

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

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| SECURITIES AND EXCHANGE COMMISSION, | § | |
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| Plaintiff, | § | |
| | § | |
| vs. | § | |
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| ARISEBANK, JARED RICE SR., and STANLEY FORD, | § | Civil Action No. 3:18-cv-186-M |
| | § | |
| Defendants. | § | |
| | § | |

**RECEIVER’S MOTION FOR APPROVAL OF CLAIMS PROCESS
AND PROPOSED BAR DATE AND BRIEF IN SUPPORT**

Mark W. Rasmussen, the Court-appointed Receiver in this action, files this Motion for Approval of Claims Process and Proposed Bar Date and Brief in Support (“Motion”). This Motion seeks the Court’s approval for the Receiver’s proposed claims process (“Claims Process”), including the method by which the Receiver will provide notice to claimants, the method by which claimants will file claims, and the date by which claims are to be filed (the “Bar Date”).

I. BACKGROUND

1. On January 25, 2018, the Securities and Exchange Commission filed a complaint against Defendants AriseBank, Jared Rice, Sr., and Stanley Ford, including, among other things, an application for the appointment of a receiver, in connection with the AriseBank Initial Coin Offering (“ICO”). After reviewing the application, the Court concluded that the appointment of a receiver in this action was necessary and appropriate for the purposes of marshaling and preserving all assets, tangible and intangible, that are owned, controlled or possessed by AriseBank and its affiliates (the “Receivership Entities” or the “AriseBank Receivership Estate”).

2. Accordingly, on January 25, 2018, the Court entered the Receivership Order, appointing Mark Rasmussen as Receiver for Defendant AriseBank and its affiliates. That same day, the Court also entered a temporary restraining order establishing an asset freeze and other relief, and set a hearing on the SEC's motion for a preliminary injunction. The Court later entered a preliminary injunction against Rice and Ford. Dkt. 61, 69.

3. On November 29, 2018, the SEC filed an unopposed motion to enter final judgments against Rice and Ford, together with consents under which Rice and Ford agreed to the terms of the proposed final judgment. Dkt. 95. On December 11, 2018, the Court entered final judgments against Rice and Ford. Dkt. 96.

4. At this time, the Receiver is prepared to begin his Claims Process, which ultimately will allow the Receiver to distribute the assets of the Receivership Entities to claimants with valid claims against the Receivership Entities in the coming months. Through this Motion, the Receiver seeks the Court's approval to:

- a. Provide via electronic means notice of and instructions regarding the Claims Process to claimants;
- b. accept claims by electronic means;
- c. determine whether a claim is valid and, if so, the amount of the claim; and
- d. establish a Bar Date.

II. DISCUSSION

A. Notice via Electronic Means

5. On information and belief, there are over 800 people who may have potential claims for recovery of amounts from the Receivership Entities. Before the Receiver can distribute funds, claimants must provide the Receiver with details regarding their losses and documentation supporting their claim. For the claimants to be able to do so, the Receiver must provide claimants

with notice of the Claims Process and Bar Date (described below). The Receiver believes that the Claims Process and notice procedure below provide an efficient and effective means of communicating with the claimants in light of the digital nature of this case.

6. A claims process must satisfy due process for it to be approved by a court. Due process requires that a party must receive notice “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action.” *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). In the receivership context, federal courts have distinguished between “known” and “unknown” creditors in determining the sufficiency of notice. See *In re Waterford Energy*, 294 F. App’x. 900, 904 (5th Cir. 2008), citing *Zurich Am. Ins. Co. v. Tessler (In re J.A. Jones, Inc.)*, 492 F.3d 242, 2490250 (4th Cir. 2007). “Known” creditors are those who are actually known or “reasonably ascertainable” to the receiver. *Tessler*, 492 F.3d at 250. A creditor is “reasonably ascertainable” if she can be located through “reasonably diligent efforts.” *In re Crystal Oil Co.*, 158 F.3d 291, 297 (5th Cir. 1998) (quoting *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 798 n.4 (1983)). For known creditors, actual notice is required in order for the bar date to be effective, whereas for unknown creditors constructive notice is sufficient. *Tessler*, 492 F.3d at 249-250.

7. The Receiver proposes to use electronic means to apprise claimants of the Claims Process in order to greatly reduce the costs associated with the notice process, and believes electronic notice is appropriate given the digital nature of the ICO. In cases involving predominantly internet-based activities, federal courts have concluded that electronic notice satisfies the requirements of due process. See *U.S. Commodity Futures Trading Commission v. Senen Pousa, et al.*, No. 12-CV-0862, Order Approving Claims Process, Notice Procedures, and Bar Date, Dkt. 101 (W.D. Tex., Aug. 11, 2015) (approving electronic notice of claims process and

bar date for receivership); *Browning v. Yahoo! Inc.*, No. C04-01463, 2007 WL 4105971, at *4 (N.D. Cal., Nov. 16, 2007) (electronic notice “particularly suitable” where claims involve “visits to Defendants’ internet websites”); *Lundell v. Dell, Inc.*, CIV A C05-3970 JWRS, 2006 WL 3507938, at *1 (N.D. Cal., Dec. 5, 2006) (notice sent electronically and posted to website satisfied due process).

8. Here, as in those cases, electronic means of notice are appropriate because AriseBank primarily interacted with potential contributors online. The AriseBank ICO was promoted through various means on the internet, including through a website (www.arisebank.com) and through social media channels (*e.g.*, Facebook, Telegram, Twitter). The details of the AriseBank business and ICO were explained in a white paper that could be downloaded by contributors from the AriseBank website. The primary method of contributing to the ICO was to access the website, click on a link, and contribute funds electronically. Most of the funds contributed were in the form of cryptocurrencies, which are a purely digital form of currency. Virtually all known contributors provided email addresses to AriseBank when they contributed to the ICO; moreover, those who had follow-up questions about their contributions submitted them online. Thus, under the circumstances, it is reasonable to assume the claimants have regular internet access, and that notice via electronic means would comport with due process in this case. *See Browning v. Yahoo Inc.*, 2007 WL 4105971 at * 4.

9. Specifically, the Receiver requests approval of the following notice procedures: within 14 days after entry of the Court’s Order, the Receiver will (1) provide notice of the Claims Process via email to all known claimants in a form substantially similar to the notice attached hereto as **Exhibit A** (“Notice”); (2) provide Notice via regular mail to known claimants who provided a mailing address if the Receiver becomes aware that the email address provided is no

longer valid; and (3) publish the Notice on the Receiver's website at www.arisebankreceiver.com,¹ and post a link to the Notice in a Telegram chat room called "#ArisenArmy," which appears to be used by a number of claimants.

10. The Receiver submits that the proposed notice procedure, which is reasonably calculated to apprise claimants of the Claims Process and which comports with due process, is in the best interest of the AriseBank Receivership Estate and should be approved.

B. Electronic Submittal of Claims

11. The Receiver has prepared an online claim system that will allow claimants to electronically submit a form substantially similar to **Exhibit B** containing information regarding their claim, as well as documentation supporting their claim (the "Claim Form"). The Notice provided by the Receiver via email or publication will contain a link to a web address, or in the case of Notice provided by regular mail, a web address, directing claimants to the online Claim Form and instruction site. Claimants who visit the website will have the ability to fill out and submit the claim form electronically, and to submit documentation supporting their claims through the Receiver's file uploading mechanism. The web page will contain instructions for submitting claims and documentation and access to the Claim Form. The Claim Form will prompt claimants to enter contact information and claim information (including amounts contributed, the date of contribution, the type of currency contributed, and details regarding how the contribution was made, as well as the amount of any funds returned to the claimant).

12. In addition to requesting information regarding the claimant's claim, the Claim Form includes a consent to jurisdiction which provides the claimant's consent to this Court's exclusive jurisdiction regarding any dispute related to the claimant's claim. The Claim Form also

¹ The Receiver has used this site to communicate with and update contributors, and publication to these pages will provide notice to unknown contributors in addition to providing supplementary notice to known claimants.

requires claimants to attest that the claim submitted is true and correct under penalty of perjury. Once claimants electronically submit the Claim Form, they will be prompted to upload documentation supporting their claim. Upon receipt of a claim form documentation, the Receiver will send a response email to the email address provided on the claimant's Claim Form confirming that the Claim Form and any uploaded documentation have been received.²

13. The Receiver submits that the online claim system is designed to receive the claims of claimants in a cost-effective manner. Therefore, every claimant should assert all claims through the Receiver's online Claim Form and file uploading system. Any claimant who wishes to submit their claim via mail or by any other alternative means should contact the Receiver at mail@arisebankreceiver.com, or by letter actually received on or before the Bar Date (discussed below) to request approval of the alternative method, which the Receiver may grant at his discretion. The Receiver's discretionary approval of an alternative method of submission and disposition for a specific claimant may include an extension for the Bar Date for that claimant. Requests for approval of an alternative means of claim submittal and disposition may be addressed to: AriseBank Receivership, c/o Jones Day and Mark Rasmussen, 2727 N. Harwood Street, Dallas, Texas 75201. The Receiver intends to exercise his direction to accommodate circumstances demonstrating good cause that a claimant with a valid claim cannot reasonably be expected to comply with the online submission and disposition mechanism.

C. Bar Date

14. In order to obtain certainty regarding the number and aggregate amount of claims and to allow for a final distribution of all Receivership Estate funds, a date must be set by which all claims are to be submitted (the "Bar Date"). The Receiver believes that 90 days will be

² If the Receiver has agreed to an alternative means of claim submittal, as discussed below, the Receiver will provide confirmation of receipt of the claim via the alternative method agreed upon.

sufficient for the Receiver to provide notice of the Claims Process and for both U.S.-based and internationally located claimants to collect and submit their claims. The Receiver therefore requests the Court's approval to establish a Bar Date of 11:59 p.m. (prevailing Central Time) on the first Tuesday that is 90 calendar days after the date the Court enters its Order regarding the relief requested in this Motion. Ninety days will provide both U.S.-based and international claimants the opportunity to organize and submit documentation supporting their claims, as well as provide claimants who wish to submit claims via an alternate means with ample time to contact the Receiver to obtain approval.

15. Except for any claims as to which the Receiver has specifically determined to be subject to an alternative method of submittal and disposition, any claims of claimants that are not properly submitted to the Receiver on a Claim Form by the Bar Date will be disallowed and barred.

D. Approval of Claims

16. After receiving a claim and supporting documentation, the Receiver will reconcile the data provided with the information collected throughout the Receivership. The Receiver and his advisors will reconcile claims on a rolling basis beginning as soon as the first claim is submitted. The Receiver will complete reconciliation of each claimant's claim as soon as possible, although time needed after the Bar Date has passed to complete reconciliation of all claims will be dependent upon the number of claims received and the quality of information submitted. Once the Receiver has determined whether a claim is valid, the Receiver will notify the claimant via the email provided with the claimant's Claim Form (or via U.S. mail if only a mailing address has been provided) of the allowable amount of the claim, if any (the "Claim Determination").³ The Receiver's notification will explain that the amount ultimately distributed to the claimant, if any,

³ In the event the Receiver has agreed to an alternative means of claim submission and disposition, as discussed above, the Receiver will provide the Claim Determination via the alternative method agreed upon.

will be paid *pro rata* based on available funds to claimants with allowable claims and is likely to be less than the full value of the allowable amount.

E. Objecting to the Claim Determination

17. The Receiver proposes that each claimant be given 30 days from the date the Receiver sends the Claim Determination to submit an objection. The objection should be emailed to the Receiver at mail@arisebankreceiver.com on or before 11:59 p.m. (prevailing Central Time) on the date that is 30 days after the date the Receiver sent the Claim Determination. If the Receiver has agreed to an alternative means of claim submission, an objection may likewise be sent via the alternative method agreed upon and shall be received on or before 11:59 p.m. (prevailing Central Time) on the date that is 30 days after the date the Receiver sent the Claim Determination. The Receiver will receive and consider timely Objections and will communicate any changes in its original Claim Determination within 30 days after receiving a timely Objection.

F. Release

18. The Receiver proposes that each claimant should be required to submit the release attached hereto as **Exhibit C** (the “Release”). The Release provides that any claimant who seeks to receive a distribution from the AriseBank Receivership Fund will release the Receiver, the AriseBank Receivership Estate, and their agents from any claim the claimant has or may assert in excess of the claimant’s *pro rata* share of the amount of the Claim Determination based on the funds available to claimants. The purpose of the Release is to prevent a claimant from later contesting a Claim Determination or amount of distribution received after the objection process has occurred, thus allowing the Receiver to reliably conduct a final distribution. By signing the Release, claimants are not releasing a claim to any additional funds that have already been recovered but are not held in the AriseBank Receivership Estate, or releasing a claim to any additional funds that may be recovered from any other source. Similar releases have been

approved in other receiverships or trusteeships involving distributions. *In re MF Global Holdings Ltd.*, 2013 WL 139594, 1 (S.D.N.Y. January 11, 2013); *In re MF Global Inc.*, 2012 WL 1424670 (Bankr. S.D.N.Y. Apr. 24, 2012). The Receiver will provide a reminder to claimants regarding submission of the release both during confirmation of receipt of the claim and once the final Claim Determination is sent.

G. Distribution of Assets

19. After the Bar Date, and after the Receiver has determined the validity and allowable amounts of all claims, the Receiver will, in a separate Motion, seek approval from the Court for a distribution plan to return available assets *pro rata* to claimants.

III. PRAYER

The Receiver respectfully requests that the Court enter an Order approving Receiver's proposed Claims Process, method of notice and receipt of claims, and the Bar Date, and providing any other relief this Court finds proper.

Dated: January 29, 2019

Respectfully submitted,

/s/ James A. Cox

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*ATTORNEYS FOR RECEIVER FOR
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on January 29, 2019, a true and correct copy of the foregoing document was served on counsel for all parties through the ECF system.

/s/ James A. Cox

James A. Cox