

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:) Chapter 7
)
PEREGRINE FINANCIAL GROUP, INC.,) Case No. 12-27488
)
Debtor.) Honorable Judge Carol A. Doyle
)
) Hearing Date: April 5, 2017
) Hearing Time: 10:00 a.m.

**TRUSTEE’S MOTION FOR ENTRY OF AN AMENDED ORDER AUTHORIZING
ADDITIONAL INTERIM DISTRIBUTIONS ON ALLOWED 4D CUSTOMER CLAIMS**

Ira Bodenstein, not personally, but as chapter 7 trustee (“Trustee”) for the estate of Peregrine Financial Group, Inc. d/b/a PFG Best (“Debtor”), requests the entry of the attached proposed amended order authorizing and approving up to a sixty-three percent (63%) interim distribution to the holders of Allowed 4d Claims (“Amended Order”). In support of the motion, the Trustee respectfully states as follows:

1. On February 23, 2017, the Trustee filed the *Trustee’s Motion for Entry of an Order Authorizing Additional Interim Distributions on Allowed 4d Customer Claims* (“Distribution Motion”) seeking the entry of an order authorizing and approving up to a sixty-three percent (63%) interim distribution to holders of Allowed 4d Claims.¹

2. On January 26, 2017, Richard Standish and Charles Sizemore, on behalf of a putative class of PFG’s futures customers who failed to file timely proofs of claim in the main bankruptcy case (“Plaintiffs”), filed a complaint against the Trustee, commencing Adversary Proceeding No. 17-00041. In the Adversary Proceeding, the Plaintiffs seek an order requiring that the Trustee turn over all funds attributable to the accounts of Plaintiffs and the purported

¹ All capitalized terms not defined herein shall have the meanings ascribed to them in the Distribution Motion

class as of the Petition Date, as well as punitive damages, costs and attorney's fees, pursuant to various legal and equitable theories, including breach of fiduciary duty, fraud, unjust enrichment and conversion.

3. On March 8, 2017, the Court conducted a hearing on the Distribution Motion. At the hearing, counsel for Plaintiffs orally objected to the relief sought in the Motion. The Court granted Plaintiffs until March 22, 2017 to file a written objection to the Distribution Motion.

4. On March 22, 2017, counsel for Plaintiffs sent counsel for the Trustee an email confirming that they "decided not to object to the Trustee's request to make a distribution to the 4d claimants" and would not be filing a written objection to the Distribution Motion. Counsel for Plaintiffs also informed the Court that Plaintiffs would not be filing the Objection.

5. After learning that the Plaintiffs had agreed to withdraw their objection, the Trustee prepared a revised proposed order. Prior to the Trustee submitting the proposed order, however, the Court entered an order granting the Distribution Motion ("Distribution Order"). [Docket No. 5116.]

6. By this motion, the Trustee requests the Court enter the proposed Amended Order attached hereto, which contains two proposed modifications to the Distribution Order:²

- First, the Amended Order identifies Plaintiffs as the parties that made the oral objection at the March 8, 2017 hearing and states that they withdrew their objection. (Amended Order, ¶ Intro.)
- Second, the Amended Order clarifies that the Trustee is not required to establish a reserve of any 4d Seg. Funds or 30.7 Seg. Funds (collectively, "Segregated Funds") for the asserted claim of the Plaintiffs or any other Futures Customers that did not timely file a proof of claim as required by the applicable bar date order. (Amended Order, ¶ 9.)

² A marked copy of the Amended Order showing the modifications is attached hereto as Exhibit A.

7. At the hearing on the Distribution Motion, the Plaintiffs asserted that the Trustee should not be authorized to make distributions to holders of Allowed 4d Claims because the Segregated Funds belong to them – despite the fact that they did not timely file proofs of claim in this case and the bar date passed *over four years ago*. Since 2012, the Trustee has reconciled over 8,000 Futures claims and distributed approximately \$250 million to holders of Allowed Futures Claims pursuant to six distribution orders. The Trustee currently has approximately \$13.5 million in Segregated Funds available for distribution to holders of Allowed Futures Claims, of which \$10.5 million will be distributed pursuant to the seventh distribution.

8. Section 765(a) requires that futures customers file proofs of claim in order to participate in any distribution. 11 U.S.C. § 765(a); H.R. Rep. No. 95-595, at 392 (1977) (“Section 765(a) indicates that a customer must file a proof of claim, including any claim to specifically identifiable property, within such time as the court fixes.”). Additionally, the Court has consistently reclassified untimely Futures Claims as “tardily filed, general unsecured claims entitled to third priority distribution under 11 U.S.C. § 726(a)(3).” Accordingly, the Trustee has not reserved Segregated Funds for former customers of the Debtor that did not comply with the Court’s bar date orders. No further distributions will be made until the end of the case if the Trustee must reserve Segregated Funds for all former customers that did not timely file proofs of claim.

9. Because of their baseless (and subsequently withdrawn) objection, the Trustee is compelled, in an abundance of caution, to request a modification to the Distribution Order to include a provision stating that he is not required to establish a Segregated Funds reserve for any purported Futures Customers that either did not file a proof of claim or filed an untimely claim.

WHEREFORE, the Trustee respectfully requests that this Court enter the Amended Order, in the form attached hereto, granting the relief requested herein and such other and further relief as is just and proper under the circumstances.

Respectfully submitted,

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

Dated: March 27, 2017

By: /s/Allen J. Guon
One of his attorneys

Robert M. Fishman (#3124316)
Allen J. Guon (#6244526)
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Chicago, IL 60654
Phone: (312) 541-0151

EXHIBIT A

Upon consideration of the motion (“Motion”) of Ira Bodenstein, not personally, but as chapter 7 trustee (“Trustee”) for the estate of Peregrine Financial Group, Inc. d/b/a PFG Best (“Debtor”), pursuant to 11 U.S.C. §§ 105(a) and 766 and 17 C.F.R. §§ 190.01 through 190.10, seeking the entry of an order authorizing and approving up to a sixty-three percent (63%) interim distribution to holders of Allowed 4d Claims (capitalized terms not defined herein shall have the meanings ascribed thereto in the Motion); sufficient notice having been provided; the Court having core jurisdiction to hear and determine the Motion; the Court having held a hearing on this matter on March 8, 2017 (“Hearing”); the Plaintiffs in Adversary Proceeding No. 17-00041, Richard Standish and Charles Sizemore, on behalf of themselves and on behalf of all persons and entities similarly situated (collectively, the "Objectors") having orally objected to the relief sought in the Motion at the Hearing; the Objectors having subsequently withdrawn their objection to Motion and the relief requested therein; appearing that there is good cause to grant the relief requested based on the legal and factual bases set forth in the Motion and by counsel at the Hearing; and, there being no objection to the relief requested; it is ORDERED:

1. The Motion is granted.

2. The Trustee is authorized to make distributions of segregated cash in an amount up to a sixty-three percent (63%) distribution to the holders of Allowed 4d Claims (“Distribution(s)”). With respect to holders of Allowed 4d Claims that received all Prior Distributions, the incremental distributions will be three percent (3%). To the extent that an unresolved claim becomes an Allowed 4d Claim after the entry of this Order, the Trustee is authorized to make the requisite pro rata distribution to the holder of such Allowed 4d Claim without further notice or order of this Court. The Trustee is authorized to use up to \$2.5 million of 30.7 Seg. Funds, in addition to any 4d Seg. Funds, to make the Distributions to holders of Allowed 4d Claims (“Holder(s)”).

3. For the purposes of this Order, Allowed 4d Claims shall include only those proofs of claim filed by 4d Customers that have been reconciled and deemed allowed by the Trustee; it being understood that Allowed 4d Claims shall not include any of the following: (i) proofs of claim subject to a pending objection pursuant to Fed. R. Bankr. P. 3007; (ii) proofs of claim subject to disputed Notice of Trustee's Assessment of Claim; (iii) proprietary accounts, as defined in the CFTC Regulation 1.3(y), pursuant to the Debtor's books and records; or (iv) proofs of claim that have not been finally reconciled by the Trustee and his professionals. The Trustee shall be authorized, in his business judgment, to allow without further objection or reconciliation any proofs of claim filed by 4d Customers that have discrepancies with the Debtor's books and records in an amount less than \$1,000. All proofs of claim that are deemed Allowed 4d Claims by the Trustee for the purposes of the Distributions shall be listed in the "Proof of Claim Docket" on the Trustee's website (www.pfgchapter7.com).

4. The Trustee is authorized to use a deposit account at Union Bank for the purpose of making the Distributions ("Union Bank Distribution Account"). The Trustee is further authorized to transfer 4d Seg. Funds and 30.7 Seg. Funds funds from the Trustee's accounts into the Union Bank Distribution Account in amounts sufficient to fund the Distributions. The Trustee is authorized pay all costs and expenses incurred in connection with the implementation of a "positive pay" payment system for the Distributions.

5. The Trustee is authorized to make the Distributions directly to the Holders by check utilizing the services of the Claims Agent. Alternatively, in the event that a Holder is unable to negotiate the check received from Claims Agent, the Trustee is authorized to wire transfer the funds to the applicable Holder's bank account. All costs and expenses incurred by the Estate in connection with the cancellation of a check and either (i) initiating a wire transfer or (ii) reissuing

a check (collectively, the “Bank Fees”) shall be paid for by the applicable Holder and the Trustee is authorized to deduct the Bank Fees from the Distribution. The Trustee may, in his sole discretion, withhold any Distribution if (x) the total amount to be distributed on account of an Allowed 4d Claim is less than \$100 or (y) a Prior Distribution was either returned to the Claims Agent as undeliverable or was not negotiated by the Holder.

6. With respect to a Distribution to any Holder that is either (i) not negotiated by the Holder within ninety (90) days of the date of the check or (ii) undeliverable by virtue of a bad address, bad transfer instructions or any other reason that prevents the Trustee from properly transferring the Distribution to the Holder, the Trustee, in his sole discretion, may either (a) resend such Distribution, less any applicable stop payment fees, to the Holder once an updated address or transfer instructions are provided or (b) withhold such Distribution until the Court authorizes a subsequent distribution to such Holder. If any dispute arises as to the identity of a Holder who is to receive a Distribution, the Trustee may, in his sole discretion, withhold the Distribution until the disposition thereof can be determined by this Court or by written agreement among the interested parties to such dispute.

7. The record date for the Distributions shall be 11:59 p.m. (CST) on February 23, 2017 (“Record Date”). As of the Record Date, the claims register is closed and the Trustee shall have no obligation to recognize transfers of any claims occurring after the Record Date for the purposes of the Distributions. The Trustee is authorized to mail Distribution checks to each Holder at the address contained in the proof of claim as of the Record Date.

8. Nothing in this Order shall modify the Trustee's authority to make distributions to holders of Allowed 30.7 Claims pursuant to the Order Granting Trustees Motion for An Order (1) Authorizing up to 100% Distribution on Allowed 30.7 Customer Claims and an Interim

Distribution on Allowed 4d Customer Claims and (2) Authorizing the Allocation of Certain Settlement Proceeds to the 4d Customer Estate [Dkt. No. 3256].

9. In making the Distributions authorized under this Order, the Trustee shall not be required to establish a reserve of any 4d Seg. Funds or 30.7 Seg. Funds for the asserted claims of the Objectors or any other Futures Customers that did not timely file a proof of claim as required by any applicable bar date order entered in this case.

UNITED STATES BANKRUPTCY COURT
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Eastern Division

In Re:) BK No.: 12-27488
PEREGRINE FINANCIAL GROUP, INC.,)
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) Chapter: 7
) Honorable Carol A. Doyle
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Debtor(s))

**AMENDED ORDER GRANTING TRUSTEE’S MOTION FOR AN ORDER AUTHORIZING
ADDITIONAL INTERIM DISTRIBUTIONS ON ALLOWED 4D CUSTOMER CLAIMS**

Upon consideration of the motion (“Motion”) of Ira Bodenstein, not personally, but as chapter 7 trustee (“Trustee”) for the estate of Peregrine Financial Group, Inc. d/b/a PFG Best (“Debtor”), pursuant to 11 U.S.C. §§ 105(a) and 766 and 17 C.F.R. §§ 190.01 through 190.10, seeking the entry of an order authorizing and approving up to a sixty-three percent (63%) interim distribution to holders of Allowed 4d Claims (capitalized terms not defined herein shall have the meanings ascribed thereto in the Motion); sufficient notice having been provided; the Court having core jurisdiction to hear and determine the Motion; the Court having held a hearing on this matter on March 8, 2017 (“Hearing”); the Plaintiffs in Adversary Proceeding No. 17-00041, Richard Standish and Charles Sizemore, on behalf of themselves and on behalf of all persons and entities similarly situated (collectively, the "Objectors") having orally objected to the relief sought in the Motion at the Hearing; the Objectors having subsequently withdrawn their objection to Motion and the relief requested therein; appearing that there is good cause to grant the relief requested based on the legal and factual bases set forth in the Motion and by counsel at the Hearing; and, there being no objection to the relief requested; it is ORDERED:

1. The Motion is granted.

2. The Trustee is authorized to make distributions of segregated cash in an amount up to a sixty-three percent (63%) distribution to the holders of Allowed 4d Claims (“Distribution(s)"). With respect to holders of Allowed 4d Claims that received all Prior Distributions, the incremental distributions will be three percent (3%). To the extent that an unresolved claim becomes an Allowed 4d Claim after the entry of this Order, the Trustee is authorized to make the requisite pro rata distribution to the holder of such Allowed 4d Claim without further notice or order of this Court. The Trustee is authorized to use up to \$2.5 million of 30.7 Seg. Funds, in addition to any 4d Seg. Funds, to make the Distributions to holders of Allowed 4d Claims (“Holder(s)").

3. For the purposes of this Order, Allowed 4d Claims shall include only those proofs of claim filed by 4d Customers that have been reconciled and deemed allowed by the Trustee; it being understood that Allowed 4d Claims shall not include any of the following: (i) proofs of claim subject to a pending objection pursuant to Fed. R. Bankr. P. 3007; (ii) proofs of claim subject to disputed Notice of Trustee's Assessment of Claim; (iii) proprietary accounts, as defined in the CFTC Regulation 1.3(y), pursuant to the Debtor’s books and records; or (iv) proofs of claim that have not been finally reconciled by the Trustee and his professionals. The Trustee shall be authorized, in his business judgment, to allow without further objection or reconciliation any proofs of claim filed by 4d Customers that have discrepancies with the Debtor’s books and records in an amount less than \$1,000. All proofs of claim that are deemed Allowed 4d Claims by the Trustee for the purposes of the Distributions shall be listed

in the "Proof of Claim Docket" on the Trustee's website (www.pfgchapter7.com).

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6. With respect to a Distribution to any Holder that is either (i) not negotiated by the Holder within ninety (90) days of the date of the check or (ii) undeliverable by virtue of a bad address, bad transfer instructions or any other reason that prevents the Trustee from properly transferring the Distribution to the Holder, the Trustee, in his sole discretion, may either (a) resend such Distribution, less any applicable stop payment fees, to the Holder once an updated address or transfer instructions are provided or (b) withhold such Distribution until the Court authorizes a subsequent distribution to such Holder. If any dispute arises as to the identity of a Holder who is to receive a Distribution, the Trustee may, in his sole discretion, withhold the Distribution until the disposition thereof can be determined by this Court or by written agreement among the interested parties to such dispute.

7. The record date for the Distributions shall be 11:59 p.m. (CST) on February 23, 2017 ("Record Date"). As of the Record Date, the claims register is closed and the Trustee shall have no obligation to recognize transfers of any claims occurring after the Record Date for the purposes of the Distributions. The Trustee is authorized to mail Distribution checks to each Holder at the address contained in the proof of claim as of the Record Date.

8. Nothing in this Order shall modify the Trustee's authority to make distributions to holders of Allowed 30.7 Claims pursuant to the Order Granting Trustees Motion for An Order (1) Authorizing up to 100% Distribution on Allowed 30.7 Customer Claims and an Interim Distribution on Allowed 4d Customer Claims and (2) Authorizing the Allocation of Certain Settlement Proceeds to the 4d Customer Estate [Dkt. No. 3256].

9. In making the Distributions authorized under this Order, the Trustee shall not be required to establish a reserve of any 4d Seg. Funds or 30.7 Seg. Funds for the asserted claims of the Objectors or any other Futures Customers that did not timely file a proof of claim as required by any applicable bar date order entered in this case.

Enter:

Dated:

United States Bankruptcy Judge

Prepared by:

Allen J. Guon (#6244526)
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