

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 AMENDED 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 Amended Revised Distribution Chart attached as **Exhibit "A"**, which applies the rising tide method to recalculate the payout amounts to the approved claimants, in accordance with the Court's May 14, 2019 order (the "Order"). [D.E. 218.]

The Receiver filed a Revised Distribution Chart on May 28, 2019, [D.E. 219; 219-1], but subsequently discovered corrections that needed to be made to the rising tide calculation in that filing. The Amended Revised Distribution Chart attached hereto as Ex. A makes those changes

and replaces the Revised Distribution Chart at [D.E. 219-1]. The Receiver is serving a copy of the Amended Revised Distribution Chart on all claimants, in accordance with the Court's Order.

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 separation of claims was sufficient for the net investment method of distribution,¹ combination of claims is necessary for 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 Amended Revised Distribution Chart, attached hereto as Ex. A, reflects a combination of these claims and determines a proposed distribution by claimant. The Receiver respectfully submits that the

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

Amended Revised Distribution Chart, attached as Ex. A, reflects the appropriate distribution under application of the rising tide method.

Respectfully submitted,

NELSON MULLINS BROAD AND CASSEL

Attorneys for Receiver
One Biscayne Tower, 21st 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
dan.newman@nelsonmullins.com
Christopher Cavallo, Esq.
Florida Bar No. 0092305
chris.cavallo@nelsonmullins.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 6, 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.

ELM TREE INVESTMENT ADVISORS

RISING TIDE PROPOSED INTERIM DISTRIBUTION REVISED

Claim No.	Confirmed Deposits	Confirmed Returns	Net Investor Loss	Initial Investment Return Percentage	Total First Interim Distribution Amt	Total Returns Amt Received	Total Returns Amt Received %
1	\$34,000.00	\$0.00	\$34,000.00	0.00%	\$9,753.89	\$9,753.89	28.69%
2	\$700,000.00	\$0.00	\$700,000.00	0.00%	\$200,815.37	\$200,815.37	28.69%
3	\$49,965.00	\$0.00	\$49,965.00	0.00%	\$14,333.91	\$14,333.91	28.69%
4	\$49,980.00	\$0.00	\$49,980.00	0.00%	\$14,338.22	\$14,338.22	28.69%
5	\$94,119.00	\$0.00	\$94,119.00	0.00%	\$27,000.77	\$27,000.77	28.69%
6 & 7	\$469,256.00	\$101,200.00	\$368,056.00	21.57%	\$33,419.74	\$134,619.74	28.69%
9	\$2,999,950.00	\$0.00	\$2,999,950.00	0.00%	\$860,622.95	\$860,622.95	28.69%
10	\$70,000.00	\$50,000.00	\$20,000.00	71.43%	\$0.00	\$50,000.00	71.43%
11	\$49,913.66	\$0.00	\$49,913.66	0.00%	\$14,319.19	\$14,319.19	28.69%
12 & 13	\$5,750,000.00	\$1,451,443.49	\$4,298,556.51	25.24%	\$198,111.33	\$1,649,554.82	28.69%
14	\$23,860.00	\$0.00	\$23,860.00	0.00%	\$6,844.94	\$6,844.94	28.69%
15	\$479,870.00	\$14,800.21	\$465,069.79	3.08%	\$122,864.46	\$137,664.67	28.69%
16	\$69,970.00	\$0.00	\$69,970.00	0.00%	\$20,072.93	\$20,072.93	28.69%
17	\$199,950.00	\$0.00	\$199,950.00	0.00%	\$57,361.48	\$57,361.48	28.69%
18	\$360,950.00	\$158,885.00	\$202,065.00	44.02%	\$0.00	\$158,885.00	44.02%
19	\$48,410.00	\$0.00	\$48,410.00	0.00%	\$13,887.82	\$13,887.82	28.69%
20	\$32,000.00	\$0.00	\$32,000.00	0.00%	\$9,180.13	\$9,180.13	28.69%
21	\$716,965.00	\$35,850.00	\$681,115.00	5.00%	\$169,832.27	\$205,682.27	28.69%
22	\$14,975.00	\$0.00	\$14,975.00	0.00%	\$4,296.01	\$4,296.01	28.69%
23	\$81,945.00	\$25,000.00	\$56,945.00	30.51%	\$0.00	\$25,000.00	30.51%
24	\$126,960.00	\$64,000.00	\$62,960.00	50.41%	\$0.00	\$64,000.00	50.41%
25	\$79,980.00	\$0.00	\$79,980.00	0.00%	\$22,944.59	\$22,944.59	28.69%
TOTAL	\$12,503,018.66	\$1,901,178.70	\$10,601,839.96		\$1,800,000.00	\$3,701,178.70	