

**UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

**In re:** ) **Chapter 7**  
)  
**PEREGRINE FINANCIAL GROUP, INC.,** ) **Case No. 12-27488**  
)  
) **Honorable Judge Carol A. Doyle**  
**Debtor.** )  
) **Hearing Date: August 30, 2012**  
) **Hearing Time: 10:00 a.m.**

**NOTICE OF MOTION**

**PLEASE TAKE NOTICE** that on **August 30, 2012 at 10:00 a.m.**, the undersigned shall appear before the Honorable Carol A. Doyle, United States Bankruptcy Judge for the United States Bankruptcy Court, Northern District of Illinois, Eastern Division, in Courtroom 742 of the Dirksen Federal Building, 219 South Dearborn Street, Chicago, Illinois 60604, and then and there present the **TRUSTEE’S SECOND MOTION FOR AUTHORITY TO OPERATE THE BUSINESS OF THE DEBTOR AND FOR RELATED RELIEF**, at which time you may appear and be heard.

Dated: August 22, 2012

Respectfully submitted,

Ira Bodenstein, not personally, but as chapter 7 trustee for the estate of Peregrine Financial Group, Inc.

By:           /s/ Kimberly Bacher            
One of his proposed attorneys

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**CERTIFICATE OF SERVICE**

Kimberly Bacher certifies that she caused to be served a true copy of the above and foregoing **NOTICE OF MOTION** and **TRUSTEE'S SECOND MOTION FOR AUTHORITY TO OPERATE THE BUSINESS OF THE DEBTOR AND FOR RELATED RELIEF** upon the attached ECF Electronic Mail Notice List and Service List in the manner so indicated on this 22<sup>nd</sup> day of August, 2012.

/s/ Kimberly Bacher

**Mailing Information for Case 12-27488**  
**Electronic Mail Notice List**

The following is the list of **parties** who are currently on the list to receive email notice/service for this case.

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**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
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**In re:** ) **Chapter 7**  
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**PEREGRINE FINANCIAL GROUP, INC.,** ) **Case No. 12-27488**  
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**TRUSTEE'S SECOND MOTION FOR AUTHORITY  
TO OPERATE THE BUSINESS OF THE DEBTOR AND FOR RELATED RELIEF**

Pursuant to 11 U.S.C. §§ 721 and 507(a)(4), Ira Bodenstein, not personally, but as chapter 7 trustee (the "Trustee") for the estate of Peregrine Financial Group, Inc. d/b/a PFG Best (the "Debtor"), respectfully requests that this Court enter an order, effective through November 12, 2012 without prejudice to the Trustee's ability to seek further extensions, (i) authorizing the Trustee to operate the business of the Debtor on a limited basis, (ii) authorizing the Trustee to pay certain employee obligations including payroll-related withholdings incurred postpetition, (iii) authorizing the Trustee to continue employee benefit plans on a postpetition basis, and (iv) authorizing the Trustee to modestly increase the salary of the Debtor's former general counsel (the "Motion"). In support of the Motion, the Trustee respectfully states as follows:

**BACKGROUND**

1. On July 10, 2012 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 7 of the Bankruptcy Code, 11 U.S.C. § 101, *et. seq.* Ira Bodenstein is the duly appointed chapter 7 trustee of the Debtor's estate.

2. This Court has jurisdiction to hear this matter and enter a final order granting the relief requested herein pursuant to 28 U.S.C. §§ 157 and 1334 and Internal Operating Procedure

15(a) of the United States District Court for the Northern District of Illinois. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

3. Prior to the Petition Date, the United States Commodity Futures Trading Commission (“CFTC”) filed a lawsuit in the United States District Court for the Northern District of Illinois (“District Court”) alleging that the Debtor and its founder, Russell Wasendorf Sr., committed fraud, customer-funds violations and made false statements (the “Lawsuit”). In connection with the Lawsuit, on July 10, 2012, the District Court entered an Order Appointing a Temporary Receiver. Shortly thereafter, the Debtor commenced the above-captioned case.

4. On July 12, 2012, the Trustee filed an Emergency Motion for Authority to Operate the Business of the Debtor and for Related Relief (the “First Motion”). On July 13, 2012, this Court entered an order authorizing the Trustee to operate the Debtor’s business and pay employee obligations pursuant to 11 U.S.C. § 721 (the “First Order”). Pursuant to the First Order, the Trustee was authorized to, *inter alia*, operate the Debtor’s business until September 13, 2012. The Trustee was granted leave to seek extensions of his authority to operate the business.

5. Since the entry of the First Order, the Trustee, with the assistance of the Debtor’s employees, has diligently worked to liquidate the assets of the Debtor and to wind-down the Debtor’s business. The Trustee has determined that he requires additional time to operate the Debtor’s business so that he can continue to effectively and efficiently liquidate the assets of the Debtor.

**RELIEF REQUESTED**

6. Consistent with the relief sought in the First Motion, the Trustee seeks authority pursuant to 11 U.S.C. §§ 721 and 507(a)(4) to operate the business of the Debtor on a limited basis to conduct the Business Operations (defined below) and to pay the Employee Obligations

(defined below).

**A. Business Operations.**

7. In order to properly and orderly liquidate the assets of the Debtor, the Trustee requests authority to operate the business of the Debtor to, among other things, perform the following business operations (collectively, the “Business Operations”):

- i. Accounting functions;
- ii. Regulatory compliance;
- iii. Balancing and processing;
- iv. Responsibilities and obligations related to human resources;
- v. Information technology; and
- vi. Retaining the services of appropriate professionals and/or other service providers as necessary to properly investigate, marshal and liquidate the assets of the Debtor (including potential causes of action).

8. The Trustee does not intend to solicit new customers or new orders, market the Debtor’s services to the public or execute any transactions except as pursuant to applicable bankruptcy and non-bankruptcy law.

9. The Trustee requests authority to perform the Business Operations so that he can effectively facilitate the liquidation of the Debtor’s assets. Given the size and magnitude of the Debtor’s business, the Trustee believes that the request is necessary under the circumstances.

**B. Employee Obligations.**

10. **Wages.** Prior to the Petition Date, the Debtor employed 241 employees (the “Employees”). The Debtor generally paid its employees on the 15<sup>th</sup> and the 30<sup>th</sup> of each month. Each payroll includes the wages for the previous two weeks of services. The Debtor’s payroll is processed through a third party payroll service, Paylocity.

11. As of the date of the First Motion and through consultation with the Debtor's management, the Trustee identified fifty-seven (57) of the Employees that needed to be retained to assist him in liquidating the assets of the Debtor. The Trustee has since reduced that number to thirty-five (35), and expects that number to decrease further based on the continued liquidation of the Debtor's business (the "Retained Employees"). The Trustee requires the assistance of the Retained Employees in order to maximize assets for the Debtor's creditors.

12. The Trustee also requests authority to increase the compensation paid to the Debtor's general counsel, Rebecca Wing. During calendar year 2011, the Debtor paid Ms. Wing \$380,219.92 annually, which was comprised of a base salary and bonus. During the Trustee's operation of the Debtor's business, it has become apparent that Ms. Wing's services are invaluable. Ms. Wing contains a wealth of knowledge regarding the Debtor's business and has extensive experience as a commodity/financial services attorney. Based on the outstanding services provided by Ms. Wing, the Trustee requests authority to modestly increase her annual compensation to \$400,000. This amount represents only a slight increase in Ms. Wing's salary from calendar year 2011.

13. The Trustee requests authority to continue to pay the Retained Employees, including the proposed increase for Ms. Wing, the wages owed for services rendered to the Debtor's estate after the Petition Date (the "Wages"). The Trustee has the ability to pay the Wages through the Debtor's unencumbered funds.

14. **Employee Benefits.** In the ordinary course of business, the Debtor established various employee benefit plans and other policies. By this Motion, the Trustee requests further authority to continue these benefit programs postpetition (collectively, the "Employee Benefits" and together with the Wages, the "Employee Obligations"). The Employee Benefits include the

following:

- a. **Vacation benefits.** Unless otherwise agreed to by the Debtor, after six months of eligible service, an employee is entitled to five vacation days; after one year of service, an employee is entitled to ten vacation days; and after two or more years, an employee is entitled to fifteen vacation days each year. As of the Petition Date, certain Retained Employees had accrued unused vacation days. The Trustee requests that all Retained Employees be authorized to use such accrued vacation days as authorized by the Trustee while the Trustee operates the Debtor's business. The Trustee does not propose to "cash out" any unused vacation time and he is not seeking authority to pay the same.
- b. **Insurance.** The Debtor provided insurance coverage and other benefit plans to its Retained Employees, which included dental, vision, health, disability and life insurance. The Trustee requests authority to continue the insurance obligations for the Retained Employees for the period prior to the Petition Date and while the Trustee operates the Debtor's business.
- c. **401(k) Obligations.** The Debtor sponsored a 401(k) retirement savings plan that is administered through a third-party. The Debtor provided its Retained Employees with a matching contribution ("Contribution Program"). The Trustee does not seek authority to continue the Contribution Program, but seeks authority to permit the Retained Employees to continue making contributions to their 401(k) plans.
- d. **Flexible Spending Accounts.** The Debtor provided its Retained Employees with a flexible spending account plan ("Flex Accounts"), pursuant to which some Retained Employees maintain accounts for healthcare and dependent care. Under the Flex Accounts, Retained Employees have amounts withheld from their paychecks and those amounts subsequently can be used to reimburse Retained Employees for their healthcare and dependent care expenses. The Trustee seeks approval of this Court to continue the Flex Accounts with respect to the Retained Employees.

15. In sum, the Trustee seeks authority to pay the Employee Benefits (as set forth herein) for the Retained Employees while the Trustee operates the Debtor's business.

16. Nothing contained in this Motion shall constitute a request for authority to assume any agreements, policies or procedures relating to any executory contracts or agreements, including, but not limited to, any benefit plans, employment agreements, collective bargaining agreements or severance agreements to which the Debtor is a party.



17. Under the Bankruptcy Code, the Court may, in its discretion, authorize a chapter 7 trustee to continue to operate a debtor's business if such action is "in the best interest of the estate and consistent with the orderly liquidation of the estate." 11 U.S.C. § 721. Generally, courts approve of continued operation "to maximize receipts when the business is sold." *In re Hessinger Resources, LTD.*, 67 B.R. 378, 383 (C.D. Ill. 1986). That is exactly the situation we are faced with here. The Trustee believes that the continued operation of the Debtor's business is both necessary to maintain the value of the assets of the Debtor's estate and to allow him to maximize the recovery from the liquidation of the Debtor's business.

WHEREFORE, the Trustee respectfully requests that this court enter an order, in a form attached hereto, pursuant to 11 U.S.C. § 721, authorizing the Trustee to continue to operate the Debtor's business to perform the Business Operations, in the Trustee's business judgment, to preserve value for the Debtor's estate and to pay the Employee Obligations, and for such other, further and different relief as this court deems just and proper.

Dated: August 22, 2012

Respectfully submitted,

Ira Bodenstein, not personally, but as chapter 7 trustee for the estate of Peregrine Financial Group, Inc.

By: /s/ Kimberly Bacher  
One of his proposed attorneys

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