

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 15-cv-60082-DIMITROULEAS/SNOW

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

FREDERIC ELM f/k/a FREDERIC ELMALEH, et al.,

Defendants,

and

AMANDA ELM f/k/a AMANDA ELMALEH,

Relief Defendant.

\_\_\_\_\_ )

**RECEIVER'S MOTION FOR APPROVAL OF CLAIMS PROCESS**

Receiver Grisel Alonso, not individually, but solely in her capacity as Court-appointed receiver ("Receiver") for Elm Tree Investment Advisors, LLC, Elm Tree Investment Fund LP, Elm Tree 'e'conomy Fund LP, and Elm Tree Motion Opportunity LP (collectively, the "Receivership Entities"), respectfully files this Motion for Approval of Claims Process, and requests that this Court enter an order: 1) approving the procedure to administer claims set forth herein and the proof of claim form attached as **Exhibit "A"** (the "Proof of Claim Form"); and 2) permitting notice of the deadline by mail, by publication on the Receiver's website, and by publication in The New York Times at least one day per week for two consecutive weeks.

The Securities and Exchange Commission (the "Commission" or "SEC") does not object to the relief sought by the Receiver in this Motion.

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One Biscayne Tower, 21st Floor 2 South Biscayne Blvd. Miami, Florida 33131-1811 305.373.9400

## I. INTRODUCTION

On January 15, 2015, the SEC filed its Complaint and Emergency Motion for Temporary Restraining Order ("SEC Action") against Frederick Elm ("Elm"), the Receivership Entities (collectively, "Defendants"), and Relief Defendant Amanda Elm ("Mrs. Elm"), alleging that the Defendants were engaging in a scheme to defraud investors and violate the federal securities laws. [D.E. 1]. In the SEC action, the SEC sought, among other relief, entry of a temporary restraining order and preliminary injunction. After reviewing the SEC submission, on January 16, 2015 the court entered an Order freezing Defendants' assets (the "TRO"). [D.E. 14].

On January 16, 2015, Court also entered an Order appointing Ms. Alonso as Receiver over the Receivership Entities (the "Receivership Order") [D.E. 13]. Pursuant to the Receivership Order, the Receiver is obligated to, among other things, take possession of all Receivership Entities' property and assets, investigate the manner in which the affairs of the Defendants were conducted, and take actions for the benefit and on behalf of the Defendants and their investors. In order to assist the Receiver in her efforts to recover and take control of the Receivership Entities' assets for the benefit of its defrauded investors, the Receivership Order provides that the Receiver shall, among other things:

Take immediate possession of all property, assets and estates of every kind of ETI and the Elm Tree Funds, whatsoever and wherever located belonging to or in the possession of ETIA and the Elm Tree Funds, including but not limited to all offices maintained by ETIA and the Elm Tree Funds, rights of actions, books, papers, data processing records, evidences of debt, bank accounts, savings accounts, certificates of deposit, stocks, bonds, debentures and other securities, mortgages, furniture, fixtures, office supplies and equipment, and all real property of ETIA and the Elm Tree Funds, wherever situated, and to administer such assets as is required in order to comply with the directions contained in this Order...

...

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Investigate the manner in which the affairs of ETIA and the Elm Tree Funds were conducted and institute such actions and legal proceedings, for the benefit and on behalf of ETIA and the Elm Tree Funds and their investors and other creditors, as Receiver deems necessary against those individuals, corporations, partnerships, associations and/or unincorporated organizations, which the Receiver may claim have wrongfully, legally or otherwise improperly misappropriated or transferred monies or other proceeds directly or indirectly traceable from the investors in ETIA and the Elm Tree Funds...

[D.E. 13 at paragraphs 1-2].

On January 28, 2015, both the Elms and the Receiver, on behalf of the Receivership Entities, agreed to the entry of a preliminary injunction continuing the terms of the TRO against the Elms and the Receivership Entities, except as relates it relates to the Receiver's ability to perform her Court-ordered duties under Receivership Order [D.E. 13]. On January 29, 2016, upon consent, the Court entered a Judgment of Permanent Injunction and other relief as to the Receivership Entities [D.E. 137], permanently enjoining the Receivership Entities from violating Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10(b)(5) thereunder. Further, that Judgment enjoined the Receivership Entities from violations of Section 206 of the Investment Advisors Act of 1940. The Judgment specifically provides that the Receivership Order entered by the Court on January 16, 2015 remains in effect and that the Court-appointed Receiver shall continue to act consistently with the rights and powers afforded to her under the terms of the Receivership Order.

In accordance with her powers and obligations under the Receivership Order, the Receiver has determined that is in the best interest of the Receivership Entities and the investors to commence a claims process, by which all investors in, and creditors of, the Receivership Entities may make any claims they may have for the return of any funds to which they may be entitled and the Receiver may evaluate and process those claims for the purposes of

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recommending an eventual plan of distribution to the Court.

The Receiver is substantially underway in the process of determining legal obligations of the Receivership Entities. However, for the Receiver to confirm the extent of the Receivership Entities' legal obligations and to allow investors, creditors, and other interested parties to advise the Receiver of any possible claims against the Receivership Entities, the Receiver proposes that the Court approve the Proof of Claim Form and the procedures to administer claims as set forth below.

## **II. SOURCES OF RECOVERY FOR DISTRIBUTION AND POTENTIAL SOURCES**

The Receiver has recovered a significant amount of funds to date. The bulk of recovered funds generally fall into four categories: (1) Funds recovered from bank and brokerage accounts; (2) Funds generated from the recovery and sale of a home purchased by Elm (the "Elm Home") utilizing Receivership Entities' funds; (3) Funds recovered as a result of the recovery and sale of personal property purchased by Elm and Mrs. Elm with the Receivership Entities' funds; and (4) Funds recovered to date from third parties who either improperly received Receivership Entities' funds or were holding such funds on behalf of the Receivership Entities.

### **A. Recovery and Sale of Elm Home**

Pursuant to the Receivership Order, on June 2, 2015 the Receiver filed an Emergency Motion for Entry of an Order Approving the Turnover of the Elm Home [D.E. 79]. The Receiver sought turnover because the down payment and mortgage payments for the Elm Home were made with Receivership Entities' monies. The Receiver believed that the best way to preserve the asset was to acquire possession and control over the Elm Home to protect its value and assume the obligations for, among other things, payments to the mortgage holder, Bank of the Internet

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("BOFI"), taxes, insurance, and upkeep. On June 22, 2015, the Court entered an Agreed Order Approving Turnover of the Home of Defendants Frederic Elm and Amanda Elm [D.E. 100].

Once in possession of the Elm Home, the Receiver took all actions necessary to preserve the value of the Elm Home, and with the approval of the Court marketed the Elm Home through a retained real estate professional. The Receiver obtained appraisals and ultimately negotiated an offer to purchase the Elm Home for \$1,640,000. On December 7, 2015, the Receiver filed an Unopposed Motion to Approve the Sale of Real Property (Elm Home) [D.E. 130], and by Order entered on December 8, 2015, the Court approved the sale of the Elm Home for \$1,640,000. [D.E. 131].<sup>1</sup> The sale of the Elm Home resulted in a net recovery to the Receivership Estate after payment of all expenses, including a payoff of the mortgage to BOFI, of \$506,543.41.

**B. Recovery and Sale of Cars, Jewelry and Other Personal Property**

On October 2, 2015, the Receiver filed a Motion for Turnover and Sale of Vehicles and Personal Property [D.E. 121]. The Receiver sought permission through the Motion to sell a Bentley and a Maserati, both of which were recovered by the Receiver and for which Elm utilized Receivership Entities' funds to finance and/or purchase. Furthermore, the Receiver sought in that Motion permission to sell certain personal property including watches and jewelry recovered by the Receiver from Elm and Mrs. Elm. By Order dated October 6, 2015, the Court granted the Receiver's Motion [D.E. 122]. Pursuant to that Order, the Receiver sold the vehicles

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<sup>1</sup> On September 11, 2015, the Receiver filed Motion to Approve the Sale of Real Property (Elm Home) [D.E. 119], after receipt of a written offer to purchase the Elm Home for \$1,763,000. Pursuant to the terms of the purchase contract, the buyers had the right to cancel the contract within 30 days of the effective date. On September 22, 2015, the buyers exercised the right to cancel the purchase contract. The Receiver immediately re-listed the Elm Home which ultimately resulted in the sale of the Elm Home.

both at auction and private sale for a net profit to the Receivership Estate of \$163,000. The Receiver sold the jewelry both at auction and private sale for a net recovery to the Receivership Estate of \$86,005.06.

In addition, the Receiver pursuant to Court authority sold certain furniture recovered from the Elm Home, as well as certain office furniture recovered from offices leased by Myecco. The sale of the office furniture generated \$780.00, and the sale of the home furniture generated \$18,399.10.

**C. Miscellaneous Other Funds Recovered**

The Receiver has also recovered approximately \$150,005.46 from other sources. For example, on October 30, 2015, the Receiver filed a Motion for an Order determining that funds transferred to Navient for purposes of payment of a student loan for Mrs. Elm constituted receivership property, and requiring the turnover of those funds to the Receiver. [D.E. 124]. On November 18, 2015, the Court entered an Order granting that Motion and requiring Navient to return funds to the Receiver. [D.E. 128]. In connection with that Motion and Order, the Receiver recovered \$19,444.60 from Navient. Furthermore, pursuant to a Settlement Agreement with Michael Coraggio, which was approved by the Court [D.E. 142], the Receiver will recover \$43,000 by May 17, 2016.

Furthermore, through her investigation, the Receiver discovered the existence of \$100,000 deposited in escrow with the law firm of Hagen & Hagen, P.A. The Receiver recovered those funds after demand was made upon Hagen & Hagen, P.A. for the return of the funds. The Receiver has also recovered, to date, approximately another \$15,000 of Receivership Entities' funds.

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The Receiver anticipates the recovery of additional funds which are currently being pursued from individuals and entities the Receiver believes received those funds improperly.

### **III. PROPOSED CLAIMS PROCESS AND REQUESTED RELIEF**

The Receiver seeks to initiate a claims process by requesting that investors and/or creditors of the Receivership Entities submit the Proof of Claim Form attached hereto as Exhibit "A" to be supplied to them by the Receiver once the Court approves the form of such document. The Proof of Claim Form, once approved by the Court, will also be made publicly available on the receivership website maintained by the Receiver.

#### **A. Claims Bar Date**

The Receiver seeks entry of an Order establishing a filing deadline for all Claimants holding claims against the Receivership Entities (including creditors), arising in any way out of the activities of the Receivership Entities with such claimants ("Claimants") to assert a claim (the "Claim Bar Date").

The Receiver proposes that the Claim Bar Date be set ninety (90) days from the entry of the Order requested herein. This date will allow the Receiver sufficient time to arrange for and publish the proposed notice (as hereafter defined) and give investors and other potential claimants sufficient time to file a Proof of Claim Form with the Receiver. Claimants must file Proof of Claim Forms in order to participate in any distribution of the Receivership Entities' assets. The Receiver proposes that any Proof of Claim Form received by the Receiver after the Claim Bar Date should be disallowed.

The Receiver submits that it is appropriate to establish a Claim Bar Date to permit the Receiver to allow as many Claimants as possible to participate in these proceedings.

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Furthermore, a Claim Bar Date will allow the Receiver to obtain certainty as to the total amount of potential claims against the Receivership Entities in a reasonably prompt fashion. Such certainty will facilitate a timely claims resolution and distribution process. The Receiver also requests that the Court order that the claims process contemplated in this Motion be the sole form of recovery for creditors against the Receivership Entities and that in addition to the Proof of Claim Form, all creditors seeking to participate in the Proof of Claim Process return executed releases in favor of the Receivership Entities and the Receiver in the form attached hereto as **Exhibit "B"**. These investor releases will be held in escrow by the Receiver's counsel until such time as a distribution is made to the Claimants.

**B. Notice by Mail and Publication**

The Receiver and her professionals have spent considerable time, effort, and resources examining documents and other data relating to the Receivership Entities. Based on the review of these voluminous documents, the Receiver believes she has identified substantially all of the Receivership Entities' investors and creditors. As to these known potential Claimants, the Receiver possesses last known mailing addresses. However, some of the last known mailing addresses may not be current. In addition, it is possible that some potential Claimants may be currently unknown. As such, alternative forms of notice are advisable.

Based on the documents reviewed and information gathered to date, investors and other potential creditors are located throughout the United States and overseas. Given the geographically broad area in which investors are located and the significant expense associated with publication of the Notice (as hereafter defined) in each of the states, provinces, and countries where Claimants may reside, and the relatively few (if any) interested parties who

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might benefit from such publication, the Receiver proposes publishing the Notice in The New York Times<sup>2</sup>, a paper with a national and international circulation, at least one day a week for two consecutive weeks, and at least 30 days prior to the Claim Bar Date. Notice of Claim Bar Date will be in the form attached hereto as **Exhibit "C"** ("Notice"). The Receiver further proposes to publish the Proof of Claim Form and Notice on the receivership website at [www.elmtreereceivership.com](http://www.elmtreereceivership.com).

Therefore, the Receiver seeks permission to provide notice of the Claim Bar Date to known potential Claimants by: (i) mail or FedEx to their last known address; and (ii) by email to the last known email address. The Receiver proposes to provide notice to unknown Claimants by publication in The New York Times and the Receiver's website.

The Receiver believes that such notice is reasonably calculated to inform all known and unknown Claimants of the Claim Bar Date.

**C. Procedures to be Applied to Administration of Claims**

The Receiver has developed a proposed procedure and Proof of Claim Form to efficiently, equitably, and promptly identify potential Claimants and the amount and validity of any claim. The Receiver's proposed procedure will ensure certainty as to the total number and amount of claims against the Receivership Entities and thus allow for an equitable distribution among Claimants. The Receiver's proposed procedure will also allow the Receiver to obtain information to insure that all Claimants claims can be verified and that to the extent any potential setoffs are appropriate, they can be identified and applied.

The Receiver and her professionals have spent considerable time and resources

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<sup>2</sup> The cost of global publication for one day in The New York Times for an advertisement the size of the Receiver's proposed Notice is approximately \$1,896.00.

examining voluminous documents relating to the Receivership Entities, including their financial information. With respect to the investors in the Receivership Entities, based on this examination and to the extent possible, the Receiver has determined that a Net Invested Capital (as hereafter defined) approach for a determination of potential recovery for investor "accounts" is the preferred approach.<sup>3</sup>

The "Net Invested Capital" for an account is calculated by adding all amounts contributed by the pertinent investor(s) to its or their account or to a Receivership Entity and subtracting all payments made to that accountholder(s) or recipient, irrespective of whether those payments are characterized as interest, earnings, profits, returns or redemptions of principal, incentive fees, management fees, or by any other terminology. For example, an account that had a total investment of \$100,000, of which \$50,000 was distributed to the accountholder, would have Net Invested Capital equal to \$50,000. The Receiver proposes that Net Invested Capital be the starting point for all determinations as to distributions to investors in the Receivership Entities.<sup>4</sup>

If the investor maintained multiple accounts, the Receiver will send the investor a Proof of Claim Form and Investor Release for each account. The investor must complete and return the Proof of Claim Form for each account to preserve all claims. The investor must also complete an Investor Release for each account.

To the extent the Receivership Entities do not have sufficient funds to pay all valid claims, the Net Invested Capital will serve as the basis for determining the recipients and

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<sup>3</sup> For ease of reference, the Receiver will use the term "account" in this motion and the attached exhibits, although it is not meant to denote an ownership right to any amount reflected as being in an investor "account."

<sup>4</sup> Where applicable, the Receiver may recommend set offs from that amount.

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amounts of distributions with respect to investors.<sup>5</sup> The identification of a Net Invested Capital amount does not mean that the investor account has a valid claim; the Receiver reserves the right to object to the validity of any claim notwithstanding the identification of any such amount.

Subject to the Receiver's discretion to be exercised in an equitable manner and in the best interests of the Receivership Entities, the Receiver may send notice of a deficiency in a submitted Proof of Claim Form to the submitting Claimant. The Receiver proposes that the Claimant then have the later of either: (i) the Claim Bar Date; or (ii) thirty (30) days from the date the notice of deficiency is sent, to return an amended Proof of Claim Form and/or supplement their existing Proof of Claim Form, to preserve his, her, or its claims.

Each Proof of Claim Form provided to the Receiver must conform substantially to and must contain all of the information sought in the Proof of Claim Form approved by the Court. The Receiver reserves the right to reject any altered Proof of Claim Form or any Proof of Claim Form that is not filled out completely and properly executed by the correct legal entity or individual. Such rejection will be treated as a deficiency and the Claimant will have the time indicated above within which to submit an acceptable Proof of Claim Form. Each Proof of Claim Form must be signed by the Claimant or, if the Claimant is not an individual, by an authorized agent of the Claimant. The Claimant must attest under penalty of perjury that the information is true and correct. Each Proof of Claim Form must be legible, written in English, and denominated in United States currency. The submission of a Proof of Claim Form will subject the Claimant to the jurisdiction of the United States District Court for the Southern

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<sup>5</sup> To the extent any non-investor claims are submitted, the Receiver will recommend and seek the Court's approval for a method for addressing and resolving such claims consistent with the goals of the Receivership.

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District of Florida.

All Proof of Claim Forms and Investor Releases must be sent so as to be received on or before the Claim Bar Date at the following address:

Grisel Alonso, Receiver  
Michael Moecker & Associates, Inc.  
1883 Marina Mile Blvd., Suite 106  
Fort Lauderdale, FL 33315

Any timely and properly completed and executed Proof of Claim Form provided to the Receiver will be considered allowed if it is established that: (1) the claim arises out of any of the Receivership Entities' activities; (2) losses recognized by law resulted from such activities; (3) any alleged claim and losses are consistent with the books and records available to the Receiver; and (4) no ground exists for denying the claim or setting off amounts claimed. After the Claim Bar Date and the Receiver has evaluated all submitted claims, she will seek approval from this Court regarding: (1) allowed claim amounts; (2) priority of claims; (3) a process for the determination of objections to claim determinations and priorities reached by the Receiver; (4) the timing and amount of distributions to be made to Claimants; and (5) if needed, the establishment of reserves for administration of the Receivership, for litigation, and for disputed claims and priorities (until such time as such disputes are resolved).

After all claims and priority objections are resolved, the Receiver will prepare a motion for a proposed distribution to approved Claimants. The motion will identify the total assets of the Receivership Entities at the pertinent time and the total allowed claims amount. The motion will also address the methodology applied to arrive at the proposed recommended distributions. After Court approval, any distribution to the Claimants will be made in an equitable manner and in accordance with the appropriate priority, and no Claimant shall receive more than the allowed

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amounts. Any distributions of amounts less than the Claimants' total allowed amounts will be made on a *pro rata* basis based on the Claimants' allowed claim amounts. The Receiver may seek court approval to make interim distributions.

All administrative expenses, including attorneys' fees and costs, litigation expenses, experts, and other administrative costs, will be paid by the Receivership Entities. These administrative expenses will be paid or reserved before any distribution to Claimants is made. Administrative expenses may also include, but are not limited to: (1) expenses for publishing notice; and (2) the retention of one or more consultants to assist in analyzing the validity of claims. No previous request for the relief sought herein has been made to this or any other Court.

The Receiver requests that this Court then: (1) approve the claims administration procedure as set forth herein and the Proof of Claim Form as attached hereto as Exhibit "A"; (2) establish a deadline 90 days from the date of entry of the Order requested herein for receipt of Proof of Claim Forms and Investor Releases; and (3) permit notice of such deadline in the form of Notice attached as Exhibit "C" by (a) first class U.S. mail or FedEx and email to the last known addresses of all known Claimants; (b) publication in The New York Times as described above; and (c) on the Receiver's website as described above.

Undersigned counsel for the Receiver has discussed the relief sought herein with counsel for the SEC and Defendant Elm. The SEC has authorized the Receiver to represent to this Court that it does not oppose the granting of the relief sought in this Motion. Counsel for Elm has similarly advised undersigned counsel for the Receiver that Elm does not oppose the granting of the relief sought in this Motion. For the Court's convenience, a proposed Order granting this

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Motion is attached as **Exhibit "D"**.

#### IV. MEMORANDUM OF LAW

The Court's power to supervise an equity receivership and to determine the appropriate actions to be taken in the administration of the receivership is extremely broad. *Securities Exch. Comm'n v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992); *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986). The Court's wide discretion derives from the inherent powers of an equity court to fashion relief. *Elliott*, 953 F.2d at 1566; *SEC v. Safety Finance Serv., Inc.*, 674 F.2d 368, 372 (5th Cir. 1982). The relief sought by the Receiver falls squarely within those powers.

In receivership proceedings such as this, "[e]very person who has any claim or demand against the estate or property in the custody of the court through the receiver, must assert such claim or demand in the court in which such receiver was appointed." Ralph E. Clark, Clark on Receivers § 646, at 1132 (3rd Ed. 1992). Although there are many ways in which a claimant can assert a claim, one such way is for claimants to be authorized "under a general order of the appointing court [to file their] claim with the receiver." *Id.* The receiver may agree or disagree with the claim, which claim is ultimately approved or disapproved by the court. *Id.* "The claims should be definite enough to enable the receiver to pass on their validity, fairness and legality and to place them in their proper and legal category of claims for preference, if any." *Id.* § 651, at 1142.

In addition to approving a proof of claim form, it is not unusual for a court overseeing a receivership to enter an order limiting the time within which claims must be presented. *Id.* § 652, at 1142 (citing *Chicago Title & Trust Co. v. Fox Theatres Corp.*, 91 F.2d 907 (2d Cir. 1937); *People of New York v. Hopkins*, 18 F.2d 731 (2d Cir. 1927)); *U.S. Commodity Futures Trading*

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*Comm'n v. Barki, LLC*, 2009 WL 2473687, \*1 (W.D. N.C. 2009) (approving a receivership claims process and a claims bar date no earlier than 30 days after notice to investors). Such an order limiting the time within which claims must be presented has been deemed to be necessary to "lay the foundation for the court to order payments to creditors and distribution to those entitled to receive," *Id.*, § 651, at 1142. Furthermore, a court with jurisdiction over a receivership, by advertisement and by proper notices by mail, by publication and otherwise, should take measures to notify interested parties affected by the receivership. *Id.* § 652, at 1143; *see also SEC v. Tanner*, 2006 WL 897642, \*1 (D. Kan. 2006) (approving receiver's website notice and e-mail notice to investors of a claims process and claims bar date).

Under the terms and conditions of the Receivership Order, the Receiver, among other things, is authorized, empowered, and directed to (a) administer the assets of the Receivership Entities and (b) report to the Court the extent of liabilities the Receiver believes to be the legal obligations of the Receivership Entities. *See* [D.E. 13]. In exercising her duties, the Receiver has determined that it is reasonable, necessary, advisable, and in the best interest of the Receivership Entities that the claims administration procedures, Notice, Claim Bar Date, and Proof of Claim Form as set forth herein and in the attached exhibits be approved by this Court.

#### V. CONCLUSION

For the foregoing reasons, Grisel Alonso, as Receiver, respectfully requests that this Court enter an Order: (1) approving the claims administration procedure as set forth herein and the Proof of Claim Form attached as Exhibit "A"; (2) establishing the date ninety (90) days from the entry of the Order requested herein as the Claim Bar Date; and (3) permitting notice of such deadline in the form of Notice attached as Exhibit "C" by (a) first class U.S. mail or FedEx and

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email to the last known addresses of all known Claimants; (b) publication in The New York Times, at least one day a week for two consecutive weeks; and (c) on the Receiver's website as described above.

This Motion, as well as any Order pertaining thereto, will be made available to Receivership Entities' investors via the Receivership website.

Respectfully submitted,

**BROAD AND CASSEL**

Attorneys for Receiver

One Biscayne Tower, 21<sup>st</sup> Floor

2 S. Biscayne Boulevard

Miami, FL 33131

Telephone: (305) 373-9467

Facsimile: (305) 995-6387

By: /s/ Daniel S. Newman

Daniel S. Newman, P.A.

Florida Bar No. 0962767

[dnewman@broadandcassel.com](mailto:dnewman@broadandcassel.com)

Amanda Star Frazer, Esq.

Florida Bar No. 0043921

[afrazer@broadandcassel.com](mailto:afrazer@broadandcassel.com)

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One Biscayne Tower, 21st Floor 2 South Biscayne Blvd. Miami, Florida 33131-1811 305.373.9400

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on March 29<sup>th</sup>, 2016, a true and correct copy of the foregoing was served via electronic transmission on all counsel or parties of record on the Service List below.

*s/Daniel S. Newman* \_\_\_\_\_  
Daniel S. Newman, P.A.

**SERVICE LIST**

<p>Patrick R. Costello, Esq. Katharine Zoladz, Esq. <a href="mailto:costello@sec.gov">costello@sec.gov</a> <a href="mailto:zoladzK@sec.gov">zoladzK@sec.gov</a> U.S. Securities and Exchange Commission 801 Brickell Avenue Suite 1800 Miami, FL 33131 305-982-6380 305-536-4154 (fax) <i>Counsel for U.S. Securities and Exchange Commission</i></p>	<p>David R. Chase, Esq. <a href="mailto:david@davidchaselaw.com">david@davidchaselaw.com</a> David R. Chase, P.A. 1700 East Las Olas Boulevard Suite 305 Fort Lauderdale, FL 33301 <i>Counsel for Defendant Frederic Elm and Relief Defendant Amanda Elm</i></p>
<p>Christopher Bruno, Esq. <a href="mailto:cbruno@brunodegenhardt.com">cbruno@brunodegenhardt.com</a> Bruno &amp; Degenhardt 10615 Judicial Drive Suite 703 Fairfax, VA 22030 <i>Co-Counsel for Defendant Frederic Elm and Relief Defendant Amanda Elm</i></p>	<p>Grisel Alonso, Esq. <a href="mailto:galonso@moecker.com">galonso@moecker.com</a> Michael Moecker &amp; Associates, Inc. 1883 Marina Mile Blvd., Suite 106 Fort Lauderdale, FL 33315 <i>Receiver</i></p>

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One Biscayne Tower, 21st Floor 2 South Biscayne Blvd. Miami, Florida 33131-1811 305.373.9400

# **EXHIBIT "A"**

**PROOF OF CLAIM IS TO BE FILED WITH RECEIVER – DO NOT FILE WITH COURT**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 15-cv-60082-DIMITROULEAS/SNOW

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

FREDERIC ELM f/k/a FREDERIC ELMALEH,  
ELM TREE INVESTMENT ADVISORS LLC,  
ELM TREE INVESTMENT FUND LP,  
ELM TREE 'E'CONOMY FUND LP, and  
ELM TREE MOTION OPPORTUNITY LP,

Defendants,

and

AMANDA ELM f/k/a AMANDA ELMALEH,

Relief Defendant.

\_\_\_\_\_ )

**PROOF OF CLAIM FORM**

<p><b>CLAIMANT CONTACT INFORMATION:</b></p> <p>Name of Claimant: _____</p> <p>Name of Person Submitting Form and Relationship to Claimant (if different from Claimant): _____</p> <p>Name and Address Where Notices Should be Sent:</p> <p>_____</p> <p>_____</p> <p>_____</p>	<p><b>CLAIM STATUS:</b></p> <p>Check box if you are aware that anyone else has filed a Proof of Claim Form relating to your Claim. <i>(Attach statement giving particulars.)</i></p> <p>Check box if you have never received any notices from the Receiver.</p> <p>Check box if the address entered on this form differs from the</p>
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**PROOF OF CLAIM FORM**

Telephone No.: _____ Email Address: _____ Fax No.: _____	address on the envelope sent to you by the Receiver.  Check here if this Proof of Claim Form: amends replaces supplements a previously filed Proof of Claim Form, dated: _____.
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<b>SEND PROOF OF CLAIM FORM TO:</b>  Grisel Alonso, Receiver Michael Moecker & Associates, Inc.  <b>MAILING ADDRESS:</b>  1883 Marina Mile Blvd., Suite 106 Fort Lauderdale, FL 33315	<b>THIS SPACE IS FOR RECEIVER'S USE ONLY:</b>  <b>Claim No.:</b> _____
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**PROOF OF CLAIM FORM**

**INSTRUCTIONS**

**PLEASE READ CAREFULLY – FAILURE TO FOLLOW ALL INSTRUCTIONS MAY  
JEOPARDIZE YOUR ENTIRE CLAIM**

**1. Where to File Proof of Claim.**

This form must be completed in accordance with the instructions below and timely filed with Grisel Alonso, Receiver, Michael Moecker & Associates, Inc., 3613 North 29th Avenue, Hollywood, Florida 33020.

**2. Deadline for Filing Proof of Claim.**

The deadline for filing this Proof of Claim is [\_\_\_\_\_], **2016**. Any Proof of Claim not filed or postmarked with the Receiver on or before [\_\_\_\_\_], **2016** will be considered untimely and may result in disallowance of the Claim.

**3. Who Should File a Claim.**

***Elm Tree Funds “Investors of Record.”*** An Investor of Record is defined as a Person shown to be an investor in the books and records associated with Elm Tree Investment Advisors LLC, Elm Tree Investment Fund LP, Elm Tree 'e'conomy Fund LP, and Elm Tree Motion Opportunity LP, including any of their related entities (hereinafter “Elm Tree Funds” or singularly "Receivership Entity" and collectively "Receivership Entities") as of January 16, 2015. If you believe that you invested funds directly into the Elm Tree Funds or some other entity or fund operated by Defendant Frederic Elm (f/k/a Frederic Elmaleh) ("Elm") and suffered financial injury as a result of your participation in such investment, you should complete and timely submit this Proof of Claim Form to the Receiver. The Receiver recognizes that it is possible that some of the Investors of Record are not the actual beneficial owners ("Actual Beneficial Owners") of all of the funds that they invested, and may have been raising funds from “Sub-Investors” and then investing those funds through the name of an Investor of Record, or were pooling funds received from a number of “Sub-Investors” under the name of an Investor of Record. The Proof of Claim Form requires all Claimants who are Investors of Record to identify the Actual Beneficial Owners of the funds invested, and to set forth their investment history. Failure to cooperate with the Receiver’s efforts to determine the Actual Beneficial Owners of the funds invested in the Elm Tree Funds may result in total forfeiture by the Investor of Record of that portion of the investment for which the Investor of Record is not the Actual Beneficial Owner. To the extent that you are an Investor of Record, but are not the Actual Beneficial Owner of any of the funds invested, you should still file a Claim, identifying all information relating to any beneficiaries' investment. *[If you invested in several of the Elm Tree Funds, please provide a separate proof of claims form for each Elm Tree Fund.]*

**PROOF OF CLAIM FORM**

**4. Information and Documentation to Be Provided by Claimant.**

Each item of information and documentation requested in this Proof of Claim Form will be used by the Receiver in determining each Claimant's eligibility in any distribution of Receivership Property, and in calculating the appropriate amount of each allowed claim, subject to the Court's approval. Please be as detailed and complete as possible with regard to submissions and accounts attached to this form, as it may affect both your eligibility to participate and the amount of your allowed claim. ***Providing false, misleading or incomplete information or incomplete documentation will delay any disbursement made from this Receivership Estate and could jeopardize your distribution altogether.***

**5. Claimant Contact Information.**

Complete the Claimant Contact Information section on the first page of this Proof of Claim Form, giving the name, address, telephone number, e-mail address and fax number of the Claimant to whom the Receivership Entity allegedly owes money or property.

**6. Claim Status.**

If you have never received any notices from the Receiver about this case, and/or if the address differs from the address on the envelope sent to you by the Receiver, check the appropriate boxes on the form on the first page. If this Proof of Claim Form changes, replaces or supplements a Proof of Claim previously filed by you, check the appropriate box on the form and provide the date the previous Proof of Claim Form was filed. Furthermore, check the appropriate box if anyone else has filed a Proof of Claim Form relating to your Claim, and in an attached statement provide particulars such as who filed the related Proof of Claim Form, its date and amount.

**7. Details Regarding Investments and Returns in the Elm Tree Funds – Schedule A.**

With respect to any investment(s) as to which you are asserting a Claim, you must complete Schedule A according to the instructions provided with respect thereto. Use additional sheets as necessary. Only include in this Schedule all monies actually transferred directly or indirectly, to the Elm Tree Funds, and all monies actually received directly or indirectly, from any such entities. This includes profit payments received by you, and principal returned. Your Schedule A should **not** include any undistributed profits or rollovers of undistributed profits. If you are a Sub-Investor, the Receiver does not expect you to be able to track the transfer of your funds into the Elm Tree Funds. Instead, your Schedule A should identify the accounts into which you deposited your investments, all receipts of profit payments and any principal returns received by you, and the source of those payments, if known.

***FAILURE TO IDENTIFY ALL FUNDS RECEIVED BY YOU IN CONNECTION WITH YOUR INVESTMENT MAY RESULT IN FORFEITURE OF YOUR ENTIRE CLAIM.***

**8. Details Regarding “Introducing Party” Fees/Commissions – Schedule B.**

The Receiver is aware that some Claimants may have received “introducing party” fees, commissions or other payments in connection with their introduction, whether directly or

**PROOF OF CLAIM FORM**

indirectly, of investors into the Elm Tree Funds. These are referred to collectively as "Commission Payments." Any Claimant who has received any Commission Payments must identify all such payments received on the attached Schedule B. The Receiver is aware that some of these payments may have been further distributed by a Claimant to other marketers or introducing parties, and Schedule B requires such information. Claims will be adjusted to account for these payments.

***FAILURE TO IDENTIFY ALL COMMISSION PAYMENTS MAY RESULT IN FORFEITURE OF YOUR ENTIRE CLAIM.***

**9. Supporting Documents Relating to Investment.**

You must attach to this Proof of Claim Form all documents that show that a Receivership Entity owes the obligation claimed. These documents must be sufficient to show the source of the funds invested in the Elm Tree Funds, the amount and dates of funds deposited, and the amounts and dates for each payment of funds received from the Elm Tree Funds. (For example, you may want to attach copies of cancelled checks (front and back), carbon checks, wire transfer instructions, wire transfer confirmations, money orders, bank statements, itemized account statements, correspondence, subscription documents, etc.) If documents are not available, you must attach an explanation as to why they are not available.

*Please make sure that you sequentially label all of the documents that you produce to the Receiver in connection with your Claim, to ensure that both you and the Receiver have the same record of documents received, and in order to maintain integrity and order among the documents the Receiver receives among numerous documents. The Receiver recommends that you label on the bottom right hand corner of each document using your initials and beginning with the number 001 (e.g. for John Q. Smith, the first page of the production of documents would be labeled "JQS001," the second page "JQS002" and so on). Labeling by hand is acceptable.*

***DO NOT SEND ORIGINAL DOCUMENTS AT THIS TIME – ONLY SEND COPIES OF DOCUMENTS.***

**10. Identification of Actual Beneficial Owners of Funds Invested in the Elm Tree Funds.**

To the extent that you are an Investor of Record in the Elm Tree Funds, but are not the Actual Beneficial Owner of all of the funds that you invested in your name, you should check the box in Section II.H of the Proof of Claim Form indicating that you are not the Actual Beneficial Owner of all of the funds that you invested, and provide contact information for each separate Sub-Investor whose funds you invested in your name. To the extent that you are a Sub-Investor whose funds were invested in the name of a different Investor of Record, you should check the box so indicating. To the extent that you are an Investor of Record in the Elm Tree Funds and you are also the Actual Beneficial Owner of the funds that you invested, you should check the "No" box.

**PROOF OF CLAIM FORM**

**11. Supporting Documents to Beneficial Ownership of Funds Invested.**

The Receiver requires that all Persons submitting a Proof of Claim Form identify and provide supporting documentation verifying the source and Actual Beneficial Owner of the funds invested. To the extent that any portion of the funds invested by you are beneficially owned by some Person other than yourself, you must so indicate and provide the Receiver with contact information for each such Person, describe the relationship between you and each such Person, and provide all documents relevant for each such Person holding a beneficial interest in your investment in the Elm Tree Funds with respect to which you are making a claim, and current contact information for each such Person. For example, if your investment constitutes a pooling of funds that you received from others, you must so indicate and provide the information required in this instruction.

To the extent that you are claiming that all or any portion of your investment constitutes funds for which you have sole beneficial interest, you must set forth the source of your funds and provide supporting documentation verifying this source. For example, if you indicate that the funds invested were proceeds of a relative's life insurance policy, you must provide documentation establishing your receipt of such funds and tracing such proceeds to your investment.

**12. Questions Seeking Additional Information Relating To Your Investment.**

Please answer the questions to the best of your ability. This will assist the Receiver with her investigation efforts, and may lead to the recovery of additional assets.

**13. Questions Relating to Credits.**

By signing and filing this Proof of Claim Form, you are stating under oath that you have given the Receivership Entity credit for ALL payments received from any Receivership Entity or any other third-party.

**14. No Blank Answers.**

If a particular item does not apply to you specifically, write "not applicable." If you do not know the answer to a particular item, write "not known." *Do not leave a question blank. Use additional pages as necessary to provide complete responses.*

**15. Signature – Legal Authority to Submit Claim.**

The Proof of Claim Form must be signed and dated by the Claimant, or a duly authorized officer or legal representative in the space provided on the final page. To the extent that the signatory is authorized pursuant to a power of attorney or court appointment, documentation of such authority must be provided.

**PROOF OF CLAIM FORM**

**16. Independent Verification of Claims – Requests for Supplemental Information.**

All Claims are subject to verification by the Receiver and any professionals and experts she retains. It is important to provide complete and accurate information to facilitate this effort. Claimants may be asked to supply additional information to complete this process. Claims will not be considered for payment until they have been verified.

**17. Acknowledgment of Filing Proof of Claim.**

To receive an acknowledgment of the receipt of your Claim, enclose a self-addressed envelope or postcard with your Proof of Claim Form and be certain to provide your email address, as well.

**18. Communications with Receiver.**

Any questions about this form or process (including supporting documentation) should be made by e-mail to [elmtreeinfo@moecker.com](mailto:elmtreeinfo@moecker.com) or in writing to the Receiver's office, Michael Moecker & Associates, Inc., Attn: Elm Tree Funds Claims Administrator, 3613 North 29th Avenue, Hollywood, Florida 33020. If you have information that you believe may be helpful to the Receiver, the SEC or any other law enforcement agencies, we encourage you to contact the Receiver's counsel at the above e-mail address.

**19. Certification of Truthfulness.**

Each Person completing a Proof of Claim Form is required to certify, under penalty of perjury, that all the information contained in this Proof of Claim Form is correct, to the best of such Person's knowledge, and that such Person is authorized by the Claimant to submit the Proof of Claim Form on the Claimant's behalf.

**20. Requests for Additional Information or Documentation.**

The Receiver may require additional information or documentation. By submitting a Proof of Claim Form, each Claimant agrees to cooperate with the Receiver in these requests. ***Failure to provide all such requested information or documentation may result in delays in the claims process or in the partial or complete disqualification of your claim.***

**21. Computing Your Claim Amount.**

You are not being requested at this time to state an amount you wish to recover through an allowed claim. Using the information provided in and with your Proof of Claim, the Receiver will determine the amount of your allowed claim, if any, and will provide notice to you of such determination, as well as how you might object to the Receiver's determination, in accordance with a Court approved plan of distribution.

**PROOF OF CLAIM FORM**

**QUESTIONNAIRE**

***Before completing this form, please read the foregoing Instructions, provided to you along with this Proof of Claim Form.***

*Providing false, misleading or incomplete information or incomplete documentation will delay any disbursement made from this Receivership Estate and could jeopardize your distribution altogether.*

**Section I. – Affiliations and Related Parties.**

*Check the appropriate box for each question. If the answer to any question is yes, please attach an explanation giving details*

**Yes No**

- A. Are you affiliated with or related in any way to any of the Defendants identified in the caption on page 1 of this Proof of Claim Form ("Defendants")?
- B. Are you a present or former officer, director, employee, representative, independent contractor or agent of any of the Defendants?
- C. Are you the legal representative, heir, successor, or assignee of any of the Defendants?
- D. Did you or your company or any of your officers, directors, employees, agents, affiliates or related parties directly or indirectly sell or otherwise market any investment for any of the Defendants?
- E. Did you or your company or any of your officers, directors, employees, agents, affiliates or related parties directly or indirectly recommend any investments for any of the Defendants (including refer anyone to a salesperson, provide a list of names of possible investors, tell others about the investment, etc.)?
- F. Did you or your company or any of your officers, directors, employees, agents, affiliates or related parties receive any money or other compensation or benefit of any nature (such as commission, referral fee, finder's fee, promoter fee, credit on any investment, gift or present) directly or indirectly from any of the Defendants or any other Person connected with the Elm Tree Funds?

**PROOF OF CLAIM FORM**

**Section II. – Relationship of Claimant to Elm Tree Funds.**

*Please review Instructions carefully before completing this section.*

*Check the appropriate box for each question, and supply additional information as requested.*

**Yes    No**

G. Did you invest any funds directly and in your own name into the Elm Tree Funds (i.e., were you an “Investor of Record”)?

H. Did you invest funds indirectly into the Elm Tree Funds through another Person (i.e., were you a “Sub-Investor”)? (If the answer to this question is YES, please state the name of the Person through which your funds were invested in the Elm Tree Funds, and provide the contact information sought below.)

Person through which funds were invested: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone No.: \_\_\_\_\_

E-Mail address: \_\_\_\_\_

I. Did you invest funds directly or indirectly in either Elm Tree Investment Advisors LLC, Elm Tree Investment Fund LP, Elm Tree 'e'conomy Fund LP, and Elm Tree Motion Opportunity LP. If yes, please mark the entity in which you claim to have invested. If no, please state the related entity in which you have invested funds either directly or indirectly.

Elm Tree Investment Advisors LLC

Elm Tree Investment Fund LP

Elm Tree 'e'conomy Fund LP

Elm Tree Motion Opportunity LP

Other: \_\_\_\_\_

\_\_\_\_\_

**PROOF OF CLAIM FORM**

- J. Did you enter into any written agreement(s) relating to your investment?
- K. Do you possess a copy of such written agreement(s)? (If the answer to this question is YES, please produce copies of any such agreement with your Proof of Claim Form.)
- L. Did you ever send or receive any written communication(s) relating to your investment?
- M. Do you possess a copy of such written communication(s)? (If the answer to this question is YES, please produce copies of all such communications with your Proof of Claim Form.)

**Section III. – Investment History – Schedule A.**

*All Claimants must complete Schedule A – Investment History.*

*Please review Instruction 7 carefully before completing this schedule.*

*You should attach additional sheets as necessary.*

**YOUR CLAIM WILL NOT BE CONSIDERED UNLESS YOU COMPLETE SCHEDULE A.**

**Section IV. – Documents Relating to Investment History.**

*All Claimants must provide documentation verifying their investment history, including the submission of periodic (e.g., monthly, quarterly, etc.) bank statements showing all receipts and payments of any funds relating to the Elm Tree Funds, back detail (such as wire transfer confirmations and fronts and backs of checks), and any and all correspondence, including emails or texts, reflecting, confirming or otherwise relating to receipts and payments of funds.*

**Section V. – Identification of Actual Beneficial Ownership of Funds Invested.**

*Check the appropriate box for each question, and supply additional information as requested.*

**Yes No**

- N. Are you the Actual Beneficial Owner of all of the funds that you invested in the Elm Tree Funds? (If you are not the Actual Beneficial Owner of the funds invested, please attach a list of all Sub-Investors whose funds you invested in the Elm Tree Funds, and, for each Sub-Investor: (i) provide current contact information; (ii) set forth the entire investment history of such Sub-Investor including all payments received from such Sub-Investor and all payments made to such Sub-Investor; and (iii) produce all documents in your possession relating to such Sub-Investor's investment.

**PROOF OF CLAIM FORM**

*To the extent that you were the Actual Beneficial Owner of some but not all of the funds that you invested in the Elm Tree Funds, you should check “NO,” and provide separate investment histories with respect to both the aggregate investment made by you and the component of such investment that comprises funds that you beneficially owned.)*

**Section VI. – Documentation of Actual Beneficial Ownership of Funds.**

*Please review Instruction 11 carefully before completing this schedule.*

*You are required to provide documentation establishing your ownership of funds invested in the Elm Tree Funds. This includes, but is not limited to, bank or other financial records for each account out of which funds were invested or into which any payments were received.*

**Section VII. – “Introducing Party” Fees, Commissions, Other Payments – Schedule B.**

*Please review Instruction 8 carefully before completing this schedule.*

*All Claimants who have received any “introducing party” fees, commissions or payments in connection with the Elm Tree Funds or any related fund must complete Schedule B – “Introducing Party” Fees, Commission or Other Payments.*

*You should attach additional sheets as necessary.*

***FAILURE TO IDENTIFY ALL SUCH PAYMENTS MAY RESULT IN FORFEITURE OF YOUR ENTIRE CLAIM.***

**Section VIII. –Additional Information.**

*Please attach additional documents as needed.*

- O. Who introduced you to the investment that is the basis for your Claim and who was the person(s) with whom you communicated about the investment?

***PROOF OF CLAIM FORM***

- P. Describe in detail how you learned about the investment that is the source of your Claim, and provide all relevant details concerning the investment from first learning of it through the date the Receiver was appointed. (Please provide a narrative of the details.)
- Q. What is the source of the funds you invested? (For example, personal savings, borrowed funds, funds invested on behalf of others, etc.)
- R. How did you first learn that you should file this Proof of Claim Form?
- S. Have you made any attempts, including the filing of any lawsuit, to retrieve your investment, apart from any attempts made through this claims process? *(If the answer to this question is YES, provide a narrative of all such attempts, with whom you communicated, the response you received, and produce all documentation of any such attempts. If you have filed any Claim with any court or in any proceeding, please identify what you have filed and where, and provide any copies and all documentation submitted in connection with any such Claim.)*

***PROOF OF CLAIM FORM***

- T. Did you at any time, other than the investment(s) described in this Proof of Claim Form, have business dealings with any of the Elm Tree Funds or with Elm? If so, please describe those business dealings in detail.
- U. Have you received any monies from any of the Elm Tree Funds at any time, other than in connection with the investment(s) described in this Proof of Claim Form? If so, please explain.
- V. Have you made any investment in the Elm Tree Funds which is not reflected in this or any other Proof of Claim Form? (If the answer to this question is YES, complete Schedules A and B, and also comply with Sections IV, V, and VI, with regard to this investment. Furthermore, explain why you have not filed a Proof of Claim Form with regard to that investment.)

**PROOF OF CLAIM FORM**

- X. Have you had any communications with any of the Defendants and/or anyone formerly affiliated with them regarding retrieving or recovering any part of your investment in the Elm Tree Funds? (If the answer to this question is YES, please provide a written narrative of all such communications, stating with whom you communicated, how the communication came about, what agreements, if any, you reached, and please produce all documentation related to these discussions.)

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I am a signatory to each of the accounts listed above and am duly authorized to provide such consent.

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CLAIMANT

**PROOF OF CLAIM FORM**

**Certification of Truthfulness**

Pursuant to 28 U.S.C. § 1746, I, the undersigned, hereby certify, under penalty of perjury, and pursuant, that all of the information provided in this Proof of Claim Form, including all Schedules and attachments to the Proof of Claim, is true and correct and that the undersigned is authorized to make this Claim. By initialing each item below, I specifically certify that:

		<b>Initial</b>
1.	I have read the Instructions to the Proof of Claim Form <b>prior</b> to completing the Proof of Claim Form.	_____
2.	I have identified in Schedule A to the Proof of Claim Form all of my investments into the Elm Tree Funds or related investment program, and all Profit Payments and Principal Returns that I have received at any time since the beginning of my participation in such investment to the present.	_____
3.	I have identified in Schedule B to the Proof of Claim Form all "Commission Payments" that I have received in connection with my direct or indirect introduction of investors into the Elm Tree Funds or any successor or related investment program.	_____
4.	I have identified, to the best of my knowledge, the Actual Beneficial Owners of the funds that I invested in the Elm Tree Funds or related investment program.	_____
5.	I acknowledge a duty on my part to supplement or amend this Proof of Claim Form to disclose a material change with respect to any answer or information provided in connection herewith.	_____

Signed, under penalty of perjury, this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Name of Claimant: \_\_\_\_\_

Relationship to Claimant (Title): \_\_\_\_\_

*[Sign and print name, the name of the Claimant on whose behalf you are submitting this Claim and your relationship to the Claimant. If you are signing on behalf of the Claimant, state the basis for your authorization to sign on behalf of claimant, and attach any power of attorney or other relevant authorization.]*

**SCHEDULE A**

**INVESTMENT HISTORY**  
 (Use additional sheets as necessary)

**Name of Claimant:** \_\_\_\_\_

<b>Date of Transaction</b> (month/day/year)	<b>Funds invested</b> (\$ amount)	<b>Payments received from the Elm Tree Funds</b> (\$ amount)	<b>Bank account information</b> (include name of bank, branch, account holder name, account number)	<b>Method of investment / payment</b> (e.g., check, wire transfer)	<b>Counterparty</b>	<b>Counterparty bank information, if known</b> (include name of bank, branch, account holder name, account number)	<b>Are you producing along with your Proof of Claim Form documents reflecting or relating to this transaction?</b> (Yes or No)

**SCHEDULE B**

**COMMISSION PAYMENTS**  
(Use additional sheets as necessary)

Name of Claimant: \_\_\_\_\_

<b>Date of Transaction</b> (month/day/year)	<b>Amount of commission payments received</b> (\$ amount)	<b>Bank account information for Claimant Account into which payment received</b> (include name of bank, branch, account holder name, account #)	<b>Payor Name</b>	<b>Bank account information re payor of commission payments if known</b> (include name of bank, branch, account holder name, account #)	<b>Transfers of Funds by Claimant to Other Marketers / Introducing Parties</b> (\$ amount)	<b>Name of Recipient of Commission Payments Transferred by Claimant</b>	<b>Counterparty Bank information, if known</b> (include name of bank, branch, account holder name, account number)	<b>Are you producing along with your Proof of Claim Form documents reflecting or relating to this transaction?</b> (Yes or No)

# **EXHIBIT "B"**

**RELEASE OF CLAIMS (by Fund Investors)**

The undersigned person (the "Affiant"), in consideration of:

the participation in the court-approved claims process of which this Release of Claims is an integral part,

on behalf of:

such Affiant, and his/her/its officers, directors, partners, members, shareholders, managers, agents, representatives, heirs, executors, trustees, administrators, predecessors, subsidiaries, successors, affiliates, assigns, advisors, legal representatives, attorneys, and employees (collectively, the "Releasers"),

hereby releases and discharges:

Elm Tree Investment Advisors LLC, Elm Tree Investment Fund LP, Elm Tree 'e'conomy Fund LP, and Elm Tree Motion Opportunity LP (collectively, the "Receivership Entities"), and the Receiver, and each of their respective officers, directors, partners, members, shareholders, managers, agents, representatives, heirs, executors, trustees, administrators, predecessors, subsidiaries, successors, affiliates, assigns, advisors, legal representatives, attorneys, and employees (collectively, the "Releasees"), but this Release of Claims does not release any of the following persons or entities: Frederic Elm f/k/a Frederic Elmaleh and Amanda Elm f/k/a Amanda Elmaleh, and their respective assigns and representatives,

from:

all liabilities arising from any and all claims, demands, controversies, actions, causes of action whether asserted or unasserted, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, proceedings, agreements, promises, variances, trespasses, obligations, liabilities, fines, penalties, costs, expenses, attorneys' fees, and damages of whatsoever character, nature, or kind, in law or in equity, whether known or unknown, fixed or contingent, liquidated or unliquidated, pending or not pending, disclosed or not disclosed, whether directly, representatively, derivatively or in any other capacity (collectively, the "Claims"),

which the Releasers ever had, now have or hereafter can, shall or may have for, against the

Releasees, upon or by reason of:

any Claims in any way related to the investments by any of the Releasers into the Receivership Entities, and any Claims in any way related to any actions or omissions of the Receiver relating in any manner to her role as the Receiver for the Receivership Entities (collectively, the "Released Claims").

The Releasors shall not commence, prosecute, or assert any action, complaint, demand, cause of action, arbitration or other proceeding of any kind relating to, arising out of or involving in any way the Released Claims including, without limitation, any action for contribution, indemnity or otherwise, against or affecting any of the Releasees or any of their property, except for the purpose of enforcing this or any other Release executed in connection with the court appointed claims process.

In the event that any Releasor breaches the foregoing paragraphs, such Releasor shall indemnify and hold harmless each Releasee for any loss or damages, however suffered, caused by such breach, including, without limitation, costs, expenses and reasonable attorneys' fees, including, without limitation, attorneys' fees incurred in the course of enforcement of this indemnification provision.

The Releasors represent and warrant that they have not assigned or transferred, or purported to assign or transfer, to any person or entity any claim released hereby that they have had, now have or may have against Releasees or any portion thereof or interest therein.

This Release may be modified only by a writing duly executed by the parties hereto.

This Release shall be governed by and interpreted in accordance with the laws of the State of Florida, without giving effect to any conflicts of laws rule or principle that might require the application of the laws of another jurisdiction.

IN WITNESS WHEREOF, the Affiant has set his or her or its hand this \_\_\_\_ day of \_\_\_\_\_, 2016.

(Name of Fund Investor):

\_\_\_\_\_

(Signature):

By: \_\_\_\_\_

(Position):

\_\_\_\_\_

[Individual Acknowledgement]

STATE OF \_\_\_\_\_ )  
 : ss.:  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 2016, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same, and that by his/her signature on the instrument, the individual executed the instrument.

\_\_\_\_\_  
Notary Public

[Corporate Acknowledgement]

STATE OF \_\_\_\_\_ )  
 : ss.:  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 2016, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity as \_\_\_\_\_ of \_\_\_\_\_, and that by his/her signature on the instrument, the individual or entity upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Signature and Office of individual taking acknowledgment

\_\_\_\_\_  
Notary Public

# **EXHIBIT "C"**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 15-cv-60082-DIMITROULEAS/SNOW

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

FREDERIC ELM f/k/a FREDERIC ELMALEH, et al.,

Defendants,

\_\_\_\_\_ )

**NOTICE TO INVESTORS AND CREDITORS**

TO: All investors, creditors and other persons who may have a claim against Elm Tree Investment Advisors, LLC, Elm Tree Investment Fund LP, Elm Tree e'C'onomy Fund LP, and Elm Tree Motion Opportunity LP (collectively, the "Receivership Entities"), which arose prior to January 16, 2015 or against the assets held by the Receiver.

All Investors who seek to be eligible for recoveries from the Receivership Estate must complete, execute and return the Proof of Claim Form. Investors who seek to be eligible to obtain a benefit from the settlement transaction must also complete, execute and return the Investor Release. Both the Proof of Claim Form and the Investor Release must be returned to the Receiver, Grisel Alonso, at Michael Moecker & Associates, Inc., 1883 Marina Mile Blvd., Suite 106, Fort Lauderdale, FL 33315.

Copies of the Proof of Claim Form and Investor Release are available from the Receiver by downloading a copy from the receivership website at [www.elmtreereceivership.com](http://www.elmtreereceivership.com). **Do not file the Proof of Claim with the Court.**

The Proof of Claim Form and Investor Release must be received by the Receiver by no later than 5:00 p.m. on [Claims Bar Date]. Failure to file a claim timely shall result in a waiver of any rights to participate in any distribution of funds through the Receivership.

# **EXHIBIT "D"**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 0:15-CV-60082-DIMITROULEAS/SNOW

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

FREDERIC ELM f/k/a FREDERIC ELMALEH, et al.,

Defendants,

and

AMANDA ELM f/k/a AMANDA ELMALEH,

Relief Defendant.

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**ORDER GRANTING RECEIVER'S MOTION  
FOR APPROVAL OF CLAIMS PROCESS**

This cause came before the Court upon the Receiver's Motion for Approval of Claims Process (the "Motion") and the Court, having reviewed the Motion and the Court file, being advised that the Securities and Exchanges Commission has no objection to the requested relief, and being otherwise duly advised in the premises, it is hereby

ORDERED that:

1. The Receiver's Motion is GRANTED.
2. The claims administration procedure outlined in the Receiver's Motion and the Proof of Claim Form attached as Exhibit "A" to the Motion are APPROVED.
3. The claims process set forth in the Receiver's Motion (the "Proof of Claim Process") shall be the sole form of recovery for creditors against Elm Tree Investment Advisors, LLC, Elm Tree Investment Fund LP, Elm Tree 'e'conomy Fund LP, and Elm Tree Motion

Opportunity LP (collectively, the "Receivership Entities"). All creditors seeking to participate in the Proof of Claim Process shall return executed releases in favor of the Receivership Entities and the Receiver in the form attached to the Receiver's Motion as Exhibit "B".

4. The Claims Bar Date, as that term is defined in the Receiver's Motion, shall be ninety (90) days from the date of entry of this Order.

5. The Receiver is permitted to provide notice to claimants of the Claims Bar Date in the form of the Notice attached as Exhibit "C" to the Receiver's Motion by (a) first class U.S. mail or FedEx and email to the last known addresses of all known claimants; (b) publication in The New York Times, at least one day a week for two consecutive weeks; and (c) on the Receiver's website, [www.elmtreereceivership.com](http://www.elmtreereceivership.com).

DONE AND ORDERED in Chambers in Fort Lauderdale, Florida, this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

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WILLIAM P. DIMITROULEAS  
UNITED STATES DISTRICT JUDGE

Copies:  
All counsel of record