

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

Securities and Exchange Commission,

Plaintiff,

vs.

Case No. 23-20719-Civ-SCOLA

BKCoin Management, LLC  
and other Defendants.

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**RECEIVER’S PROPOSED LIQUIDATION PLAN**

Michael I. Goldberg, the court-appointed receiver (the “Receiver”) for Defendant BKCoin Management LLC and the Relief Defendants, BKCoin Capital LP (the “Legacy Fund”), BK Offshore Fund, Ltd. (“BK Offshore”), BKCoin Multi-Strategy Master Fund, Ltd. (“Multi-Strat Master”), BKCoin Multi-Strategy Fund, Ltd. (“Multi-Strat Offshore”), BKCoin Multi-Strategy Fund LP (“Multi-Strat Onshore”), and Bison Digital LLC (“Bison Digital”) (collectively, the “Receivership Entities”), by and through undersigned counsel and in accordance with the Order Appointing Receiver (the “Receivership Order”) (ECF No. 8, ¶ 50), submits this Liquidation Plan.<sup>1</sup>

**I. INTRODUCTION**

On February 23, 2023, the Securities and Exchange Commission (the “SEC”) filed its *Complaint for Injunctive and Other Relief* (ECF No. 1) (the “Complaint”), seeking relief against BKCoin Management LLC, one of its managing members, Min Woo Kang (a/k/a “Kevin Kang”) (together, the “Defendants”), and the Relief Defendants.

From October 2018 and into October 2022, BKCoin Management LLC served as general partner for and investment manager of five of the six Relief Defendants. *See* Complaint, ¶ 1.

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<sup>1</sup> The use of the term “Receivership Entities” may involve the action of one or more of the above seven entities and does not mean necessarily all of the above entities when discussing a particular action.

Defendants and the Relief Defendants allegedly raised nearly \$100 million from at least 55 investors. *Id.* ¶ 2. The sixth Relief Defendant, Bison Digital, received \$12 million from BKCoin Management LLC and the other Relief Defendants for no apparent or legitimate reason. *Id.* ¶ 3.

The SEC filed suit to prevent further fraud and misappropriation of investor money by the Defendants, alleging that Defendants had made false and materially misleading statements to their investors in their offerings, that Defendants had comingled investor assets, made Ponzi-like payments to fund investor redemptions, and that assets of the funds were improperly diverted to or for the personal benefit of Defendant Kevin Kang. *Id.* ¶ 2-3. Based on these assertions, the SEC sought the appointment of a receiver over the Receivership Entities as well as entry of order freezing the assets of the Defendants and the Relief Defendants. The Court granted the SEC's motion for the appointment of a receiver on February 24, 2023, appointing Michael I. Goldberg as receiver over the Receivership Entities. Receivership Order, ¶ 2.

## **II. SUMMARY OF LIQUIDATION PLAN**

The Receivership Order directs the Receiver to “develop a plan for the fair, reasonable, and efficient recovery and liquidation of all remaining, recovered, and recoverable Receivership Property” and to file same in the form of a Liquidation Plan. *Id.* ¶ 50. In short, the Receiver's Liquidation Plan is to accumulate assets and ultimately distribute them, with the Court's authorization, on a *pro rata* basis to all creditors with an allowed claim.

The assets to be distributed, which currently comprise the “numerator,” are set forth in detail below. For the most part, except for potential litigation recoveries, the “numerator” is now known, and any future litigation recoveries will be added to the assets to be distributed. The process of figuring out the “denominator” – the amount of total claims and each creditor's individual percentage of the total claims – is much more complicated and not yet completed. This process is

accomplished by determining each individual creditor's "inflow" (transfer of cash or assets by the creditor to the Receivership Entities) minus the "outflow" (the value of cash or assets the Receivership Entities transferred to the creditor) to determine if the creditor is a "net winner" or a "net loser." If the creditor is a "net loser" (meaning the creditor received less from the Receivership Entities than it transferred to the Receivership Entities), the creditor will have an allowed claim equal to the amount of their net loss. If a creditor is a "net winner" (meaning the creditor received more from the Receivership Entities than it transferred to the Receivership Entities), then such creditor will not have a claim and may actually be subject to a "clawback" claim to recoup any "profit" that it may have wrongfully received. The total of all net loser claims comprises the "denominator."

Unlike a typical investment fraud based solely on transfers of cash, whereby the process of computing a creditor's claim is rather straightforward and entails simply subtracting cash outflows from cash inflows, the process in this case is significantly more complicated because (i) certain "outflows" to creditors may have been based on legitimate trading gains in cryptocurrency and therefore excluded from the calculation; and (ii) many transfers (both inflows and outflows) were made in cryptocurrency, requiring the forensic accountants to compute the value of the transfer based on the subject cryptocurrency's spot price on the day of the transfer. Furthermore, the forensic accountants must identify the specific point in time where the business went "sideways," and payments made thereafter are not based on legitimate investment data. Doing so will ensure that only improper transfers are taken into consideration. Only after this analysis is completed can the Receiver finalize a "denominator" and request the Court to approve the distribution to creditors.

The Receiver expects the forensic accountants will complete their analysis shortly, at which point the Receiver will supplement this Liquidation Plan with the claims information. The

Receiver reserves the right to modify, supplement, or otherwise revise the recommendations presented in this Liquidation Plan as the investigation is still ongoing.

### **III. ASSETS AVAILABLE FOR DISTRIBUTION**

#### **A. Recovered, Remaining, and Recoverable Real Property**

##### **1. Assets On Hand**

The Receiver identified and secured a condominium titled in the name of BK Offshore and located at 76 Madison Avenue, Apartment 3A, New York, New York 10016. The Receiver sought and obtained this Court's approval for the sale of the condominium, ECF Nos. 63, 66, & 88, and the sale closed on November 16, 2023, for \$2,230,000. Because the property was titled in the name of BK Offshore, a BVI entity, the sale proceeds were subject to a 21% tax withholding under the Foreign Investment in Real Property Tax Act.<sup>2</sup> Accordingly, the cash immediately available to the Receivership Estate by virtue of the condo sale net of tax withholdings is \$1,525,970.14.

The Receiver has not identified any other real property in the name of the Receivership Entities other than the condominium described above. Should the Receiver identify any other real property in the name of the Receivership Entities or held directly or indirectly for their benefit, the Receiver will update the Court accordingly.

#### **B. Recovered, Remaining, and Recoverable Personal Property**

##### **1. Assets On Hand**

At the time of filing this Liquidation Plan, the aggregate amount of cash on hand totals \$6,708,049.53, which includes the \$5,177,945.85 cash on hand outlined in the Receiver's Third Interim Status Report (ECF No. 106) as well as the \$1,525,970.14 condominium sale proceeds. The cash assets recovered to date are comprised of fiat currency held in Receivership Entity bank

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<sup>2</sup> The Receiver believes he has a basis to obtain a refund of this money and has instructed his accountants to attempt to obtain a refund of this money from the IRS.

and cryptocurrency accounts in addition to the proceeds from the liquidation of cryptocurrency. Third Interim Status Report, at 4. These funds, along with the net proceeds of the condominium sale, are held in a federally insured bank account established by the Receiver. *See id.* at 3.

## **2. Potentially Recoverable Assets**

In addition to cash, the Receiver has identified cryptocurrency held at various exchanges as well as in a hardware wallet. The cryptocurrency is broken down by exchange in the “Summary of All Cryptocurrency Assets” chart in the Third Interim Report. *See id.* at 5-6. The hardware wallet and its secret key are under Defendant Kang’s possession and control. As of the filing of the Third Interim Report, the hardware wallet is affiliated with three wallet addresses holding \$687,727.84 worth of cryptocurrency. *Id.* at 4-5.

One of the Receivership Entities, Bison Digital, made several investments in cryptocurrency-related companies. *See id.* at 7. The Receiver is unable to determine the market value of the Bison Digital investments, as no secondary market exists for them.

## **3. Contemplated Liquidation Procedure**

With respect to cryptocurrency still held on exchanges, the Receiver has filed his *Uncontested Motion for Clarification* (the “Clarification Motion”), ECF No. 122, seeking the entry of an order that will facilitate the transfer of cryptocurrency from domestic and onshore exchanges to the Receiver’s cryptocurrency account. Upon the Court’s approval of the Receiver’s Clarification Motion, the exchanges listed therein have agreed to transfer the cryptocurrency to the Receiver. The cryptocurrency will then be liquidated in order to protect the assets from the volatility of the digital asset market. The Receiver will also use the order granting the Clarification Motion to secure and liquidate any additional cryptocurrency located during the course of his investigation.

Similarly, the Receivership Entities hold claims in the bankruptcy proceedings of various cryptocurrency companies. The Receiver is working with debtors' counsel to preserve any Receivership Entity claims. If and when the Receiver recovers those funds, they will be liquidated in the same manner as the other digital assets.

As for the hardware wallet, if the Receiver is unable to secure the hardware wallet by agreement with Defendant Kang's counsel, the Receiver will have to resort to compelling turnover of the Receivership Property. The Receiver remains cognizant of the cost-benefit analysis of such motion practice.

Lastly, with respect to the Bison Digital investments, the Receiver is in the process of coordinating with the companies in which Bison Digital invested to ascertain whether the companies know of any parties interested in purchasing the shares from Bison Digital. To date, neither the companies nor the Receiver have been able to identify any secondary market for the shares, but the discussions are still ongoing.

Should the Receiver identify any additional personal property, the Receiver will dispose of the property "in the ordinary course of business in the manner the Receiver deems most beneficial to the Receivership Estate, and with due regard to the realization of the due and proper value of such Receivership Property." Receivership Order, ¶ 35.

### **C. Potential Litigation Claims**

While the Receiver's top priorities have been to locate and secure physical assets and unravel the Receivership Entities' business operations, the Receiver is also analyzing the viability of potential claims against third parties who dealt with the Receivership Entities prior the Receivership who may be liable for their conduct as well as third parties who may have received

payments or transfers to which they were not entitled or otherwise improperly benefitted from their affiliation with the Receivership Entities.

As of the filing of this Liquidation Plan, the Receiver is still investigating and has not yet determined whether any such claims exist, the viability of such claims, nor the amount of recovery, if any, they may bring to the Receivership Estate. To the extent such claims exist, the Receiver will determine their propriety of bringing such claims, including a cost-benefit analysis to the Receivership Estate of bringing them.

#### **IV. LEGAL AUTHORITY**

Since the Receiver's appointment, the Receiver and his professionals have undertaken the challenging process of unraveling the business operations, trading history, and investments made by the Receivership Entities. The forensic analysis of the Receivership Entities' accounts has uncovered extensive commingling of investor funds among the Receivership Entities' bank accounts and cryptocurrency accounts. The analysis has also demonstrated Ponzi-like payments, where new investor money was used to repay obligations to older investors. Based on these characteristics, the Receiver believes, and case law supports, a *pro rata* distribution to creditors ultimately determined to have an allowed claim.

One of the most significant hurdles in formulating a claims process is determining the extent to which it is practical (or even possible) to treat the seven Receivership Entities as separate from one another as opposed to treating them as a common enterprise. The Receiver anticipates that there will be several categories of potential creditors: (1) investors in one or more of the Receivership Entities; (2) business operations creditors, such as former employees and other service providers; and (3) cryptocurrency lenders. At this stage, the Receiver is unable to definitively determine whether the current and future recovery of assets will be sufficient to cover

the universe of claims that are expected to be allowed. However, for purposes of this proposed Liquidation Plan, it is currently assumed that the amount of cash to be distributed will be less than the total amount of allowed claims.

In circumstances like those in this receivership – where the amount of purported claims of the investors exceeds the funds available for distribution to the claimants – a court is obligated to devise an equitable system of distribution with the goal of treating each victim of the investment fraud scheme “fairly and as nearly equally as is possible.” *See United States v. Cabe*, 311 F. Supp. 2d 501, 504 (D.S.C. 2003). It is appropriate for a receiver to seek guidance from a court regarding a matter of such import and wide discretion as devising a claims process in an equity receivership. As has been noted, “[i]t is the court itself which has the care of the property in dispute . . . [and the] receiver is but the creature of the court.” *SEC v. Safety Fin. Serv., Inc.*, 674 F.2d 368, 373 (5th Cir. 1982) (quoting *Atlantic Trust Co. v. Chapman*, 208 U.S. 360, 371 (1908)). It has further been observed that “[i]n accepting or rejecting the claims of creditors, as well as in filing a report of findings of fact and conclusions of law, a receiver acts like a master . . . [and] a district court must decide *de novo* all objections to findings of fact and conclusions of law made or recommended by a master before ruling on the master’s recommendations.” *United States v. Fairway Cap. Corp.*, 433 F. Supp. 2d 226, 231 (D.R.I. 2006), *aff’d*, 483 F.3d 34 (1st Cir. 2007) (citations omitted).

One consistently recognized principle is that the district court has extremely broad powers and wide discretion to determine relief in equity receiverships. *See, e.g., SEC v. Cap. Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005) (quoting *SEC v. Lincoln Thrift Ass’n*, 577 F.2d 600, 606 (9th Cir. 1978)); *see also SEC v. Basic Energy & Affiliated Res., Inc.*, 273 F.3d 657, 668 (6th Cir. 2001); *SEC v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992), *rev’d in part on other grounds*, 998 F.2d 922 (11th Cir. 1993). “The basis for this broad deference to the district court’s supervisory



role in equity receiverships arises out of the fact that most receiverships involve multiple parties and complex transactions.” *See Cap. Consultants*, 397 F.3d at 738 (quoting *Hardy*, 803 F.2d at 1037). And, because a district judge overseeing an equity receivership faces a myriad of complicated problems in dealing with the various parties and issues involved in administering the receivership . . . [r]easonable administrative procedures, crafted to deal with the complex circumstances of each case, will be upheld.” *Hardy*, 803 F.2d at 1038. Accordingly, a district court’s decisions relating to the choice of a distribution plan for the receivership are reviewed for abuse of discretion. *Id.* at 1037-38; *SEC v. Credit Bancorp, Ltd.*, 290 F.3d 80, 87 (2d Cir. 2002); *Elliott*, 953 F.2d at 1569-70.

Whatever remedy a district court ultimately chooses as an equitable distribution plan must take into consideration the due process rights of claimants. In general, investors may have some due process rights in the distribution plan of a receivership, although there are no specific standards or rules setting forth precisely what rights such investors would have to participate in such a proceeding. *See SEC v. TLC Invs. & Trade Co.*, 147 F. Supp. 2d 1031, 1034 (C.D. Cal. 2001). In the context of the formulation of an equitable distribution plan, due process requires notice and an opportunity to be heard. *See Elliott*, 953 F.2d at 1566.

In addition to determining the identity of the investors and the amounts of their purported claims, a plan must be devised in order to determine what percentage of the assets of the receivership estate is to be distributed to each of the investors. As to the particular method for distributing funds, “[n]o specific distribution scheme is mandated so long as the distribution is ‘fair and equitable.’” *SEC v. P.B. Ventures*, No. CIV. A. 90-5322, 1991 WL 269982, at \*2 (E.D. Pa. Dec. 11, 1991). In deciding how receivership assets should be distributed to investors, “the fundamental principle which emerges from [the] case law is that any distribution should be done

equitably and fairly, with similarly-situated investors or customers treated alike.” *SEC v. Credit Bancorp, Ltd.*, No. 99 CIV. 11395 RWS, 2000 WL 1752979, at \*13 (S.D.N.Y. Nov. 29, 2000), *aff’d*, 290 F.3d 80 (2d Cir. 2002) (collecting cases). Further, “equity demands equal treatment of victims in a factually similar case.” *Cap. Consultants*, 397 F.3d at 738-39; *see also SEC v. Drucker*, 318 F. Supp. 2d 1205, 1206-07 (N.D. Ga. 2004); *United States v. Real Prop. Located at 13328 & 13324 State Highway 75 N.*, 89 F.3d 551 (9th Cir. 1996). Since investors generally occupy the same legal position as other investors, equity should not permit them a preference over another investor for “equality is equity.” *Elliott*, 953 F.2d at 1570 (quoting *Cunningham v. Brown*, 265 U.S. 1, 13 (1924)).

A *pro rata* distribution system is the most common distribution process in equity receiverships involving multiple claimants and commingled funds and, by its very definition, treats equally situated creditors equitably. *See CFTC v. Equity Fin. Grp., Inc.*, No. CIV 04-1512 RBK AMD, 2005 WL 2143975, at \*23-\*24 (D.N.J. Sept. 2, 2005), *report & recommendation adopted*, 2005 WL 2864783 (D.N.J. Oct. 26, 2005); *Real Property*, 89 F.3d at 553-54; *see also Credit Bancorp*, 290 F.3d at 88-89 (“Courts have favored pro rata distribution of assets where, as here, the funds of the defrauded victims were commingled and where victims were similarly situated with respect to their relationship to the defrauders”). Thus, since this case involves multiple investors and commingled funds, a *pro rata* distribution scheme of distribution is the most equitable method.

The “net investment” approach in calculating investor claims is also the most common method of claims calculation in federal equity receiverships. The case law supporting the use of the “net investment” approach to calculating claims arises out of cases involving investment schemes where earlier investors’ returns were generated by the influx of fresh capital from

newcomers rather than through legitimate investment activity. *See, e.g., Cabe*, 311 F. Supp. 2d at 509; *see generally Cunningham*, 265 U.S. at 1. Although this case is not a true Ponzi scheme, as explained above, it bears many of the same attributes like commingling funds and using money (or cryptocurrency) contributed by newer investors to pay returns to older investors.

The Receiver believes the “net investment” approach is applicable and should be utilized here based on the underlying facts of this case. As discussed, although the Receivership Entities engaged in some legitimate cryptocurrency investing, in many situations they also incurred significant trading losses yet still paid out redemptions and returns to investors without taking those trading losses into account. Instead, many of those redemptions and returns were paid from other investors’ newly invested funds and in amounts not reflecting the true value of the underlying trading activity.

However, the implementation of a “net investment” approach may need to be tailored to the specific facts of this case, considering that the Receivership Entities were not necessarily operating fraudulently from their outset, but rather ended up engaging in fraud at a later point in time. As a result, once the forensic analysis is completed, the Receiver will make a recommendation to the Court as to how investors’ claims should be calculated.

The Receiver intends to work with his professionals to formulate a claims process for the Court’s approval that will provide for the efficient and equitable distribution of assets while also minimizing administrative costs. Currently, the Receiver anticipates presenting a proposed claims process for the Court’s approval in early 2024, which will seek to establish the process and procedures for filing claims as well as establish a bar date for claims against the Receivership Entities. Once a claims process is approved by the Court, the Receiver will provide notice to all known investors and any other interested parties.

V. **CONCLUSION**

In conclusion, after each creditor's allowed claim is determined, the Receiver proposes to distribute available cash to each creditor on a *pro rata* basis. This Liquidation Plan will necessarily require the Receiver to analyze and compute each individual investor's trading activity to determine whether or not the distributions they received were based on legitimate trading activity or simply the whim of the Receivership Entities' principals. The forensic accountant should be done with this analysis shortly, at which time the Receiver will supplement this Liquidation Plan.

Dated December 21, 2023

Respectfully submitted,

By: /s/ Katherine A. Johnson

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on this Thursday, December 21, 2023 via the Court's notice of electronic filing on all CM/ECF registered users entitled to notice in this case.

By: /s/ Katherine A. Johnson

Katherine A. Johnson, Esq.