaining
26 Funds Pro Rata Share, compensating Investors for the lost time-value of their originally
27 invested amounts.

Holland & Knight LLP
400 South Hope Street, 8th Floor
Los Angeles, CA 90071
Tel: 213.896.2400
Fax: 213.896.2450

Holland & Knight LLP
400 South Hope Street, 8th Floor
Los Angeles, CA 90071
Tel: 213.896.2400
Fax: 213.896.2450

1 **C. Distributing Net Remaining Funds in Excess of Allowed Investor**
2 **Claims.**

3 In fairness to the entire class, the Final Distribution will be shared equally by all
4 Investor Claimants. The Receiver’s Distribution Plan defines the funds available after
5 the Second Distribution, Reserve Fund, and any other tax or administrative expense as
6 “Net Remaining Funds.” Each Investor Claimant’s “Net Remaining Pro Rata Share”
7 will be equal to the product of (a) their *Pro Rata* Multiplier and (b) the Net Remaining
8 Funds.

9 An Investor Claimant’s “Pro Rata Multiplier” will be calculated as the quotient
10 of:

11 (the amount of Available Assets² to be distributed to Claimants in such Class in
12 accordance with the Plan)

13 (the aggregate Allowed Amount of Claims in such Class on the Distribution
14 Date)

15 The total distributions paid to an Investor Claimant shall not exceed the sum of
16 their Allowed Amount plus their “Opportunity Cost”³. If a Final Distribution appears
17 necessary, the Receiver will consult his certified tax advisor who will determine tax
18 liabilities and shall bear sole responsibility for Receivership Entity’s tax related claims.
19 The information contained herein, in the Receiver’s Distribution Plan, or in any other
20 materials shared with the Claimants is not and should not be relied upon as tax advice.
21 All Claimants are encouraged to consult with their independent tax advisors with
22 respect to specific tax consequences of any distribution.
23

24 _____
25 ² For the purposes of calculating the U.S. Dollar equivalent of Available Assets, the
26 Receiver will use the Conversion Price on the Benchmark Date—each is described
more fully in the Distribution Plan.

27 ³ Opportunity Cost is defined by the Receiver’s Distribution Plan as the difference
28 between the spot price to exchange the Original Form of Currency for Cash at the
time of the Investor Claimant’s investment and the Benchmark Date for the Final
Distribution.

D. Distributing Allowed Claims in Ether Will Maximize the Recovery for the Investor Claimants.

Courts have explained that “the ultimate goal of a receivership is to maximize the recovery of the investor class.” *SEC v. Felix Investments*, No. 16-CV-01386-EMC, 2018 WL 6706038, at *2 (N.D. Cal. Dec. 20, 2018) (quoting *Wealth Mgmt.*, 628 F.3d 336); *see Janvey v. Romero*, No. 3:11-CV-0297-N, 2015 WL 11017950, at *3 (N.D. Tex. Sept. 22, 2015) (“The goal of the receivership is to maximize the Receivership Estate's assets so that defrauded investors ... can be made whole to the greatest extent possible.”). Additionally, Courts have broad discretion to fashion equitable remedies in the context of returning assets to harmed investors in the most efficient manner possible. *United States v. Durham*, 86 F.3d 70, 73 (5th Cir. 1996). Courts have exercised that authority to approve plans that make in-kind distributions of non-cash assets to harmed investors.⁴

In *SEC v. AriseBank*, the Northern District of Texas Court granted a distribution plan that used the receivership estate’s cryptocurrency assets to pay allowed claims. *See Order*, Dkt. No. 116, No. 3:18-cv-00186-M (N.D. Tex. Jan. 25, 2018). Specifically, the plan distributed a *pro rata* share of the original cryptocurrency that claimants used to invest in the unregistered initial coin offering.⁵ As justification for an in-kind distribution in this case, the Receiver argued that returning the various cryptocurrency assets to investors was the most efficient and least costly method of settling claims. *Id.* The Receiver further explained the difficulties of converting some of the digital assets to cash. *Id.*

⁴ *See, e.g., SEC v. EB5 Asset Manager, LLC*, 2016 WL 11486857, at *2 (S.D. Fla. Dec. 8, 2016) (approving in-kind distribution of real estate); *SEC v. Credit Bancorp, Ltd.*, 2000 WL 1752979, at *36 (S.D.N.Y. Nov. 29, 2000), *aff'd*, 290 F.3d 80 (2d Cir. 2002) (approving in-kind distribution of securities); *SEC v. Enterprise Tr. Co.*, 2008 WL 4534154, at *5-6 (N.D. Ill. Oct. 7, 2008), *aff'd*, 559 F.3d 649 (7th Cir. 2009) (same); *Felix Investments*, 2018 WL 6706038, at *6 (same).

⁵ Receiver’s Motion for Approval of Proposed Distribution Plan and Initial Distribution and Supporting Brief, *SEC v. Arise Bank* (ECF No. 115).

Holland & Knight LLP
400 South Hope Street, 8th Floor
Los Angeles, CA 90071
Tel: 213.896.2400
Fax: 213.896.2450

1 Similarly here, the Receivership Entity’s assets include various forms of
2 cryptocurrencies. The largest holding is Ether—amounting to more than 2000 units.
3 Although the assets represent only a fraction of the original investments in the
4 Receivership Entity, the price appreciation over the years of the cryptocurrencies in
5 comparison to USD allows the Receiver to make the Claimants nearly whole (and
6 possibly profitable). Of the eight (8) different cryptocurrencies held by the Receiver,
7 some are illiquid or nearly worthless and others are less desirable coins. Meanwhile,
8 Ether is the second most valuable cryptocurrency by market capitalization and is the
9 transactional token of the Ethereum Network, where the TBIS unregistered securities
10 were traded. Based on online forms and investor feedback, many have expressed a
11 preference for an Ether distribution. Additionally, many of the Claimants are foreigners
12 who would have difficulties depositing USD into their accounts. As was the situation
13 in *AriseBank*, this proposed method of distribution will significantly reduce transaction
14 costs associated with converting the cryptocurrency to cash—effectively maximizing
15 the return to the investor class. It will also avoid unnecessary friction for foreign
16 Claimants who would otherwise have to exchange USD for their local fiat currencies.

17 Nevertheless, the Receiver acknowledges that some Claimants may prefer a
18 USD distribution. To account for such a group, the Receiver’s Distribution Plan
19 proposes that a questionnaire be sent to each Claimant by email, whereby they can
20 select their preferred method of distribution between Ether or USD (“Distribution
21 Election”), subject to the Receiver’s discretion and approval. The Distribution Election
22 will also require that the Claimant provide an associated Ether address or mailing
23 address for a USD check. If the Claimant fails to make a selection within 14 days of
24 the date the Distribution Election is sent, the default payment method will be Ether sent
25 to the Claimant’s Claimed Address[es].

26 Lastly, in an effort to preserve equity between all Claimants, the Receiver will
27 select an official date (“Benchmark Date”) for calculating the USD conversion price of
28 the various cryptocurrencies. Given the volatile price of cryptocurrencies, each

1 distribution will have its own Benchmark Date. The Receiver’s Distribution Plan also
2 includes the means for calculating the USD spot price (“Conversion Price”) of the
3 Receivership Entity’s assets, which will likely be obtained from a variety of
4 cryptocurrency exchanges (e.g., Coinbase, Bittrex, and Binance). After determining
5 an appropriate Benchmark Date and Conversion Price, the Receiver shall make the
6 Second Distribution to the Investor Claimants based on their Distribution Election and
7 subject to his discretion—reserving any funds for tax withholdings or Administrative
8 Expenses.

9 **E. The Distribution Contemplated by the Plan is Fair and Reasonable**

10 The Receiver’s Distribution Plan will first make an Initial Distribution to fully
11 satisfy all Non-Investor Claims. Next, it will make a Second Distribution to Investor
12 Claimants. Based on the Conversion Price, Investor Claimants will likely recover their
13 principal investment in TBIS unregistered securities. Given the appreciation of the
14 cryptocurrency assets, it may even allow the Investor Claimants to receive a profit over
15 and above their original investments. In either case, the Investor Claimants’ allowed
16 claims are determined on a net investment *pro rata* basis because they were similarly
17 harmed by the TBIS fraud and the assets were comingled with one another. Finally,
18 Investor Claimants will have the option to choose whether they prefer a distribution in
19 Ether or USD.

20 The Receiver’s Distribution Plan makes all stakeholders whole, and possibly
21 profitable. The Investor Claimants share in the assets equally by way of a *pro rata* net
22 investment distribution, and Ether distributions minimize transaction costs associated
23 with such distributions. In sum, the Receiver’s Distribution Plan maximizes the
24 recovery of the Investor Claimants and distributes the funds fairly and reasonably.

Holland & Knight LLP
400 South Hope Street, 8th Floor
Los Angeles, CA 90071
Tel: 213.896.2400
Fax: 213.896.2450

1 **IV. CONCLUSION**

2 The Receiver respectfully requests that the Court enter an Order approving the
3 Receiver’s Distribution Plan (attached hereto as Exhibit 1).

4
5 Dated: April 5, 2022

Respectfully submitted,
HOLLAND & KNIGHT LLP
/s/Kristina S. Azlin
Kristina S. Azlin (SBN 235238)
Jose A. Casal (pro hac vice)
Samuel J. Stone (SBN 317013)

*Attorneys for Josias Dewey,
Court-appointed Receiver for
Receivership Entities*

Holland & Knight LLP
400 South Hope Street, 8th Floor
Los Angeles, CA 90071
Tel: 213.896.2400
Fax: 213.896.2450

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PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 400 S. Hope Street, 8th Floor, Los Angeles, CA 90071.

On **April 5, 2022**, I served the document described as Receiver’s **MOTION FOR APPROVAL OF RECEIVER’S PROPOSED DISTRIBUTION PLAN** on the interested parties in this action as follows:

(BY Electronic Transfer to the CM/ECF System) In accordance with Federal Rules of Civil Procedure 5(d)(3) and Local Rule 5-4, I uploaded via electronic transfer a true and correct copy scanned into an electronic file in Adobe “pdf” format of the above-listed document(s) to the U.S. District Court Central District of California’s Electronic Case Filing (CM/ECF) system on this date.

I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed on **April 5, 2022**, Los Angeles, California.

/s/Kristina S. Azlin
Kristina S. Azlin (SBN 235238)

#156626721_v1

Holland & Knight LLP
400 South Hope Street, 8th Floor
Los Angeles, CA 90071
Tel: 213.896.2400
Fax: 213.896.2450