

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION
www.flsb.uscourts.gov

In re:

CHAPTER 11

PALM BEACH FINANCE PARTNERS, L.P.,
PALM BEACH FINANCE II, L.P.,

Case No. 09-36379-PGH
Case No. 09-36396-PGH
(Jointly Administered)

Debtors.

**LIQUIDATING TRUSTEE'S MOTION (1) TO APPROVE SETTLEMENT WITH US BANK,
NATIONAL ASSOCIATION; (2) FOR ENTRY OF A BAR ORDER;
AND (3) TO APPROVE PAYMENT OF CONTINGENCY FEE**

Barry E. Mukamal, in his capacity as liquidating trustee ("*Liquidating Trustee*") for the Palm Beach Finance Partners Liquidating Trust and the Palm Beach Finance Partners II Liquidating Trust (collectively, the "*Palm Beach Liquidating Trusts*"), by and through undersigned counsel, files this Motion (1) to approve settlement with US Bank National Association ("*Bank*"); (2) for the entry of a bar order; and (3) to approve payment of counsel's contingency fee (the "*Motion*"). In support of this Motion, the Liquidating Trustee states the following:

I. Factual Background

1. Prepetition, Palm Beach Finance Partners, L.P. and Palm Beach Finance II, L.P. (collectively, the "*Debtors*") operated as hedge funds. Together, David Harrold and Bruce Prevost managed the Debtors' fund raising and investment activities.

2. On November 30, 2009, the Debtors filed voluntary petitions under Chapter 11 of the United States Bankruptcy Code. By subsequent Order of this Court, the cases are jointly administered.

3. On January 28, 2010, the Court entered the Agreed Order Directing Appointment of Chapter 11 Trustee and Denying United States Trustee's Motion to Convert Cases to Cases under Chapter 7 [ECF No. 100].

4. On January 29, 2010, the United States Trustee appointed the Liquidating Trustee as Chapter 11 Trustee in both of the Debtors' estates [ECF No. 107].

5. On October 21, 2010, this Court entered its Order Confirming Second Amended Plan of Liquidation [ECF No. 444], creating the Palm Beach Liquidating Trusts, appointing the Liquidating Trustee as Liquidating Trustee and appointing Geoffrey Varga as Trust Monitor.

6. Bank is a national banking association headquartered in Minneapolis, Minnesota.

7. Pre-petition, the Palm Beach Funds maintained several escrow and collateral bank accounts at Bank ("***Palm Beach Accounts***"). These accounts were utilized by the Palm Beach Funds to facilitate the funds' investing activities.

II. Settlement Terms

8. Prior to the appointment of the Liquidating Trustee, at the inception of these cases, the Debtors filed an adversary against Bank and M&I Marshall & Ilsley Bank, Adv. Case No. 09-02530-BKC-PGH-A ("***Bank Litigation***").

9. Upon being appointed chapter 11 trustee for the Debtors and reviewing the underlying merits of the claims set forth in the Bank Litigation, the Liquidating Trustee dismissed the complaint against Bank in order to engage in a proper investigation of potential claims that could be asserted.

10. This investigation included significant document discovery and review as well as two sworn Rule 2004 examinations of current and former Bank employees. Additionally, the Liquidating Trustee's professionals engaged in extensive discussions with counsel for Bank and the Liquidating

Trustee attended a settlement conference in Minneapolis, Minnesota with Bank and its counsel, as well as Geoff Varga, the trust monitor for the Palm Beach Finance II Liquidating Trust.

11. The Liquidating Trustee has now completed his investigation relating to the Palm Beach Accounts. Based on this investigation, the Liquidating Trustee believes there are common law claims – more fully described below - that potentially could be asserted against Bank.

12. Bank has asserted a number of alleged defenses to these claims. Following extensive discussions, the Liquidating Trustee, in his business judgment, believes that the claims should be settled.¹

13. The key aspects of the settlement are the following:²

- a) **Cash consideration** - upon approval of the Settlement, Bank shall pay or cause to be paid \$1,700,000 (the “**Settlement Payment**”).
- b) **Bar order** – as a pre-condition for providing the above consideration, the Liquidating Trustee will obtain an Order in favor of Bank and affiliated parties (“**Bank Parties**”) in the form attached to this Motion (“**Bar Order**”). As stated therein, the Bar Order would bar all past or present creditors of either of the Debtors and all investors and interest holders of either or both of the Debtors, including, without limitation, any past or present limited partners or general partners of either or both of the Debtors from bringing any claims against the Bank Parties that are related to the Debtors. **The Bar Order would not bar any claims that could be asserted against the Bank Parties by Palm Beach Offshore Ltd. and Palm Beach Offshore II Ltd. (collectively, the “Offshore Funds”), the Offshore Funds’ liquidators, or investors in, or creditors of, the Offshore Funds.** Finally, as has been requested in the past by the SEC in connection with other settlements reached by the Liquidating Trustee, the Bar Order excepts any proceedings or actions brought by the SEC.

¹ On August 8, 2012, the Liquidating Trustee filed his Notice of Filing Supplement to Affidavit of Barry Mukamal [ECF No. 1353 in Case No. 09-36379-PGH and ECF No. 55 in Case No. 09-36396-PGH]. As set forth in that filing, the Liquidating Trustee was retained in an unrelated case by a local law firm to perform certain consulting services on behalf of US Bank National Association.

² A copy of the settlement agreement is attached as Exhibit 1 to this Motion. To the extent the terms of this Motion differ from those set forth in the settlement agreement, the settlement agreement shall control.

- c) **Release** – the settlement provides for an exchange of releases between the Liquidating Trustee and Bank effective upon certain conditions, such as approval of the settlement, entry of the Bar Order and payment of the Settlement Payment.

14. Pursuant to the Second Amended Joint Plan of Liquidation (“**Plan**”), approved by this Court’s Order dated October 21, 2010 [ECF No. 444], all monetary consideration received in conjunction with the Settlement will be allocated and apportioned among the Debtors as follows: 18% to Palm Beach Finance Partners, L.P. and 82% to Palm Beach Finance II, L.P. (“**Pro Rata Allocation Formula**”).

III. Relief Requested

15. The Liquidating Trustee seeks (1) an Order from this Court approving the Settlement and directing payment of the Contingency Fee (as defined below); and (2) an Order from this Court entering the Bar Order.

16. Federal Rule of Bankruptcy Procedure 9019 provides in relevant part that [o]n motion ... and after a hearing on notice to creditors; the debtor ... and to such other entities as the Court may designate, the Court may approve a compromise or settlement.”

17. Approval of a settlement in a bankruptcy proceeding is within the sole discretion of the Court and will not be disturbed or modified on appeal unless approval or disapproval is an abuse of discretion. *In re Arrow Air*, 85 BR 891 (Bankr. S.D. Fla. 1988).

18. The standards for approval are well settled and require the Court to inquire into the reasonableness of the proposed settlement. *See, e.g., Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968); *In re W.T. Grant Co.*, 699 F.2d 599, 608 (2d Cir. 1983); *Florida Trailer and Equip. Co. v. Deal*, 284 F.2d 567, 571 (5th Cir. 1960). The inquiry need only determine whether the settlement falls below the lowest point of the range of reasonableness. *See W.T. Grant Co.*, 699 F.2d at 608; *see also In re Martin*, 91 F.3d 389 (3rd Cir. 1996); *In re Louise's Inc.*,

211 B.R. 798 (D. Del. 1997) (setting forth considerations by the Court for approval of a settlement, including: (i) the probability of success in litigation, (ii) the likely difficulties in collection; (iii) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (iv) the paramount interest of the creditors.

A. *The Settlement Ought to be Approved*

19. Based upon the above legal principles, the Liquidating Trustee asserts that the Settlement falls well above the lowest point of the range of reasonableness and thus, should be approved.

Probability of success in litigation

20. This is a significant issue that militates in settling this matter.

21. Any claims that the Liquidating Trustee would now assert differ markedly from those raised in the initial Bank Litigation.

22. Namely, the Liquidating Trustee's claims would center on Bank's handling and administration of the Palm Beach Accounts in relation to how payments for purchase financing transactions were supposed to flow compared to how they actually flowed. The Liquidating Trustee could assert various common law claims against Bank in connection with the flow of funds into the Palm Beach Accounts, *e.g.*, breach of fiduciary duty or aiding and abetting a tort.

23. There is the meaningful possibility, however, that these claims could fail. Bank would assert several substantive defenses including that it properly complied with all of its contractual and common law obligations and did not have actual knowledge of any wrongdoing. Some of these defenses may potentially defeat any claim the Liquidating Trustee could bring against USB.

Collectability and Amount of Available Insurance Coverage

24. This is not a significant issue with respect to this settlement. Bank has adequate resources to pay any judgment in the event it is found liable.

Complexity of litigation and attendant expense, inconvenience and delay

25. This is a significant consideration that militates in favor of approval of the Settlement.

26. In sum, although many of the claims that could be asserted against Bank are typical claims litigated before this Court, they still will require retention of experts and extensive fact discovery before a trial could take place. While counsel is pursuing this matter on a strict contingency fee basis, prosecution of this case will result in substantial costs for experts, travel and deposition transcripts, among other typical and ordinary litigation related expenses. The result of these costs which would be substantial would diminish the net result of any recovery.

27. The settlement addresses these concerns. The parties will avoid litigating fact specific claims with the attendant expense and delay of such litigation being nullified. Moreover, the parties avoid the expense and delay that would arise from subsequent appellate practice.

Paramount interest of creditors

28. Although a direct result of the settlement is that multiple parties will be barred from asserting any claims against the Bank Parties, the settlement conversely provides for a meaningful payment of the Liquidating Trustee's claims against Bank when measured against Bank's defenses thereto. As such, the Settlement is in the paramount interest of the Debtors' stakeholders.

B. The Bar Order Ought to be Approved

29. This Court has the inherent power under the Bankruptcy Code, including section 105(a), to issue any order necessary or appropriate to carry out the provisions of Title 11. *In re Drexel Burnham Lambert Group, Inc.*, 134 B.R. 499 (Bankr. S.D.N.Y. 1991). The Eleventh Circuit Court of Appeals in

Munford concluded that (i) public policy favors settlements, (ii) the cost of litigation can be burdensome on a bankruptcy estate, and (iii) "bar orders play an integral role in facilitating settlements." *In re Munford*, 97 F.3d 449, 454 (11th Cir. 1996).

30. This Court has the broad power to approve settlement agreements and effectuate a release of non-debtors. *Munford*, 97 F.3d at 455; *see also In re S&I Investments*, 421 B.R. 569, 583-586 (Bankr. S.D. Fla. 2009). Indeed, the Eleventh Circuit Court of Appeals has stated that:

[c]omplex litigation ...can occupy a court's docket for years on end, depleting the resources of the parties and the taxpayers while rendering meaningful relief increasingly elusive. Accordingly, the Federal Rules of Civil Procedure authorize district courts to facilitate settlements in all types of litigation [B]ar orders play an integral role in facilitating settlement. Defendants buy little peace through settlement unless they are assured that they will be protected against codefendants' efforts to shift their losses through cross claims for indemnity, contribution, and other causes related to the underlying litigation.

In re U.S. Oil & Gas Litig., 967 F.2d at 493-94.

31. The Liquidating Trustee submits that approval of the settlement is fair, reasonable and in the best interest of the estate and its general unsecured creditors. Here, an essential and necessary part of the settlement is the Bar Order, and that too should be approved; without such approval, there is no settlement. The Liquidating Trustee's agreement to obtain the Bar Order was negotiated at arms-length between the parties and in good faith, as a part of the parties' associated settlement discussions.

32. The Eleventh Circuit Court of Appeals has stated as follows:

When determining whether to enter a bar order against nonsettling defendants, the court must make reasonable determination that bar order is fair and equitable. In making such a determination, courts consider the interrelatedness of the claims that the bar order precludes, the likelihood of nonsettling defendants to prevail on the barred claim, the complexity of litigation, and the likelihood of depletion of the resources of the settling defendants.

Munford, 97 F.3d 455 (internal citations omitted).

33. The Liquidating Trustee submits that upon ‘reasonable determination,’ the requested Bar Order is fair and equitable. As set forth in the settlement and above, the Bar Order bars interrelated claims that could be asserted against the Bank Parties by both the Liquidating Trustee and limited partners and creditors of the Palm Beach Funds (other than the Offshore Funds and their respective creditors, investors and liquidators).

34. Further, as stated above, the Bar Order was a necessary part of the settlement, which results in the Settlement Payment to the Palm Beach Liquidating Trusts.

C. The Contingency Fee Ought to be Approved

35. Pursuant to this Court’s Order Granting Liquidating Trustee’ Motion to Modify Compensation Structure for Meland Russin & Budwick, P.A. as to Certain Potential Litigation Matters [ECF No. 815], Meland Russin & Budwick, P.A. (“**MRB**”) is entitled to a fee of 33% of any affirmative recovery received by the Palm Beach Liquidating Trusts’ from a litigation matter pursued by MRB as to Bank (“**Contingency Fee**”).

36. The Liquidating Trustee requests that the Contingency Fee – in the amount of \$561,000 - be approved and that he be authorized and directed to pay this amount when the Settlement Payment is made.

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WHEREFORE, the Liquidating Trustee respectfully requests that this Court enter an Order as set forth in attached Exhibit 2 (1) approving the settlement and directing payment of the Contingency Fee; (2) approving the Bar Order; and (3) granting such other relief this Court deems just and proper.

Dated: August 24, 2012.

s/ Michael S. Budwick
Michael S. Budwick, Esquire
Florida Bar No. 938777
mbudwick@melandrussin.com
MELAND RUSSIN & BUDWICK, P.A.
3200 Southeast Financial Center
200 South Biscayne Boulevard
Miami, Florida 33131
Telephone: (305) 358-6363
Telecopy: (305) 358-1221

Attorneys for the Liquidating Trustee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on August 24, 2012, via the Court's Notice of Electronic Filing upon Registered Users set forth on the attached list as Exhibit 3; via U.S. Mail on those parties set forth on the service list attached as Exhibit 4; and Rich Wilson, Esq., Maslon, Edelman, Borman & Brand, LLP, 3300 Wells Fargo Center, 90 South Seventh Street, Minneapolis, MN 55402.

s/ Michael S. Budwick

STIPULATION OF SETTLEMENT

This Stipulation of Settlement ("**Stipulation**") is entered by and among (a) Barry E. Mukamal, in his capacity as liquidating trustee ("**Liquidating Trustee**") of the Palm Beach Finance Partners Liquidating Trust and the Palm Beach Finance II Liquidating Trust (collectively, the "**Palm Beach Liquidating Trusts**") and (b) U.S. Bank National Association ("**Bank**") (Bank and the Liquidating Trustee are sometimes referred to individually as a "**Party**," or collectively, the "**Parties**"). The terms of this Stipulation are as follows:

RECITALS

A. On or about November 30, 2009 (the "**Petition Date**"), Palm Beach Finance Partners, L.P. ("**PBF I**") and Palm Beach Finance Partners II, L.P. ("**PBF II**," together with PBF I, the "**Debtors**") commenced Chapter 11 bankruptcy cases by filing voluntary petitions for relief under Chapter 11 of Title 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Florida ("**Bankruptcy Court**"), Case Nos. 09-36379-PGH and 09-36396-PGH respectively ("**Bankruptcy Cases**");

B. On October 21, 2010, the Bankruptcy Court entered its Order Confirming Second Amended Plan of Liquidation [ECF No. 444], creating the Palm Beach Liquidating Trusts and appointing the Liquidating Trustee as liquidating trustee.

C. The Liquidating Trustee, on behalf of the Palm Beach Liquidating Trusts, has, or may have, claims or causes of action against Bank, which claims the Liquidating Trustee expressly represents and warrants include any and all claims against Bank that have ever belonged to or been held by Debtors and to the extent the Bankruptcy Court approves a pending motion to approve a settlement between the Liquidating Trustee and Mr. Spring [ECF No. 1243], Jonathan Spring and Spring Investor Services, Inc. (collectively, the "**PBF Claims**");

D. Bank expressly denies any liability in connection with the PBF Claims;

E. The Liquidating Trustee (and his legal counsel) and Bank and its legal counsel, have shared information and engaged in settlement negotiations and discussions to resolve any and all PBF Claims;

F. To avoid the continued expense and risk of adverse outcome arising from PBF Claims, as well as incurring costs and expenses associated therewith, among other reasons, the Parties have agreed to resolve any and all PBF Claims subject to the terms and conditions of this Stipulation and Bankruptcy Court approval.

NOW, WHEREFORE, it is stipulated, consented to and agreed, by and among the Parties as follows:

1. The Parties acknowledge that this Stipulation is a compromise and settlement of a controversy. No Party admits, and each expressly denies, any liability on its part.

2. This Stipulation constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof and there are no other stipulations, agreements, representations, or warranties other than those specifically set forth herein. All prior agreements and understandings between the Parties concerning the subject matter hereof are superseded by the terms of this Stipulation.

3. In full and final settlement of the PBF Claims, Bank shall pay (or cause to be paid) \$1,700,000.00 within 10 days of (a) the Order approving this Stipulation becoming final and non-appealable (the "***Settlement Payment***"), and (b) receipt by Bank of taxpayer identification information and wire transfer information for each Party to receive a portion of the Settlement Payment.

4. Bank agrees that it shall not be entitled to any monetary distribution whatsoever from the Liquidating Trusts or Debtors, or to any offset or indemnity from, or in connection

with, the Collateral Agreements related to Bank Account No. 3347320 and Bank Account No. 786363000 (the “*Collateral Account Agreements*”), and Bank waives any interests it may have in said accounts. Bank’s proofs of claim in the Bankruptcy Cases shall be deemed disallowed in their entirety; but it is expressly understood and agreed that notwithstanding anything contained in this Stipulation of Settlement, Bank retains any and all rights it has, or may have, to be indemnified or to make set-offs from and/or against any and all other funds or deposits it has in its possession, or that may come into its possession, pursuant to any agreements to which Bank is a party other than the Collateral Account Agreements.

5. The Liquidating Trustee, with the cooperation of Bank, shall obtain the entry of a final, non-appealable order (the “*Bar Order*”) by the Bankruptcy Court substantially in the form of Exhibit 1, which bars and permanently enjoins the prosecution of any and all Claims (as defined below) against each and all of the Released Bank Entities (defined below) and the Bank Affiliates (defined below) by any and all of the following entities: (1) all past or present creditors of either of the Debtors; and (2) all investors and interest holders of either or both of the Debtors, including without limitation, any past or present limited partners and/or general partners of either or both of the Debtors (collectively the “*Enjoined Parties*”); except that the Bar Order shall not bar any Claims (as defined below), other than the PBF Claims which are barred, that could be asserted against the Released Bank Entities and/or the Bank Affiliates by (a) Palm Beach Offshore Ltd. and Palm Beach Offshore II Ltd. (the “*Offshore Funds*”); (b) an investor in, or creditor of, the Offshore Funds; or (c) the Offshore Funds’ liquidators (the persons and entities listed in subsections (a), (b) and (c) of this Paragraph 5 are collectively referred to as the “*Offshore Parties*”). This Stipulation shall not modify any prior Orders of this Court which bar the Offshore Parties from bringing Claims against parties that are the subject of those prior

Orders. This Stipulation is contingent upon the entry of the Bar Order and if for any reason the Bar Order is not entered, this Stipulation shall be null and void in its entirety.

6. For purposes of this Stipulation:

A. The term “*Claim*” or “*Claims*” shall mean any obligations, causes of action, demands of any type that a party may presently have, may have or have had in the past, upon or by reason of any matter, cause or thing whatsoever, including without limitation any and all obligations, claims, causes of actions and demands of any kind whatsoever, at law or in equity, indirect, derivative, or direct, known or unknown, discovered or undiscovered.

B. Upon approval of this Stipulation by final orders of the Bankruptcy Court in the Bankruptcy Cases, payment of the Settlement Payment and entry of a Bar Order, the Liquidating Trustee on behalf of the Palm Beach Liquidating Trusts and the Debtors and their estates, waives, releases and holds harmless, now and forever, Bank, and all and each of its parent, sister, and direct and indirect subsidiary companies (the “*Released Bank Entities*”) from any and all Claims that the Liquidating Trustee, the Palm Beach Liquidating Trusts or the Debtors, have ever had, now have, or may have against the Released Bank Entities, including the PBF Claims, and waives, releases and holds harmless, now and forever, all and each of the Released Bank Entities’ current and former employees, officers, directors, agents and attorneys, and each of their respective spouses, heirs, executors and assigns, (collectively, the “*Bank Affiliates*”) from any and all Claims that the Liquidating Trustee, the Palm Beach Liquidating Trusts or the Debtors have ever had, now have, or may have against them, that may relate in any way to their activities, employment or association with the Released Bank Entities, including the PBF

Claims; provided that nothing herein shall be deemed to release, waive or otherwise limit any rights or obligations arising out of this Stipulation and provided that nothing in this Paragraph 6.B shall be construed or implied to release, waive or otherwise limit any rights of, or Claims asserted by, the Offshore Parties against: (i) any persons or entities other than the Released Bank Entities and the Bank Affiliates; or (ii) the Released Bank Entities and the Bank Affiliates but only to the extent that the Offshore Parties assert Claims against the Released Bank Entities and Bank Affiliates that are not PBF Claims (as the PBF Claims are barred). The scope of this release shall not impact, impair or alter in any manner any Claims whatsoever that the Liquidating Trustee, on behalf of the Palm Beach Liquidating Trusts, the Debtors or their estates, may have against any parties other than the Released Bank Entities and the Bank Affiliates, including but not limited to Claims against alleged concurrent or consecutive tortfeasors.

C. The Liquidating Trustee on behalf of the Palm Beach Liquidating Trusts and the Debtors and their estates represents and warrants that no Claim against the Released Bank Entities and/or the Bank Affiliates, that has ever been held by or belonged to the Palm Beach Liquidating Trusts, the Debtors, and their respective estates, has been assigned, conveyed or transferred to any other person or entity.

D. Upon approval of this Stipulation by final orders of the Bankruptcy Court in the Bankruptcy Cases, payment of the Settlement Payment and entry of the Bar Order, Bank waives, releases and holds harmless, now and forever, the Liquidating Trustee, the Palm Beach Liquidating Trusts, the Debtors and their estates from any and all Claims that Bank may have against the Liquidating Trustee, the Palm Beach Liquidating Trusts, the Debtors and their estates; provided that this provision does not release, waive or

otherwise limit any rights or obligations arising out of this Stipulation, any claims Bank has, or may have, to be indemnified or to make set-offs from and/or against any and all funds or deposits it has in its possession, or that may come into its possession, pursuant to any agreements to which Bank is a party other than the Collateral Account Agreements, or any Claims or rights Bank has, or may have, against or related to any person or entity, including the Offshore Parties.

7. Each of the Parties acknowledges that he, she or it has read all of the terms of this Stipulation, has had an opportunity to consult with counsel of his, her or its own choosing or voluntarily waived such right, and enters into those terms voluntarily and without duress.

8. The Liquidating Trustee shall file and serve the necessary motion(s) in the Bankruptcy Cases seeking the entry of the Bar Order and an order approving this Stipulation, and shall disclose any and all connections, associations, or business relationships the Liquidating Trustee may have with any of the Released Bank Entities. The Liquidating Trustee shall serve by U.S. Mail notice of motion(s) upon all persons and entities whose rights would or could be affected by the Bar Order, including, without limitation, (1) all creditors of the Debtors; (2) all limited partners of the Debtors; (3) all general partner(s) of the Debtors; and (4) all shareholders of the Debtors.

9. Each Party shall bear its own attorneys' fees and costs in connection with the negotiation and drafting of this Stipulation and the submission of such Stipulation, motions and orders as may be necessary to obtain the approval of the Bankruptcy Court; provided that in the event of any litigation between the Parties under this Stipulation or arising as a result of a default under this Stipulation, the prevailing Party shall be entitled to reasonable attorneys' fees and costs related thereto, including, but not limited to, those incurred at all trial and appellate levels.

10. This Stipulation and any of the specific items, covenants, and conditions contained herein, may not be waived, changed, altered or modified except by an instrument in writing signed by the Party against whom enforcement of such change is sought.

11. This Stipulation shall be effective upon execution by all of the Parties hereto, subject only to approval of this Stipulation by final orders of the Bankruptcy Court, payment of the Settlement Payment and entry of the Bar Order. Upon it becoming effective, this Stipulation shall be binding on all of the Parties' successors or assigns.

12. If the Bankruptcy Court does not approve this Stipulation, then the Stipulation shall be of no further force or effect, and the Parties shall be restored to their rights as they existed prior to the execution of this Stipulation. Notwithstanding the foregoing, if the Bankruptcy Court does not approve this Stipulation because any of the Parties have failed to provide the Bankruptcy Court with adequate information to rule on the merits of the Stipulation, the Parties will use their best efforts to seek reconsideration of any order declining to approve the Stipulation, or to file an amended motion to approve the Stipulation.

13. This Stipulation shall in all respects be construed in accordance with the laws of the State of Florida applicable to contracts made and to be performed wholly within the State of Florida and by federal law to the extent the same has preempted the laws of the State of Florida.

14. This Stipulation may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same Stipulation. Delivery of an executed counterpart of a signature page to this Stipulation by facsimile shall be effective as delivery of a manually executed counterpart of this Stipulation.

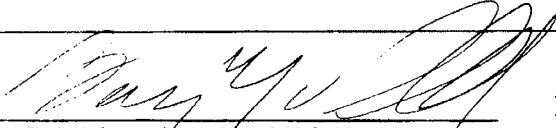
15. This Stipulation shall be deemed to have been jointly drafted by the Parties, and in construing and interpreting this Stipulation, no provision shall be construed and interpreted for or against any of the Parties because such provision or any other provision of the Stipulation as a whole is purportedly prepared or requested by such Party.

16. The Bankruptcy Court shall retain jurisdiction to enforce the terms of this Stipulation.

17. The individuals signing below represent and warrant that they have the authority to execute this Stipulation on behalf of the persons / entities identified and as set forth herein.

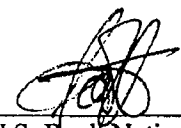
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STIPULATED AND AGREED TO BY:



Barry E. Mukamal, as Liquidating Trustee

Date: 8/24, 2012



U.S. Bank National Association

Date: 8/23, 2012

PROPOSED

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION
www.flsb.uscourts.gov

In re:
PALM BEACH FINANCE PARTNERS,
L.P., a Delaware limited partnership, et al.,

Chapter 11

Debtors,

CASE NO. 09-36379-BKC-PGH
(Jointly Administered)

**ORDER (1) GRANTING MOTION TO APPROVE
SETTLEMENT WITH US BANK NATIONAL ASSOCIATION,
(2) APPROVING PAYMENT OF CONTINGENCY FEE AND (3) GRANTING
ENTRY OF BAR ORDER IN FAVOR OF US BANK NATIONAL ASSOCIATION**

THIS MATTER came before the Court on [DATE] at [TIME], upon the *Liquidating Trustee's Motion to Approve Settlement with US Bank National Association* (the "**Motion**") [ECF No. ____].¹ The Court has reviewed the Motion, considered the arguments of counsel and is otherwise duly advised in the premises.

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.
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In its Motion, the Liquidating Trustee, on behalf of the Liquidating Trusts, Debtors and their respective bankruptcy estates, seeks entry of an order barring certain claims against US Bank National Association (“**Bank**”) as described in detail below (the “**Bar Order**”).

The Court has noted that notice of the Motion and the request for a Bar Order was given to those potentially interested parties identified on the service list referenced in the Motion. The Court has reviewed and considered the Motion, any other submissions to this Court and provided an opportunity to be heard to all persons requesting to be heard. Accordingly, it is:

ORDERED as follows:

1. The Motion is **GRANTED**.
2. The Settlement is **APPROVED**.
3. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334, and authority to enter this Order pursuant to 11 U.S.C. § 105(a).
4. Bank shall pay (or cause to be paid) \$1,700,000 to the Liquidating Trusts (the “**Settlement Payment**”) within 10 days of (a) this Order becoming final and non-appealable, and (b) receipt by Bank of taxpayer identification information and wire transfer information for each of the Liquidating Trusts.
5. The Settlement Payment will be allocated and apportioned among the estates as follows: 18% to Palm Beach Finance Partners, L.P. and 82% to Palm Beach Finance II, L.P. (the “**Pro Rata Allocation Formula**”) and the wire transfers referenced in paragraph 4 above shall be made in the amounts in accordance with this allocation.
6. MRB’s Contingency Fee in the amount of \$561,000 is approved. The Liquidating Trustee is authorized and directed to make payment of the Contingency Fee without the need for further Court Order, in accordance with the Pro Rata Allocation Formula, promptly upon receipt of the Settlement Payment.

7. Bank agrees that it shall not be entitled to any distribution from the Liquidating Trusts or the Debtors. The following claims shall be disallowed and stricken from the claims registry:

- a. Claim No. 10-1 filed in Case No. 09-36379-PGH; and
- b. Claim No. 9-1 filed in Case No. 09-36396-PGH.

8. The form and means of the notice of the Bar Order and the Motion are determined to have been the best notice practicable under the circumstances and to be good and sufficient notice to all persons whose interests would or could be affected by this Order.

9. The Court has been apprised of the negotiations that preceded the Stipulation and finds that the Motion and request for Bar Order is a result of arms'-length bargaining among the parties. There is no evidence that the settlement reached by the Liquidating Trustee with Bank is the result of collusion among the parties or that there has been any intent to prejudice any interested parties.

10. The Court finds that entry of this Order is appropriate in order to achieve the finality and repose that is contemplated as a term of the proposed settlement and that good cause therefore exists for the entry of this Order, and is fair and equitable. *See In re U.S. Oil & Gas Litigation*, 967 F.2d 489, 495-96 (11th Cir. 1992); *Munford, Inc. v. Munford, Inc.*, 97 F.3d 449, 454-55 (11th Cir. 1996); *In re Jiffy Lube Securities Litigation*, 927 F.2d 155 (4th Cir. 1991); *Eichenholtz v. Brennan*, 52 F.3d 478 (3d Cir. 1995).

11. The following additional definitions apply to the provisions of this Order barring certain claims as set forth in paragraph 12 below:

- a. “**Releasor**” or “**Releasors**” shall mean (a) all past or present creditors of either Palm Beach Finance Partners, LP and Palm Beach Finance II, LP (collectively, the “**Debtors**”); and (b) all investors and interest holders of either or both of the Debtors, including without limitation, any past or

present limited partners or general partners of either or both of the Debtors. Except with respect to the PBF Claims (as defined below), the terms Releasor and Releasers shall not include (x) Palm Beach Offshore Ltd. and Palm Beach Offshore II Ltd. (the “*Offshore Funds*”); (y) an investor in, or creditor of, the Offshore Funds; or (z) the Offshore Funds’ liquidators (the persons and entities listed in subsections (x), (y) and (z) of this Paragraph 11 are collectively referred to as the “*Offshore Parties*”).

- b. “*Claim*” or “*Claims*” shall mean any obligations, causes of action, demands of any type that a party may presently have, may have or have had in the past, upon or by reason of any matter, cause or thing whatsoever, including without limitation any and all obligations, claims, causes of actions and demands of any kind whatsoever, at law or in equity, indirect, derivative, or direct, known or unknown, discovered or undiscovered that relate in any manner whatsoever to Petters Company, Inc. or the Debtors.
- c. “*Released Bank Entities*” shall mean (i) Bank; (ii) the parent, sister, and direct and indirect subsidiary companies of Bank (“*Bank Affiliates*”); and (iii) current and former employees, officers, directors, agents and attorneys of Bank or the Bank Affiliates, and each of their respective spouses, heirs, executors and assigns.
- d. “*PBF Claim*” or “*PBF Claims*” shall mean (a) any Claim against the Released Bank Entities that belongs to either or both of the Debtors; and (b) any Claim held by Jonathan Spring and Spring Investor Services, Inc. that could be asserted.

12. Releasers are permanently barred and enjoined from commencing, prosecuting, or asserting either directly or in any other capacity, against the Released Bank Entities, any Claims

that any Releasor now has, ever had or may claim to have in the future; provided that nothing in this Order shall (i) enjoin, impair or delay the Securities and Exchange Commission ("**SEC**") from commencing or continuing any Claims, proceedings or investigations against any person or entity, including the Released Bank Entities, (ii) release or discharge any person or entity, including the Released Bank Entities, from any Claims, rights, powers or interests held or assertable by the SEC; (iii) enjoin, impair, delay or impact the Offshore Parties from commencing, asserting, pursuing or continuing any Claims, other than the PBF Claims which are barred, against any person or entity, including the Released Bank Entities; or (iv) release or discharge any person or entity, including the Released Bank Entities, from any Claims, rights, powers or interests held or assertable by the Offshore Parties, other than the PBF Claims which are barred.

13. This Order does not modify any prior Orders of this Court which bar the Offshore Parties from bringing Claims against parties that are the subject of those Orders.

14. The Court retains jurisdiction to enforce or interpret this Order.

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Submitted By:

MICHAEL S. BUDWICK
Fla. Bar No. 938777
mbudwick@melandrussin.com
MELAND RUSSIN & BUDWICK, P.A.
3200 Southeast Financial Center
200 South Biscayne Boulevard
Miami, Florida 33131
Telephone: (305) 358-6363
Telecopy: (305) 358-1221
Attorneys for the Liquidating Trustee

Copies to:

Michael S. Budwick, Esq.

(Attorney Budwick is directed to mail a conformed copy of this Order upon all interested parties and to file a certificate of service.)

Mailing Information for Case 09-36379-PGH

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.

- Geoffrey S. Aaronson gaaronson@aspalaw.com, tdmckeown@mckeownpa.com, sbeiley@aspalaw.com, dlinder@aspalaw.com
- Melissa Alagna mma@segallgordich.com, jxp@segallgordich.com
- Keith T Appleby kappleby@fowlerwhite.com, deborah.lester@fowlerwhite.com
- Paul A Avron pavron@bergersingerman.com, efile@bergersingerman.com
- Marc P Barbat ndixon@furrcohen.com, mbarbat@furrcohen.com
- Steven M Berman sberman@slk-law.com, bgoodall@slk-law.com
- Mark D. Bloom bloomm@gtlaw.com, MiaLitDock@gtlaw.com, miaecfbky@gtlaw.com
- Noel R Boeke noel.boeke@hklaw.com, brooke.tanner@hklaw.com
- Michael S Budwick mbudwick@melandrussin.com, ltannenbaum@melandrussin.com, mrbnefs@yahoo.com
- Dennis M. Campbell dcampbell@campbelllawfirm.net, gschmied@campbelllawfirm.net, lartigas@campbelllawfirm.net
- Francis L. Carter flc@katzbarron.com, lcf@katzbarron.com
- Franck D Chantayan fchantayan@carltonfields.com, kdemar@carltonfields.com, wpbecf@cfdom.net
- Daniel DeSouza ddesouza@becker-poliakoff.com, culpiz@becker-poliakoff.com
- John R. Dodd doddj@gtlaw.com, miaecfbky@gtlaw.com, mialitdock@gtlaw.com
- Heidi A. Feinman Heidi.A.Feinman@usdoj.gov
- Jonathan S. Feldman jfeldman@melandrussin.com, ltannenbaum@melandrussin.com, mrbnefs@yahoo.com
- G Steven Fender efileu1113@gmlaw.com, efileu1094@gmlaw.com, efileu1092@gmlaw.com
- David S Foster david.foster@lw.com, chefiling@lw.com
- Robert G Fracasso Jr rfracasso@shutts.com
- Robert C Furr bnsaralla@furrcohen.com
- Solomon B Genet sgenet@melandrussin.com, ltannenbaum@melandrussin.com, mrbnefs@yahoo.com
- Michael I Goldberg michael.goldberg@akerman.com, charlene.cerda@akerman.com
- Lawrence Gordich LAG@segallgordich.com, jxp@segallgordich.com, mma@segallgordich.com
- Scott M. Grossman grossmansm@gtlaw.com, postiy@gtlaw.com, postiy@gtlaw.com, MiaLitDock@gtlaw.com, FTLitDock@GTLaw.com, miaecfbky@gtlaw.com
- Jennifer Hayes jhayes@foley.com, lcrouch@foley.com
- Mark D. Hildreth mhildreth@slk-law.com, dcooper@slk-law.com
- Kenneth M Jones kjones@moodyjones.com
- Michael A Kaufman michael@mkaufmanpa.com, diamondmk@aol.com, kaufmanesq@gmail.com, gstolzburg@mkaufmanpa.com
- Harris J. Koroglu hkoroglu@shutts.com, jgoodwin@shutts.com
- Paul J McMahon pjmc@pjmllawmiami.com
- Barry E. Mukamal bankruptcy@marcumllp.com, FL64@ecfbis.com
- David J Myers myers@fsblegal.com
- Office of the US Trustee USTPRegion21.MM.ECF@usdoj.gov
- Paul L. Orshan plorshan@orshanpa.com, maria@orshanpa.com
- Leslie S. Osborne rappaport@kennethrappaportlawoffice.com
- John E Page jpage@sfl-pa.com, scusack@sfl-pa.com, lrosetto@sfl-pa.com
- Chad S. Paiva chad.paiva@gmlaw.com, katrina.bankert@gmlaw.com
- Kristopher E Pearson kpearson@stearnsweaver.com, mmasvidal@stearnsweaver.com, rross@stearnsweaver.com, mmesones-mori@stearnsweaver.com, dillworthcdp@ecf.epiqsystems.com, jmartinez@stearnsweaver.com, sanderson@stearnsweaver.com, cgraver@stearnsweaver.com
- Chad P. Pugatch cpugatch.ecf@rprslaw.com
- Christopher S. Rapp csrapp@jones-foster.com
- Patricia A. Redmond predmond@stearnsweaver.com, jrivers@stearnsweaver.com, rross@stearnsweaver.com, mmesones-mori@stearnsweaver.com, dillworthcdp@ecf.epiqsystems.com, sanderson@stearnsweaver.com, nlevine@akingump.com
- Jason S. Rigoli jrigoli@furrcohen.com, ndixon@furrcohen.com
- Kenneth B. Robinson krobison.ecf@rprslaw.com
- Joseph Rodowicz bankruptcy@rodowiczlaw.com, rodowiczlaw@gmail.com
- Robin J. Rubens rjr@lklaw.com, cag@lklaw.com
- Bradley M. Saxton bsaxton@whww.com, scolgan@whww.com, rweinman@whww.com, breece@whww.com
- Michael L. Schuster mschuster@gjb-law.com, gjbecf@gjb-law.com
- Michael D. Seese mseese@hinshawlaw.com, sseward@hinshawlaw.com, lportuondo@hinshawlaw.com
- Steven E. Seward sseward@hinshawlaw.com, lportuondo@hinshawlaw.com
- Bradley S. Shraiberg bshraiberg@sfl-pa.com, dwoodall@sfl-pa.com, vchapkin@sfl-pa.com, lrosetto@sfl-pa.com, scusack@sfl-pa.com, blee@sfl-pa.com
- Paul Steven Singerman singerman@bergersingerman.com, mdiaz@bergersingerman.com, efile@bergersingerman.com
- Peter A. Tappert ptappert@wdpalaw.com, elastra@wdpalaw.com, wbrown@wdpalaw.com, nonega@wdpalaw.com
- James S. Telepman jst@fcohenlaw.com
- Charles W. Throckmorton cwt@kttl.com, lf@kttl.com
- Trustee Services Inc 2 court@trusteeservices.biz, sandirose.magder@gmail.com
- Skipper J. Vine jonathan.vine@csklegal.com
- Jessica L. Wasserstrom jwasserstrom@melandrussin.com, ltannenbaum@melandrussin.com, mrbnefs@yahoo.com
- Morris D. Weiss morrisw@hts-law.com, sherris@hts-law.com, annmariej@hts-law.com
- George L. Zinkler gzinkler.ecf@rprslaw.com

EXHIBIT 3

Palm Beach Diversified Income, LLP
c/o David & Michelle M. Harrold
963 Evergreen Drive
Delray Beach, FL 33483

West Capital Management
1818 Market St, #3323
Philadelphia, PA 19103

Albert Liguori
16590 Crownsbury Way, #201
Ft. Myers, FL 33908

Amy Davenport
PO Box 3511
Midland, TX 79702

Robert Davenport
3 Greenwich Dr
Midland, TX 79705

Robert Davenport, Jr.
104 S. Pecos Street
Midland, TX 79701

ARIS Capital Management
152 W 57 St, 19th Fl
New York, NY 10019

ARIS Multi-Strategy Fund, LP
Aris Capital Management
152 W 57 St 19 Fl
New York, NY 10019

Armadillo Fund
40 Random Farms Cir
Chappaqua, NY 10514

BTA Oil Producers
104 S Pecos St
Midland, TX 79701

Lynda Beal
104 S Pecos St
Midland, TX 79701

Nancy Beal
104 S Pecos St
Midland, TX 79701

Spencer Beal
104 S Pecos St
Midland, TX 79701

Barry Beal
104 S Pecos St
Midland, TX 79701

Keleen Beal
104 S Pecos St
Midland, TX 79701

Kelly Beal
104 S Pecos St
Midland, TX 79701

BayRoc Associates
c/o JamiScott
15 W 53rd St. #24-B
New York, NY 10019

JamiScott LLC
15 W 53rd St #24-B
New York, NY 10019

Leslie Schneider
c/o JamiScott
15 W 53rd St., #24-B
New York, NY 10019

Scott Schneider
c/o JamiScott
15 W 53rd St, #24-B
New York, NY 10019

Leonard & Lillian Schneider
c/o JamiScott LLC
15 West 53rd St #24-B
New York NY 10019

Beacon Partners, Ltd
3030 McKinney Ave, #305
Dallas, TX 75204

Blackpool Partners, LP
701 Harger Rd, #190
Oak Brook, IL 60523

Blackpool Absolute Return Fund, LLC
c/o John E. Page, Esquire
Shraiberg Ferrara & Landau, PA
2385 NW Executive Ctr Dr #300
Boca Raton, FL 33431

Centermark Asset Management
21320 Baltic Dr
Cornelius, NC 28031

Claude Lestage
4893 N Kay
Palm Beach Gardens, FL 33418

Attn: Andrew N. Friedman, Esq.
Cohen Milstein Sellers & Toll, PLLC
1100 New York Avenue, N.W.
Suite 500, West Tower
Washington, D.C. 20005

MIO Partners Inc
c/o Robin E. Keller, Esq.
Hogan Lovells US LLP
875 Third Avenue
New York, NY 10022

McKinsey Master Retirement Trust
c/o Robin Keller, Esq.
Hogan Lovells US LLP
875 Third Avenue
New York, NY 10022

Special Situations Investment Fund, L.P. c/o
Robin Keller, Esq.
Hogan Lovells US LLP
875 Third Avenue
New York, NY 10022

Deer Island, LP
4 Nason Hill Lane
Sherborn, MA 01770

Dennis Dobrinich
3860 Dogwood Ave
Palm Beach Gardens, FL 33410

Douglas A. Kelley, Chapter 11 Trustee
Attn: James A. Rubenstein, Esq.
4800 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402

Douglas A. Kelley, Chapter 11 Trustee
Attn: Terrence J. Fleming, Esq.
4200 IDS Center
80 South Eighth Street
Minneapolis, MN 55402

Father's Heart Family Foundation Inc.
8292 Nashua Dr
Palm Beach Garden, FL 33418

Frank Carruth
5407 S Flagler Dr
West Palm Beach, FL 33405

Freestone Entities
c/o Mr. Justin Young
1918 Eighth Avenue, Suite 3400
Seattle, WA 98101

Fulbright & Jaworski
2100 IDS Center
80 South Eighth Street
Minneapolis, MN 55402-2112

Geoffrey Varga and Neil Morris
Joint Liquidators of Palm Beach Offshore/
c/o Mark W. Eckard, Esq.
1201 N. Market Street, Suite 1500
Wilmington, DE 19801

Edward J. Estrada, Esquire
Christopher A. Lynch, Esquire
Reed Smith LLP
599 Lexington Avenue
New York, NY 10022

George & Nancy Slain
59-1089 Maluhi Pl
Kamuela, HI 96743

H. Thomas Halen, III, President
Golden Gate Financial Group LLC
1750 Montgomery Street, 1st Floor
San Francisco, CA 94111

Golden Gate VP Absolute Return Fund, LP
c/o Michael J. Cordone, Esq.
Stradley Ronon Stevens & Young, LLP
2600 One Commerce Square
Philadelphia, PA 19103

Golden Sun Multi-Manager Fund, LP
c/o Jeffrey S. Posta, Esq.
Stark & Stark
PO Box 5315
Princeton, NJ 08543-5315

Guy M. Hohmann, Esq. and
Messrs. Taube, Weiss and Taylor
Hohmann, Taube & Summers, L.L.P.
100 Congress Ave, 18th Floor
Austin, TX 78701

Harvest Investments LP
Red Bird Farm
4 Nason Hill Rd
Sherborn, MA 01770

Attn: Mitchell Herr
Holland & Knight, LLP
701 Brickell Ave, Suite 3000
Miami, FL 33131

Integrity Partners
c/o Scott Walchek
1499 Danville Blvd, #202
Alamo, CA 94507

James Corydon
6650 N Tower Circle Dr
Lincolnwood, IL 60712

Janette Bancroft
9052 SW 103 Ave
Ocala, FL 34481

Janet Bonebrake
7169 150th Ct N
Palm Beach Gardens, FL 33418

John Daniel
225 Wellington Ln
Cape Girardeau, MO 63701

Judith Goldsmith
3 Water Ln
Manhasset, NY 11030

K&K Capital Management, Inc.
3545 Lake St, #201
Wilmette, IL 60091

Kaufman Rossin & Co.
2699 S Bayshore Dr
Miami, FL 33133

Kenneth A. Ralston
c/o John E. Page, Esquire
Shraiberg Ferrara & Landau, PA
2385 NW Executive Ctr Dr #300
Boca Raton, FL 33431

LAB Investments Fund, LP
1875 S Grant St, #600
San Mateo, CA 94402

Laulima Partners, LP
c/o Smithfield Trust Co.
Attn: Robert Kopf Jr.
20 Stanwix St, #650
Pittsburgh, PA 15222

M. Lee Toothman
216 Barbados Dr
Jupiter, FL 33458

MB Investments, LLC
180 N Wacker Drive, Lower 1
Chicago, IL 60606

Marder Investment Advisors Corp.
8033 Sunset Blvd, #830
Los Angeles, CA 90046

Mark Prevost
2372 Hidden Ridge Ln
Jasper, AL 35504

Martin Casdagli
554 E Coronado Rd
Santa Fe, NM 87505

Maxine Adler
c/o US Trust/Bank of America
and Patrici
150 E. Palmetto Park Road, Suite 200
Boca Raton, FL 33432

Nancy Dobrinich
3860 Dogwood Ave
Palm Beach Gardens, FL 33410

Nancy Hollingsworth
7107 Arrowood Rd
Bethesda, MD 20187

NetWide Capital LLC
P.O. Box 957
Boulder, CO 80306

Palm Beach Finance Holdings, Inc.
c/o Lindquist & Vennum, PLLP
80 South Eighth Street, Ste 4200
Minneapolis, MN 55402

Pemco Partners, LP
8 Lyman St, #204
Westborough, MA 01581

Petters Company, Inc.
c/o Lindquist & Vennum, PLLP
80 South Eighth Street, Ste 4200
Minneapolis, MN 55402

Quantum Family Office Group, LLC
1500 San Remo Avenue, Suite 210
Coral Gables, FL 33146

Raymond Feldman
4644 Balboa Ave
Encino, CA 91316

Raymond G. Feldman Family Ventures, LP
c/o John E. Page, Esquire
Shraiberg Ferrara & Landau, PA
2385 NW Executive Ctr Dr #300
Boca Raton, FL 33431

Randall Linkous
1174 SW 27 Ave
Boynton Beach, FL 33426

Ron Priestley
5565 N Espina Rd
Tuscon, AZ 85718

Ronald R. Peterson
Jenner & Block LLP
353 North Clark St.
Chicago, IL 60654

Ronald R. Peterson
c/o Lazar P. Raynal, Esquire
McDermott Will & Emery
227 West Monroe Street
Chicago, Illinois 60606-5096

SALI Fund Services, LLC
6836 Austin Center Street, Suite 320
Austin, TX 78731

SSR Capital Partners, LP
4514 Cole Ave, #1000
Dallas, TX 75205

Sage Capital Resources
3006 Julia St W, Unit A
Tampa, FL 33629

Sandra Linkous
1174 SW 27 Ave
Boynton Beach, FL 33426

Second City Alternatives
801 Park Ave
Wilmette, IL 60091

Select Access Management
15 Valley Dr
Greenwich, CT 06831

Sims Moss Kline & Davis, LLP
Three Ravinia Drive
Suite 1700
Atlanta, GA 30346

Spring Investor Services Inc.
Red Bird Farm
4 Nason Hill Lane
Sherborn, MA 01770

Sterling Management Inc.
160 White Oaks Ln
Vadnais Heights, MN 55127

Steve Bakaysa
36 Frantzen Ter
Cheektowaga, NY 14227

Strategic Stable Return Fund (ID), LP
4514 Cole Ave, #1000
Dallas, TX 75205

Strategic Stable Return Fund II, LP
4514 Cole Ave, #1000
Dallas, TX 75205

Table Mountain Capital, LLC
850 Quince Ave
Boulder, CO 80304

Ted Goldsmith
3 Water Ln
Manhasset, NY 11030

Tradex Global Advisors
35 Mason St, 4th Fl
Greenwich, CT 06830

Tradex Global Master Fund
c/o Andrew N. Friedman, Esquire
1100 New York Avenue, N.W.
Suite 500, West Tower
Washington, DC 20005

Umbach Financial Group, LLC
525 South Flagler Drive, #100
West Palm Beach, FL 33401

VAS Partners, LLC
Attn: Vincent P Allegra
4401 W Roosevelt Rd
Hillside, IL 60162

Valur Egilsson
11966 Tuliptree Ln
Huntley, IL 60142

Vincent Allegra
449 S Evergreen St
Bensenville, IL 60106

Wilbur Hobgood
2189 Radnor Ct
North Palm Beach, FL 33408

Gonzalo R Dorta
334 Minorca Ave
Miami, FL 33134

Steven W Thomas
14 27 Ave
Venice, CA 90291

Joel Barnett
Barnett Capital Ltd.
450 Skokie Blvd., # 604
Northbrook, IL 60062

Guardian Capital, LLC
3225 Aviation Avenue
601
Miami, FL 33133

Ocean Gate Capital Management, LP
5 Sewall Street
Marblehead, MA 01945

Santa Barbara Investment Capital
2220 Santiago Rd
Santa Barbara, CA 93103

DMS House
P.O. Box 31910
Grand Cayman KY1-1208
CAYMAN ISLANDS
Attention: Wade Kenny c/o Sky Bell

Pete L DeMahy, Esquire
DeMahy Labrador et al.
150 Alhambra Circle
Coral Gables, FL 33134

Debevoise & Plimpton LLP
Attn: Edwin G. Schallert, Esquire
919 Third Avenue
New York, NY 10022

Bruce Prevost
8292 Nashua Dr
Palm Beach Gardens, FL 33418

David Harrold
963 Evergreen Dr
Delray Beach, FL 33483

Lewis B. Freeman & Partners, Inc.
c/o Kenneth A. Welt, Receiver
1776 North Pine Island Road, Suite 102
Plantation, FL 33322

Lionheart Insurance Fund Series Interests of
the SALI Multi-Fund Series Fund, LP
6836 Austin Center Blvd. Ste 320
Austin, TX 78731

U.S. Bank National Association
c/o Richard G. Wilson, Esquire
Maslon Edeman Borman & Brand, LLP
90 S. 7th Street, Suite 3300
Minneapolis, MN 55402-4140

Sarah Stroebe, Snr Corp Counsel
U.S. Bank National Association
800 Nicollet Mall
Minneapolis, MN 55402-4140

Golden Sun Capital Management, LLC
885 Arapahoe Avenue
Boulder, CO 80302

Genesis Capital
Attn: Michael Dubinski
7191 Wagner Way NW
Gig Harbor, WA 98335

Robin J. Rubens, Esquire
Levine Kellogg Lehman, et al.,
201 South Biscayne Blvd.
22nd Floor, Miami Center
Miami, FL 33131

Prateek Mehrotra, CFA, CAIA
Sumnicht & Associates
W6240 Communication Ct, #1
Appleton, WI 54914-8549

Ron Robertson, President
Strategic Capital Group
7191 Wagner Way NW, Suite 302
Gig Harbor, WA 98335

Globefin US Advisors, LLC
Attn: Andrew Hoffman
980 6th Avenue, 4th Floor
New York, NY 10018

Internal Revenue Service
PO Box 7346
Philadelphia, PA 19101-7346

John Docherty
United States Attorney's Office
316 North Robert Street, Suite 404
Saint Paul, MN 55101

Andrew P. O'Brien, Esquire
U.S. Securities and Exchange Commission
Chicago Regional Office
175 West Jackson Blvd., Suite 900
Chicago, IL 60604

Sean O'D. Bosack
780 N. Water Street
Milwaukee, WI 53202

John L. Kirtley
780 N Water Street
Milwaukee, WI 53202

Matia L. Kreiter
780 N Water Street
Milwaukee, WI 53202

Daniel N. Rosen, Esquire
Parker Rose, LLC
300 First Avenue North, Suite 200
Minneapolis, MN 55401

Kenneth A. Welt
8255 West Sunrise Blvd., # 177
Plantation, FL 33322

Palm Beach Offshore Ltd.
Anchorage Centre, 2nd Floor
PO Box 32021 SMB
Grand Cayman, Cayman Islands

Palm Beach Offshore II, Ltd.
Admiral Financial Center, 5th Floor
90 Fort Street, PO Box 32021
Grand Cayman KY-1208
Cayman Islands

Scotia Capital
The Bank of Nova Scotia
Global Alternative Asset Group
40 King Street W, 68th Fl
Toronto Ontario M5W 2X6

Citco Global Securities Services
2600 Airport Business Park
Kinsale Road
Co.Cork
Ireland

Lane E. Roesch
White & Case, LLP
200 S. Biscayne Blvd., Suite 4900
Miami, FL 33131

Monica Hanlet
PO Box 321255
Palm Coast, FL 32135-1255

Michael R. Band, Esquire
Band Law Firm
169 East Flagler Street, Suite 1200
Miami, FL 33131

Andy Hall
Soffer Charbonnet LLP
7300 France Avenue South, Suite 210
Minneapolis, MN 55435

Frank Vennes
2440 N. Courtenay Pkwy.
Merritt Island, FL 32953

Deutsche Bank (Cayman) Ltd
c/o Deutsche International Trust Corporation
Mauritius Limited
Level 5 Altima Building,
56 Ebene Cybercity
Mauritius

HSBC SECURITIES (USA) INC
452 Fifth Avenue - T3
New York, NY 10018

Carlton Beal Family Trust
104 S Pecos Street
Midland, TX 79701

Beal Family trust FBO Kelly Beal
104 S Pecos Street
Midland, TX 79701

The Beal Trust U/A
104 S Pecos Street
Midland, TX 79701

Beal GST Exemption Trust
104 S Pecos Street
Midland, TX 79701

Carlton Beal Family Trust
104 S Pecos Street
Midland, TX 79701

Thomas J. Ginley Life Ins. Trust
Dated 1-22-97
6650 N Tower Circle Drive
Lincolnwood, IL 60712

Zcall, LLC
c/o Brian S. Dervishi
1 S.E. 3rd Avenue, # 1980
Miami, FL 33131

Scall, LLC
c/o Weissman, Dervishi, P.A.
Suntrust International Center
1 SE 3rd Avenue, #1700
Miami, FL 33131

U.S. Trust and Patricia Swab
Successor Trustees, TUA Maxine B Adler
POB 842056
Dallas, TX 75284

James L. Volling, Esquire
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-3901

Dana L. Choi, Esquire
Holland & Knight LLP
701 Brickell Avenue, Suite 3000
Miami, FL 33131

Palm Beach Links Capital, LP
12200 N Stemmos Fwy, Suite 316
Dallas, TX 75234

Scott M. Grossman
Greenberg Traurig, P.A.
401 East Las Olas Blvd., Suite 2000
Fort Lauderdale, FL 33301

Hillcrest Properties
c/o Stephen Willia
59 Damonte Ranch Pkwy, #B-360
Reno, NV 89521

David S. Foster, Esq.
Latham & Watkins LLP
233 South Wacker Drive
Chicago, IL 60606

John Bergman, Nancy Rodman Anguish, Rodman
Capital Holdings, Ltd. Beacon Partners, Ltd., c/o
Erika L. Morabito, Esq.
FOLEY & LARDNER LLP
3000 K Street, N.W., Suite 600
Washington, D.C. 20007

Bradley M. Saxton, Esq.
Ryan E. Davis, Esq.
Winderweede Haines et al.
390 N. Orange Avenue, Ste. 1500
Orlando, Florida 32802

James A. Lodoen, Esq.
Lindquist & Vennum PLLP
4200 IDS Center
80 S. 8th Street
Minneapolis, MN 55402

Cathy Ta, Esq.
Best Best & Krieger
3750 University Avenue
Riverside, CA 92502-10208

Jonathan Vine, Esq.
1645 Palm Beach Lakes Blvd.
2nd Floor
West Palm Beach, FL 33401

Zimmer Lucas Capital LLC
7 West 54th Street
New York, NY 10019