

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION

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 NOTICE OF FILING REVISED DISTRIBUTION CHART

The Court-appointed receiver, Grisel Alonso (the "Receiver"), not individually, but solely in her capacity as Receiver for Elm Tree Investment Advisors, LLC; Elm Tree Investment Fund, LP; Elm Tree 'e'conomy Fund, LP; Elm Tree Motion Opportunity, LP; and Etopia LP (collectively, the "Receivership Entities"), respectfully gives notice of filing the Revised Distribution Chart attached as **Exhibit "A"**, which applies the rising tide method to re-calculate the payout amounts to the approved claimants, in accordance with the Court's May 14, 2019 order (the "Order"). [D.E. 218.]

As counsel for the Receiver informed the Court during the May 9, 2019 hearing, the original Distribution Chart (or "Schedule of Claims") for the net investment method of distribution, [D.E. 200-1], did not combine multiple claims submitted by a single claimant. To wit, claim numbers 6 and 7 were submitted by a single claimant, and claim numbers 12 and 13

were submitted by a single claimant, but were treated separately on the original Distribution Chart. Pursuant to the Court-approved claims process, the Receiver permitted the submission of multiple claims by a single claimant. While this treatment did not appear to be of consequence for the net investment method of distribution,¹ it does impact the rising tide distribution, which requires the Receiver to bring each *claimant* to an equal position, to the extent possible. See *S.E.C. v. Torchia*, 2017 WL 4456905, at *9 (N.D. Ga. 2017) (“The basic goal [of the rising tide allocation] is to equalize recovery for [claimants] regardless of whether the recovery comes before or after the commencement of the [receivership].”) (citing to Michael L. Martinez, The Ebb of Rising-Tide Distributions in Ponzi Scheme Bankruptcies, 35 Am. Bankr. Inst. J. 16 (June 2016)).

Because the Receiver believes she must look at each claimant—as opposed to each claim—in order to distribute under the rising tide methodology, the Receiver has combined claims 6 and 7, and claims 12 and 13, before calculating distribution amounts. The Revised Distribution Chart, attached hereto as **Exhibit “A”**, reflects a combination of these claims and determines a proposed distribution by claimant. The Receiver respectfully submits that the Revised Distribution Chart, attached as Ex. A, reflects the appropriate distribution under application of the rising tide method.

In the alternative, should the Court or any claimant² disagree with the Receiver’s recommendation, the Receiver also attaches an alternative Revised Distribution Chart, which

¹ The proposed method discussed in the Motion to Approve the Claims Process. [D.E. 148, p. 10.]

² Claimant Khalil Mohammed already indicated his objection to the rising tide method because it penalizes him for his alleged “reinvestment” of \$65,000. [D.E. 207.] As acknowledged by the court in *Huber*, one of the issues with the rising tide distribution method is its impact on claimants who receive distributions between investments, and who argue that their post-distribution investments are actually “reinvestments.” See *S.E.C. v. Huber*, 702 F. 3d 903, 907-

provides for a rising tide distribution by claim (as opposed to claimant) without combining any claims. The alternative Revised Distribution Chart, which the Receiver *does not seek approval of*, is attached as **Exhibit “B”**. The Receiver proposes that any objection on this issue be resolved during the briefing schedule set forth in the Order and at the hearing on August 2, 2019.

Respectfully submitted,

NELSON MULLINS BROAD AND CASSEL

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 28, 2019, a true and correct copy of the foregoing was served via CM/ECF or other electronic transmission on all counsel or parties of record.

By: s/Daniel S. Newman
Daniel S. Newman, P.A.

08 (7th Cir. 2012). The Receiver’s preliminary position, to be explained further in briefing if necessary, is that she has treated all claimants equally to arrive at the distribution amounts in the Revised Distribution Schedule by totaling for each claimant the monies invested in the Receivership Entities and subtracting from that total the monies received in distributions from the Receivership Entities. Any deviation from this equal treatment would necessitate the Receiver to conduct a claimant-specific analysis, for all claimants, as to whether certain investments should be classified as “reinvestments.”

ELM TREE INVESTMENT ADVISORS
 RISING TIDE PROPOSED INTERIM DISTRIBUTION

Claim No.	Confirmed Deposits	Confirmed Returns	Net Gain to Investor	% of Total Claims Filed	Investment Return Percentage	Excess Return Percentage	Rising Tide Method Distribution Amt	Rising Tide Distribution %	Rising Tide INTERIM Distribution Amt	Rising Tide Method % Recovery After Distribution
1	\$34,000.00	\$0.00	\$34,000.00	0.321%	0.00%	0.00%	\$10,064.78	29.60%	\$5,964.99	17.54%
2	\$700,000.00	\$0.00	\$700,000.00	6.603%	0.00%	0.00%	\$207,215.97	29.60%	\$122,808.57	17.54%
3	\$49,965.00	\$0.00	\$49,965.00	0.471%	0.00%	0.00%	\$14,790.78	29.60%	\$8,765.90	17.54%
4	\$49,980.00	\$0.00	\$49,980.00	0.471%	0.00%	0.00%	\$14,795.22	29.60%	\$8,768.53	17.54%
5	\$94,119.00	\$0.00	\$94,119.00	0.888%	0.00%	0.00%	\$27,861.37	29.60%	\$16,512.31	17.54%
6 & 7	\$469,256.00	\$101,200.00	\$368,056.00	3.472%	21.57%	0.00%	\$108,952.97	29.60%	\$64,572.05	17.54%
9	\$2,999,950.00	\$0.00	\$2,999,950.00	28.297%	0.00%	0.00%	\$888,053.62	29.60%	\$526,313.69	17.54%
10	\$70,000.00	\$50,000.00	\$20,000.00	0.189%	71.43%	41.83%	\$0.00	0.00%	\$0.00	0.00%
11	\$49,913.66	\$0.00	\$49,913.66	0.471%	0.00%	0.00%	\$14,775.58	29.60%	\$8,756.89	17.54%
12 & 13	\$5,750,000.00	\$1,451,443.49	\$4,298,556.51	40.545%	25.24%	0.00%	\$1,272,470.77	29.60%	\$754,142.28	17.54%
14	\$23,860.00	\$0.00	\$23,860.00	0.225%	0.00%	0.00%	\$7,063.10	29.60%	\$4,186.02	17.54%
15	\$479,870.00	\$14,800.21	\$465,069.79	4.387%	3.08%	0.00%	\$137,671.27	29.60%	\$81,592.23	17.54%
16	\$69,970.00	\$0.00	\$69,970.00	0.660%	0.00%	0.00%	\$20,712.72	29.60%	\$12,275.59	17.54%
17	\$199,950.00	\$0.00	\$199,950.00	1.886%	0.00%	0.00%	\$59,189.76	29.60%	\$35,079.39	17.54%
18	\$360,950.00	\$158,885.00	\$202,065.00	1.906%	44.02%	14.42%	\$0.00	0.00%	\$0.00	0.00%
19	\$48,410.00	\$0.00	\$48,410.00	0.457%	0.00%	0.00%	\$14,330.46	29.60%	\$8,493.09	17.54%
20	\$32,000.00	\$0.00	\$32,000.00	0.302%	0.00%	0.00%	\$9,472.73	29.60%	\$5,614.11	17.54%
21	\$716,965.00	\$35,850.00	\$681,115.00	6.424%	5.00%	0.00%	\$201,625.58	29.60%	\$119,495.37	17.54%
22	\$14,975.00	\$0.00	\$14,975.00	0.141%	0.00%	0.00%	\$4,432.94	29.60%	\$2,627.23	17.54%
23	\$81,945.00	\$25,000.00	\$56,945.00	0.537%	30.51%	0.91%	\$0.00	0.00%	\$0.00	0.00%
24	\$126,960.00	\$64,000.00	\$62,960.00	0.594%	50.41%	20.81%	\$0.00	0.00%	\$0.00	0.00%
25	\$79,980.00	\$0.00	\$79,980.00	0.754%	0.00%	0.00%	\$23,675.90	29.60%	\$14,031.76	17.54%
INTERIM DISTRIBUTION	\$0.00	\$1,800,000.00	\$0.00							
TOTAL	\$12,503,018.66	\$3,701,178.70	\$10,601,839.96	100.000%	29.60%		\$3,037,155.52		\$1,800,000.00	

ALTERNATIVE RISING TIDE PROPOSED INTERIM DISTRIBUTION

Claim No.	Confirmed Deposits	Confirmed Returns	Net Gain to Investor	% of Total Claims Filed	Investment Return Percentage	Excess Return Percentage	Rising Tide Method Distribution Amt	Rising Tide Distribution %	Rising Tide INTERIM Distribution Amt	Rising Tide Method % Recovery After Distribution
1	\$34,000.00	\$0.00	\$34,000.00	0.321%	0.00%	0.00%	\$10,064.78	29.60%	\$8,939.37	26.29%
2	\$700,000.00	\$0.00	\$700,000.00	6.603%	0.00%	0.00%	\$207,215.97	29.60%	\$184,045.76	26.29%
3	\$49,965.00	\$0.00	\$49,965.00	0.471%	0.00%	0.00%	\$14,790.78	29.60%	\$13,136.92	26.29%
4	\$49,980.00	\$0.00	\$49,980.00	0.471%	0.00%	0.00%	\$14,795.22	29.60%	\$13,140.87	26.29%
5	\$94,119.00	\$0.00	\$94,119.00	0.888%	0.00%	0.00%	\$27,861.37	29.60%	\$24,746.00	26.29%
6	\$216,390.00	\$101,200.00	\$115,190.00	1.087%	46.77%	17.17%	\$0.00	0.00%	\$0.00	0.00%
7	\$252,866.00	\$0.00	\$252,866.00	2.385%	0.00%	0.00%	\$74,854.10	29.60%	\$66,484.16	26.29%
9	\$2,999,950.00	\$0.00	\$2,999,950.00	28.297%	0.00%	0.00%	\$888,053.62	29.60%	\$788,754.40	26.29%
10	\$70,000.00	\$50,000.00	\$20,000.00	0.189%	71.43%	41.83%	\$0.00	0.00%	\$0.00	0.00%
11	\$49,913.66	\$0.00	\$49,913.66	0.471%	0.00%	0.00%	\$14,775.58	29.60%	\$13,123.43	26.29%
12	\$1,000,000.00	\$0.00	\$1,000,000.00	9.432%	0.00%	0.00%	\$296,022.81	29.60%	\$262,922.52	26.29%
13	\$4,750,000.00	\$1,451,443.49	\$3,298,556.51	31.113%	30.56%	0.95%	\$0.00	0.00%	\$0.00	0.00%
14	\$23,860.00	\$0.00	\$23,860.00	0.225%	0.00%	0.00%	\$7,063.10	29.60%	\$6,273.33	26.29%
15	\$479,870.00	\$14,800.21	\$465,069.79	4.387%	3.08%	0.00%	\$137,671.27	29.60%	\$122,277.32	26.29%
16	\$69,970.00	\$0.00	\$69,970.00	0.660%	0.00%	0.00%	\$20,712.72	29.60%	\$18,396.69	26.29%
17	\$199,950.00	\$0.00	\$199,950.00	1.886%	0.00%	0.00%	\$59,189.76	29.60%	\$52,571.36	26.29%
18	\$360,950.00	\$158,885.00	\$202,065.00	1.906%	44.02%	14.42%	\$0.00	0.00%	\$0.00	0.00%
19	\$48,410.00	\$0.00	\$48,410.00	0.457%	0.00%	0.00%	\$14,330.46	29.60%	\$12,728.08	26.29%
20	\$32,000.00	\$0.00	\$32,000.00	0.302%	0.00%	0.00%	\$9,472.73	29.60%	\$8,413.52	26.29%
21	\$716,965.00	\$35,850.00	\$681,115.00	6.424%	5.00%	0.00%	\$201,625.58	29.60%	\$179,080.47	26.29%
22	\$14,975.00	\$0.00	\$14,975.00	0.141%	0.00%	0.00%	\$4,432.94	29.60%	\$3,937.26	26.29%
23	\$81,945.00	\$25,000.00	\$56,945.00	0.537%	30.51%	0.91%	\$0.00	0.00%	\$0.00	0.00%
24	\$126,960.00	\$64,000.00	\$62,960.00	0.594%	50.41%	20.81%	\$0.00	0.00%	\$0.00	0.00%
25	\$79,980.00	\$0.00	\$79,980.00	0.754%	0.00%	0.00%	\$23,675.90	29.60%	\$21,028.54	26.29%
INTERIM DISTRIBUTION	\$0.00	\$1,800,000.00	\$0.00							
TOTAL	\$12,503,018.66	\$3,701,178.70	\$10,601,839.96	100.000%	29.60%		\$2,026,608.69		\$1,800,000.00	