

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

CASE NO. 06:06-CV-137-PCF-KRS

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

EDWARD S. DIGGES, JR.; NEXSTAR
COMMUNICATIONS, LLC; TMT
EQUIPMENT COMPANY, LLC. TMT
MANAGEMENT GROUP, LLC; POSA,
LLC; POSA TMT, LLC; TELEVEST
COMMUNICATIONS, LLC; TELEVEST
GROUP, LLC; AND SPIN DRIFT, LLC,

Defendants.

**RECEIVER'S MOTION FOR AN ORDER APPROVING
CLAIMS PROCEDURES AND ESTABLISHING CLAIMS
DEADLINES FOR ALL CLAIMANTS, APPROVING CLAIM
FORM AND CLAIM AMENDMENT FORM, AND
APPROVING A DISTRIBUTION SOLELY TO INVESTORS**

Receiver James D. Silver, by and through undersigned counsel, pursuant to Local Rule 3.01 of the Local Rules for the Middle District of Florida, moves this Court for entry of an order approving claims procedures and establishing claims deadlines for all claimants, approving the Claim Form attached as **Exhibit 1** and Claim Amendment Form attached as **Exhibit 2**,¹ and approving a distribution to investors from the Receiver Estate in the amount of \$600,000. In support, the Receiver states as follows:

¹ The Receiver will post a copy of the instant motion on the Receivership Website contemporaneously with filing. However, because of the large number of investors and the possibility of confusion regarding

1. Pursuant to this Court's February 14, 2006 Order Granting Permanent Injunction, Freezing Assets, Appointing a Receiver and Ordering Other Ancillary Relief ("Receiver Order"), the Receiver is obligated, among other things, to take possession of the assets of Nexstar Communications, LLC, TMT Equipment Company, LLC, TMT Management Group, LLC, POSA, LLC, POSA TMT, LLC, Televest Communications, LLC, Televest Group, LLC and Spin Drift, LLC (the "Receiver Entities") for the benefit of their defrauded investors.

2. As the Receiver previously advised this Court during the March 2, 2007 hearing in this action on the Motion to Approve Settlement with Edward Golodetz, et al. (the "Golodetz Related Parties") [SEC Docket #107], the Receiver's goal is to use \$600,000 of the Golodetz Related Settlement Proceeds² to make a pro rata distribution to the defrauded investors ("Distribution").

3. The Receiver has determined that, in order to fairly and equitably accomplish the Distribution, this Court should: (i) determine an approach and procedure for the Distribution; (ii) approve the form of, and manner of disseminating the Claim Form and Claim Amendment Form; (iii) establish a deadline for filing claims in the receivership; (iv) establish procedures for the filing and determination of objections to claims; and (v) establish the timing and amount of the Distribution.

Basis for Distributing Solely to Defrauded Investors

4. The Receiver believes that it is fair and equitable to make the Distribution of \$600,000 from the \$1.3 million in Golodetz Related Settlement Proceeds (the

whether the Court has approved the Claim Form and Claim Amendment Form, the Receiver will not post copies of these forms unless otherwise directed by this Court.

² Golodetz Related Settlement Proceeds refers to the \$1.3 million in settlement proceeds from the Receiver's Settlement with the Golodetz Related Parties, which was approved by this Court's March 15, 2007 Order [SEC Docket #118].

“Golodetz Related Settlement Proceeds”) solely to defrauded investors because investors have arguable claims of title to the credit card terminals which helped generate a portion of the Golodetz Related Settlement Proceeds.³

5. The SEC and the Receiver maintain that investors put their money into a securities investment scheme; however, throughout the scheme, investors were led to believe that they were buying actual credit card terminals and were given “certificates of title” by the defendants. Rather than delay a distribution to investors by disputing investors’ ownership, the Receiver advised the Court at the March 2, 2007 hearing that resolution of the terminal ownership issue was unnecessary because the Receiver would distribute \$600,000 of the Golodetz Related Settlement Proceeds to the defrauded investors. Accordingly, the current Distribution would not include creditors other than defrauded investors.

6. It is well-settled that this Court has broad powers and wide discretion to determine relief in equity receiverships. *S.E.C. v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992). In view of the circumstances of this case, it is equitable that the proposed distribution go solely to the defrauded investors. Likewise, the claims procedures proposed herein are necessary and appropriate for the equitable and proper administration of the Receiver Estate.

7. The Receiver Order is also sufficiently broad, subject to this Court’s approval, to authorize the distribution and claims procedures set forth herein. For example, the Receiver Order authorizes the Receiver: “to sell, rent, lease or otherwise

³ Under the Golodetz Related Settlement, \$400,000 of the Golodetz Related Settlement Proceeds was allocated to the purchase of credit card terminals. Another \$300,000 of the Golodetz Related Settlement Proceeds was allocated to the purchase of the Receiver Entities’ related placements with merchants. Placements refer to the Receiver Entities’ rights to monthly income (sometimes referred to as residuals) from the placement of credit card terminals with merchants.

hypothecate or dispose of the assets of the Receiver Estate." (Receiver Order, VIII(B)) The Receiver Order also authorizes the Receiver "to take such other action as may be approved by the Court." (Receiver Order, VIII(I))

How to Calculate Investor's Pro-Rata Share

8. The Receiver believes that the most equitable approach for the Distribution is to give each investor holding an allowed investor claim a pro-rata amount based upon the investor's proportionate share of the \$600,000 proposed distribution amount.

9. In order to determine an investor's proportionate share or percentage of the proposed distribution amount, a determination must be made as to the allowed amount of each investor claim ("Allowed Investor Claim Amount") and the total allowed amount of all investor claims ("Allowed Investments Claim Total"). Once these amounts have been determined, the Receiver can ascertain what percentage an investor's Allowed Investor Claim is of the Allowed Investments Claim Total. This percentage is calculated by dividing an investor's Allowed Investor Claim by the Allowed Investments Claim Total. The resulting percentage is referred to as the "Investor Claim Percentage." The Investor Claim Percentage represents the percentage of the proposed \$600,000 distribution amount that an investor can expect to receive if the proposed Distribution is approved by the Court.

10. By way of example only, if the Allowed Investments Claim Total is \$20,000,000, and investor Jane Doe has an Allowed Investor Claim Amount for the full \$500,000 that she invested, then Jane Doe's Investment Claim Percentage would be 2.5%. This percentage is arrived at by dividing Jane Doe's \$500,000 Allowed Claim

Amount by the \$20,000,000 hypothetical Allowed Investments Claim Total ($\$500,000 \div \$20,000,000 = .025$ or 2.5%).

11. Calculation of the Investment Claim Percentage is important as that percentage will then be applied to the total amount to be distributed to determine the amount to be distributed to each investor. In the above example, if the Court authorizes the proposed \$600,000 distribution to defrauded investors, Jane Doe would receive \$15,000, which is 2.5% of \$600,000.

Determination of Allowed Investor Claims and the Allowed Investments Claim Total, and Use of “Net” Claim Concept

12. “Allowed Claim”, “Allowed Claim Amount” and similar terms are used to describe a claim that has been accepted as valid and enforceable in a particular amount. The Allowed Claim Amounts are arrived at through the claims process. The filing of a claim by the deadline for filing claims is the starting point. The Receiver and his counsel then review the claims to determine whether they are valid or are subject to objection or defense. If a disagreement arises between a claimant and the Receiver, the Court will resolve the dispute and will determine whether a claim is allowed and the amount of the allowed claim.

13. “Allowed Investor Claims” are allowed claims of the defrauded investors. Once the allowed amount of a defrauded investor’s claim is determined, that amount becomes the “Allowed Investor Claim Amount.” The “Allowed Investments Claim total” is the aggregate sum of all Allowed Investor Claim Amounts.

14. The Receiver requests that in determining the allowed amount of an investor’s claim, that the net rather than the gross amount of each claim be used. In other words, if an investor previously received payments from or on behalf of the Receiver

Entities or others, these amounts should be deducted from the amount that the investor paid in determining the allowed amount of the investor's claim.

15. It is equitable to reduce investor claim amounts by the amounts they received. Doing so reduces the disparity between the early investors who received more in so-called "lease payments" than those investors who had the misfortune of investing later in the scheme.

The Proposed Distribution Must Await Completion of the Claims Process for Investor Claims

16. Determining the allowed amounts of the claims of the approximately 300 investors will take several months since the process entails the filing of claims by the investors, the review of the claims by the Receiver, and if appropriate, the filing of objections to claims that are objectionable, and the resolution of all disputes by the Court. The proposed distribution to investors cannot occur until this process has been completed.

Establishing Deadline for Filing Claims

17. The Receiver requests that the Court require that all Claim forms from investors and all other creditors and claimants of the Receiver Estate or any of the Receiver Entities be sent to the Receiver within (45) days from (i) the date on which the Receiver mails Claim and Claim Amendment Forms to all potential claimants via first-class mail to their respective last known addresses; and (ii) contemporaneously publishes the Claim Form on the TMT Receivership website (www.tmtreceivership.com) that the Receiver uses to apprise interested parties of the Receiver's activities.

18. The cover page of each Claim Form will prominently display the calendar Due Date for submission of Claim Forms. The Due Date also will be prominently

displayed on the TMT Receivership website along with the Claim Form, Claim Amendment Form, and other relevant materials.

19. The Receiver shall file a notice with this Court within **three (3) days** of the mailing and website publication of the Claim Form and Claim Amendment Form.

20. Setting a claims deadline is critical since the Receiver cannot calculate the amounts to be distributed to each investor until claims have been filed and the claims process has been administered. Consequently, the claims process must be completed before the proposed Distribution can be made.

21. Although non-investor creditors and other non-investor claimants, subject to this Court's approval, will not be receiving any part of the proposed distribution, it is important that they too are required to submit their claims by the claims deadline.

22. Requiring such non-investors to file their claims at the same time as the investors is more efficient and cost-beneficial than having the Receiver send out claims forms on separate occasions. It also eliminates claims against the Receiver Estate for those claimants that do not timely submit their claims.

23. In addition, establishing a claims deadline now for non-investor claimants will reduce the time it will take to finalize the claims process as to those parties if one becomes necessary in the future. Thus, if the Receiver is able to make a further distribution later in this case, that distribution can take place sooner than it would otherwise.

24. At the same time, the Receiver recognizes that there may not be a distribution beyond the distribution proposed by this Motion. Since the claims review and objection process is undertaken to determine allowed claims for purposes of a

distribution, the Receiver proposes that the Court not require that the Receiver review and object to the non-investor claims unless and until it is determined that a further distribution will take place. This will help prevent the waste of Receivership resources on a time-consuming and expensive process that may not be meaningful in this case.

Proposed Procedures Relating to Claims Objections

25. After expiration of the Due Date, the Receiver shall have **forty-five (45) days**, or such longer time as this Court may authorize, to notify investor claimants in writing of any objection the Receiver has to their claims, and the reason for the objection (“Objection Notice”). All Objection Notices must be postmarked within that **forty-five (45) day** period.

26. Claimants that receive an Objection Notice shall have **thirty (30) days** to submit a response to the Receiver stating all of the reasons why their claim should not be denied. Any claimant response that is not postmarked within the 30-day response period will be untimely. Failure to timely submit a response will be grounds for denying a claim without further notice or hearing, unless the Court excuses the failure. Unlike the thirty (30) day period for the Receiver to mail Objection Notices to investor claimants, which applies only to investor claims, the above response deadline applies to all claimants.

27. Within **fifteen (15) days** of the deadline for claimants to submit Objection Notice responses, the Receiver shall send all Objection Notices and claimants’ responses to the Court for the Court’s resolution of these disputed claims.

28. Failure of an investor or other creditor to file the Claim Form by the Due Date shall be a basis for objection to and denial of that claim. Accordingly, any untimely

filed claims shall not be entitled to receive distributions unless the Court excuses the failure.

CONCLUSION

Based upon the foregoing considerations, the Receiver respectfully requests that this Court enter an Order:

- (i) Establishing a deadline for filing claims and approving the claims procedures outlined above;
- (ii) approving the Claim Form attached as **Exhibit 1**;
- (iii) approving the Claim Amendment Form attached as **Exhibit 2**;
- (iv) approving a \$600,000 Distribution to investors;
and subject to further order of the Court
- (v) granting such other relief as the Court deems just and proper.

CERTIFICATE OF CONFERRAL

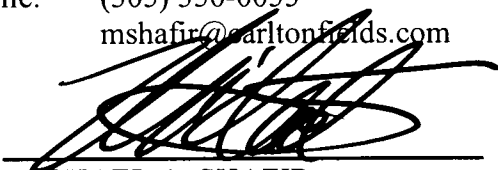
Pursuant to Local Rule 3.01(g), undersigned counsel has conferred with Defendant Digges regarding the instant motion via electronic mail, but Digges has not yet responded as of the filing of this motion. Upon receiving a response from Digges, the Receiver will supplement this conferral certificate. Undersigned counsel also has conferred with the SEC, and the SEC has indicated that it supports the relief requested and believes that the claims procedure set forth herein is in the best interest of the Receiver Estate and defrauded investors.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been uploaded this 10th day of October, 2007 to the Court's CM/ECF system which will send a notice of electronic filing to the following counsel of record:

William Hicks, Esq.
Robert K. Gordon, Esq.
M. Graham Loomis, Esq.
Jack Westrick, Esq.
Atlanta Regional Office, Securities and Exchange Commission
3475 Lenox Road N.E., Suite 1000
Atlanta, Georgia 30326-1232

I FURTHER CERTIFY that I mailed the foregoing via U.S. Mail to the following non-CM/ECF participant: **Edwards S. Digges, Jr.**, One Sandy Acres, Cambridge, Maryland 21613.

	Respectfully submitted, CARLTON FIELDS, P.A. <i>Attorneys for Receiver</i> 100 S.E. Second Street, Suite 4000 Miami, Florida 33131 Telephone: (305) 350-0050 Facsimile: (305) 350-0055 Email: mshafir@carltonfields.com By:  MICHAEL A. SHAFIR Florida Bar No. 0660671
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