

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:) Chapter 7
)
PEREGRINE FINANCIAL GROUP, INC.,) Case No. 12-27488
)
Debtor.) Honorable Judge Carol A. Doyle
)
) Hearing Date: March 8, 2017
) Hearing Time: 10:00 a.m.

NOTICE OF MOTION

PLEASE TAKE NOTICE that on **March 8, 2017 at 10:00 a.m.**, the undersigned shall appear before the Honorable Judge Carol A. Doyle, in Courtroom 742, 219 South Dearborn Street, Chicago, Illinois, and then and there present the **Trustee’s Motion for Entry of an Order Authorizing Additional Interim Distributions on Allowed 4d Customer Claims**, at which time you may appear if you deem fit.

Respectfully submitted,

Ira Bodenstein, not personally, but as chapter 7 trustee for the estate of Peregrine Financial Group, Inc.

Dated: February 23, 2017

By: /s/ Allen J. Guon
One of his attorneys

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CERTIFICATE OF SERVICE

Allen J. Guon certifies that he caused to be served a true copy of the above and foregoing **Notice Of Motion and Trustee's Motion for Entry of an Order Authorizing Additional Interim Distributions on Allowed 4d Customer Claims** upon the attached Electronic Mail Notice List through the ECF System and on the attached Service List in the manner so indicated on this 23rd day of February 2017.

/s/ Allen J. Guon

MAILING INFORMATION FOR CASE 12-27488

Electronic Mail Notice List

The following is the list of **parties** who are currently on the list to receive email notice/service for this case.

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**UNITED STATES BANKRUPTCY COURT
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)
PEREGRINE FINANCIAL GROUP, INC.,) Case No. 12-27488
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Debtor.) Honorable Judge Carol A. Doyle
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) Hearing Date: March 8, 2017
) Hearing Time: 10:00 a.m.

**TRUSTEE’S MOTION FOR ENTRY OF AN ORDER AUTHORIZING ADDITIONAL
INTERIM DISTRIBUTIONS ON ALLOWED 4D CUSTOMER CLAIMS**

Ira Bodenstein, not personally, but as chapter 7 trustee (“Trustee”) for the estate of Peregrine Financial Group, Inc. d/b/a PFG Best (“Debtor”), pursuant to 11 U.S.C. §§ 105(a) and 766 and 17 C.F.R. §§ 190.01 through 190.10, requests the entry of an order authorizing and approving up to a sixty-three percent (63%) interim distribution to the holders of Allowed 4d Claims (defined below).¹ In support of the motion, the Trustee respectfully states as follows:

BACKGROUND

A. The Debtor’s Bankruptcy Case

1. On July 10, 2012 (“Petition Date”), the Debtor filed a voluntary case under chapter 7 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (“Bankruptcy Code”), thereby commencing the above-entitled case (“Case”).

2. Ira Bodenstein is the duly appointed chapter 7 trustee of the Debtor’s bankruptcy estate (“Estate”).

3. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334 and Internal Operating Procedure 15(a) of the United States District Court for the Northern

¹ As discussed in detail below, the incremental distributions to holders of Allowed 4d Claims who have received all previous distributions will be three percent (3%).

District of Illinois. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding within the meaning of 28 U.S.C. §§ 157(b)(2)(A), (B) and (O).

B. Overview of the Debtor's Business

1. Futures Customer Business

4. The Debtor was registered as a futures commission merchant ("FCM") with the Commodity Futures Trading Commission ("CFTC") and operated a futures brokerage customer business pursuant to its FCM registration. The Debtor also had separate business lines for foreign exchange customers, physical precious metals customers and over-the-counter precious metals derivatives customers. As of the Petition Date, the Debtor had over 24,000 aggregate customer accounts over all of its lines of business, including approximately 17,000 futures customer accounts.

5. The Debtor's customers included commodity futures and option customers, i.e., customers with accounts opened for the purpose of trading futures or options on futures on a U.S. futures exchange under Section 4d of the Commodity Exchange Act ("4d Customers"). *See* 7 U.S.C. § 6d. The Debtor's customers also included foreign futures customers, i.e., customers with accounts opened for the purpose of trading futures or options on futures on an exchange located outside of the U.S. under CFTC Rule 30.7 ("30.7 Customers"). *See* 17 C.F.R. § 30.7. Additionally, the Debtor's futures customers included customers with delivery accounts, i.e., accounts denominated as such at the Debtor and through which deliveries of physical commodities could occur with respect to expiring futures contracts ("Delivery Customers," and together with 4d Customers and 30.7 Customers, the "Futures Customers").

6. The Court approved the Trustee's recognition of separate account classes of 4d Customers, 30.7 Customers and Delivery Customers pursuant to the *Order Approving*

Recognition of Futures, Foreign Futures and Delivery Account Classes of Customers entered on March 20, 2013. (Dkt. No. 598.)

2. Forex And Metals Businesses

7. In connection with its FCM registration, the Debtor carried foreign exchange (i.e., forex) trading accounts for customers, who were principally “retail” in nature (“Forex Customers”), through which such customers traded various types of forex contracts directly with the Debtor as their counterparty. The Debtor had approximately 7,000 Forex Customer accounts as of the Petition Date.²

8. The Debtor also had precious metals business lines with two sets of customers thereunder (together, the “Metals Customers”). First, the Debtor entered into over-the-counter (“OTC”) precious metals derivatives contracts with certain Metals Customers through which such customers traded “rolling spot” contracts on various precious metals directly with the Debtor as their counterparty.³ Second, certain Metals Customers of the Debtor held physical precious metals in their accounts, along with cash balances for the acquisition of physical precious metals.

C. The Claims Reconciliation Process

1. The Claims Bar Dates Established by the Court

9. By order dated September 26, 2012 (“First Bar Date Order”), this Court fixed November 16, 2012, as the last day to file a proof of claim in this Case (“Original Bar Date”) for all the Debtor’s customers and creditors and January 11, 2013 (“Governmental Bar Date”) as the

² Additional detail on the Debtor’s forex business was set forth in the *Trustee’s Motion to Approve Procedures for Fixing Pricing and Claim Amounts in Connection with the Termination and Liquidation of Foreign Exchange Customer Agreements*, filed on July 27, 2012. (Dkt. No. 49.)

³ Additional detail on the Debtor’s OTC metals business was set forth in the *Trustee’s Motion to Approve Procedures for Fixing Pricing and Claim Amounts in Connection with the Termination and Liquidation of Precious Metals Derivatives Customer Agreements*, filed on August 3, 2012. (Dkt. No. 66.)

last day to file a proof of claim in this Case for all governmental units (as defined in 11 U.S.C. § 101(27)).

10. In accordance with the First Bar Date Order, notice of the Original Bar Date and the Governmental Bar Date and customer and general creditor claim forms were served on all known claimants. (*See* Certificate of Service, dated October 2, 2012 at Dkt. No. 234.)

11. By order dated November 14, 2012, this Court extended the Original Bar Date to December 14, 2012. (Dkt. No. 281.)

12. By order dated January 23, 2013, the Court established March 15, 2013 (“Affected Creditor Bar Date”), as the last date for claimants who were first identified on the Debtor’s Amendment to Schedule F filed on January 18, 2013 to timely file proofs of claim. (Dkt. No. 371.)

13. On or about January 25, 2013, the Trustee served notice of the Affected Bar Date to all known claimholders. (*See* Certificate of Service at Dkt. No. 401.)

2. Futures Claims Reconciliation Process

14. To date, approximately 14,180 proofs of claim have been filed in this Case asserting over \$738 million claims against the Estate. The proofs of claim are recorded on the official claims register maintained by Rust-Omni, the notice and claims agent appointed by the Court in this Case (“Claims Agent”).

15. The Trustee and his professionals have undertaken a substantial effort to examine and reconcile the claims filed by Futures Customers with the Debtor’s books and records on both a customer-by-customer basis and an account-by-account basis. The Trustee has reconciled almost 10,000 futures related proofs of claim and allowed approximately \$395 million in both 4d Customer claims (“Allowed 4d Claims”) and 30.7 Customer claims (“Allowed 30.7 Claims,” and

together with the Allowed 4d Claims, the “Allowed Futures Claims”).⁴ All Allowed Futures Claims are identified on the Trustee’s website at www.pfgchapter7.com.

16. A number of Futures Customers have filed proofs of claim as to which the Trustee has objected, either in whole or in part. The Trustee has notified those claimants that the proofs of claim are objectionable by (i) serving the claimants with a Notice of Trustee’s Assessment of Claim (“Assessment(s)”) or (ii) serving the claimants with a formal objection to their proofs of claim pursuant to Fed. R. Bankr. P. 3007 (“Objection(s)”).⁵

17. *4d Customer Claims* – As of the filing of this motion, over 7,420 4d Customer claims have been allowed totalling approximately \$367 million. An estimated 20 unresolved 4d Customer claims remain, asserting approximately \$0.5 million as entitled to be treated as Allowed 4d Claims (“Unresolved Futures Claims”).

18. *30.7 Customer Claims* – As of the filing of this motion, approximately 600 30.7 Customer claims have been allowed totalling approximately \$28 million. There are no known unresolved 30.7 Customer Claims.

D. The Prior Distributions to Futures Customers

19. The Trustee and his professionals have been diligently working to do all that is possible to return property to customers, consistent with applicable law and the records available to the Trustee. In furtherance of that goal, on October 5, 2012, the Court granted the Trustee’s request to make interim distributions to Futures Customers pursuant to the *Order Approving*

⁴ The Allowed Futures Claims include proofs of claim filed by Futures Customers that have discrepancies with the Debtor’s books and records of less than \$1,000. The Trustee has determined, in his business judgment, that those proofs of claim should be allowed as filed after taking into account the fees and expenses that would be incurred if the Trustee were to object to those proofs of claim.

⁵ The First Bar Date Order established the procedures for determining and adjudicating proofs of claim in this Case. (Dkt. No. 200.)

Transfer of Funds and Accounts of Certain Commodity Customers of the Debtor to Vision Financial Markets LLC (“First Distribution Order”). (Dkt. No. 219.)

20. Pursuant to the First Distribution Order, the Trustee made a bulk transfer to Vision Financial Markets LLC (“Vision”) in the approximate amount of \$123 million, which represented a return of approximately thirty percent (30%) to 4d Customers (approximately \$111.75 million) and a forty percent (40%) return to 30.7 Customers (approximately \$11.25 million) (collectively, the “First Distributions”). Vision, in turn, made the First Distributions directly to the Futures Customers.⁶

21. On December 18, 2013, the Court granted the Trustee’s request to make additional interim distributions to Futures Customers pursuant to the *Order Granting Trustee’s Second Motion for an Order Approving Distributions to Certain Commodity Customers of the Debtor* (“Second Distribution Order”). (Dkt. No. 2014.) Pursuant to the Second Distribution Order, the Trustee made distributions in the approximate amount of \$38 million, which represented an aggregate return of approximately thirty-seven percent (37%) to holders of Allowed 4d Claims (approximately \$25 million) and an eighty-five percent (85%) return to holders of Allowed 30.7 Claims (approximately \$13 million) (“Second Distributions”).

22. Subsequent to the Second Distribution, the Court granted the Trustee’s request to make interim catch-up distributions pursuant to the *Order Granting Trustee’s Motion for an Order Approving Catch-Up Distributions to Certain Commodity Customers of the Debtor* (“Third Distribution Order”). (Dkt. No. 2981.) Pursuant to the Third Distribution Order, the Trustee made distributions in the approximate amount of \$700,000, which enabled in excess of

⁶ Approximately \$4 million of the First Distributions were returned to the Trustee after two years of being unclaimed at Vision. Of that amount, approximately \$2.2 million was subsequently distributed to those claimants who had Allowed Futures Claims.

215 additional holders of newly Allowed Futures Claims to receive their pro rata share of the undistributed portion of the First and Second Distributions (“Third Distributions”).

23. On December 11, 2014, the Court granted the Trustee’s request to make additional interim distributions to Futures Customers pursuant to the *Order Granting Trustee’s Motion For an Order (1) Authorizing up to 100% Distribution on Allowed 30.7 Customer Claims and an Interim Distribution on Allowed 4d Customer Claims and (2) Authorizing the Allocation of Certain Settlement Proceeds to the 4d Customer Estate* (“Fourth Distribution Order”). (Dkt. No. 3256.) Pursuant to the Fourth Distribution Order, the Trustee made distributions in the approximate amount of \$31 million, which represented an aggregate return of approximately forty-four percent (44%) to holders of Allowed 4d Claims (approximately \$27 million) and a one hundred percent (100%) return to holders of Allowed 30.7 Claims (approximately \$4 million) (“Fourth Distributions”).

24. On July 8, 2015, the Court granted the Trustee’s request to make additional interim distributions to Futures Customers pursuant to the *Order Granting Trustee’s Motion For an Order Authorizing Additional Distributions on Allowed 4d Customer Claims* (“Fifth Distribution Order”). (Dkt. No. 3985.) Pursuant to the Fifth Distribution Order, the Trustee made distributions in the approximate amount of \$19 million, which represented an aggregate return of approximately forty-nine percent (49%) to holders of Allowed 4d Claims (“Fifth Distributions”).

25. On February 11, 2016, the Court granted the Trustee’s request to make additional interim distributions to Futures Customers pursuant to the *Order Granting Trustee’s Motion For an Order Authorizing Additional Distributions on Allowed 4d Customer Claims* (“Sixth Distribution Order”). (Dkt. No. 3985.) Pursuant to the Sixth Distribution Order, the Trustee

made distributions in the approximate amount of \$40 million, which represented an aggregate return of approximately sixty percent (60%) to holders of Allowed 4d Claims (“Sixth Distributions,” and together with the First Distributions, the Second Distributions, the Third Distributions, the Fourth Distributions and the Fifth Distributions, the “Prior Distributions”).

26. To the extent that an unresolved claim subsequently became an Allowed Futures Claim, the prior distribution orders also authorized the Trustee to make the requisite pro rata distribution to the holder of such Allowed Futures Claim without further notice or order of this Court.

27. In sum, the Trustee has already distributed approximately \$250 million to holders of Allowed Futures Claims, including approximately \$222 million on account of Allowed 4d Claims and \$28 million on account of Allowed 30.7 Claims.

SOURCE OF FUNDS

28. The Trustee estimates that the Proposed Distributions to 4d Customers will require approximately \$13 million. As of the filing of this motion, the Trustee is holding approximately \$12 million in 4d Customer segregated funds (“4d Seg. Funds”) available for distribution to holders of Allowed 4d Claims and approximately \$4 million in 30.7 Customer segregated funds (“30.7 Seg. Funds”) available for distribution to holders of any remaining Allowed 30.7 Claims.

29. The Trustee intends to use \$10.5 million of 4d Seg. Funds and \$2.5 million of 30.7 Seg. Funds to make the Proposed Distribution to holders of Allowed 4d Claims. After the Proposed Distribution, a reserve of approximately \$1.5 million in 4d Seg. Funds and approximately \$1.5 million in 30.7 Seg. Funds will remain available for future distributions.

These amounts will be sufficient to satisfy the Unresolved Futures Claims and any undistributed portion of all Allowed Futures Claims.

RELIEF REQUESTED

30. By this motion, Trustee seeks authority to make cash distributions in an aggregate amount up to a sixty-three percent (63%) of all Allowed 4d Claims (“Proposed Distribution(s)”). With respect to holders of Allowed 4d Claims that received all Prior Distributions, the proposed incremental distributions will be three percent (3%). Holders of Allowed 4d Claims that did not receive the full amount of their Prior Distributions will receive their pro rata share of the undistributed portion of all Prior Distributions.⁷

31. The Trustee also requests authority use \$10.5 million of 4d Seg. Funds and \$2.5 million of 30.7 Seg. Funds to make the Proposed Distribution to holders of Allowed 4d Claims.

A. The Proposed Distributions to Allowed 4d Claims

32. The Trustee has determined that the Proposed Distributions sought herein are prudent, consistent with the Bankruptcy Code and the Part 190 Rules and provides prompt and fair treatment to as many Futures Customers as possible.

33. Section 766 of the Bankruptcy Code provides that the trustee in a commodity broker liquidation proceeding “shall distribute customer property ratably to customers on the basis and to the extent of such customers’ allowed net equity claims, and in priority to all other claims” except for certain administrative expenses. *See* 11 U.S.C. § 766(h). Pursuant to the Commodity Exchange Act (“CEA”), Congress authorized the CFTC to enact regulations to implement commodity broker liquidations under subchapter IV of chapter 7. *See* 7 U.S.C. § 24. The CFTC enacted those regulations in 17 C.F.R. §§ 190.01 *et seq.* (“Part 190 Rules”).

⁷ Pursuant to the Fourth Distribution Order, the Trustee will continue to make 100% distributions to holders of Allowed 30.7 Claims that did not previously receive their distributions.

34. The Part 190 Rules, among other things, (a) define what constitutes “customer property,” (17 C.F.R. § 190.08); (b) establish a system of account classes for *pro rata* distributions (17 C.F.R. §§ 190.01(a), 190.05(a)(2)); and (c) provide a formula for calculating the “net equity” of a customer’s claim (17 C.F.R. § 190.07).

35. As stated above, “customers” of an FCM liquidating under subchapter IV of the Bankruptcy Code share *pro rata* in the applicable pool of “customer property” held by the failed FCM. *See* 11 U.S.C. § 766(h). Section 761(9)(A) of the Bankruptcy Code generally defines a “customer” of an FCM for this purpose as an entity that holds a claim against the FCM on account of or arising out of a “commodity contract.”⁸ 11 U.S.C. § 761(9)(A); *see also* 17 C.F.R. § 190.01(k) (adopting § 761(9) as the “customer” definition under the Part 190 Rules). A “commodity contract” with respect to an FCM includes a “contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade” and a “commodity option.” 11 U.S.C. § 761(4)(A); *see also* 17 C.F.R. § 190.01(h) (adopting § 761(4) as the “commodity contract” definition under the Part 190 Rules).

36. Pursuant to the Part 190 Rules, a trustee liquidating a commodity broker, such as the Debtor, has a duty to use best efforts to effect the transfer of open customer contracts and

⁸ The complete definition of “customer” in section 761(9)(A) of the Bankruptcy Code is as follows:

(i) entity for or with whom such futures commission merchant deals and that holds a claim against such futures commission merchant on account of a commodity contract made, received, acquired, or held by or through such futures commission merchant in the ordinary course of such futures commission merchant’s business as a futures commission merchant from or for a commodity contract account of such entity; or

(ii) entity that holds a claim against such futures commission merchant arising out of—

(I) the making, liquidation, or change in the value of a commodity contract of a kind specified in clause (i) of this subparagraph;

(II) a deposit or payment of cash, a security, or other property with such futures commission merchant for the purpose of making or margining such a commodity contract; or

(III) the making or taking of delivery on such a commodity contract. . . .

equity. *See* 17 C.F.R. § 190.02(e)(1), referencing 17 C.F.R. § 190.06(e) and (f). The Trustee also has a duty to allocate and distribute customer property ratably to Futures Customers on the basis of their net equity claims. *See* 17 C.F.R. § 190.08; 11 U.S.C. § 766(h).

37. With respect to the Allowed 4d Claims, the Proposed Distributions may also be approved as “partial distribution(s)” made “pursuant to a preliminary plan of distribution approved by the court” under Section 190.08(d)(5) of the Part 190 Rules. *See* 17 C.F.R. § 190.08(d)(5). Moreover, the Part 190 Rules permit the CFTC, in appropriate cases and to protect the public interest, to authorize such transfers as it has here. *See* 17 C.F.R. § 190.06(h) (“Notwithstanding any other provision of this section, in appropriate cases and to protect the public interest, the Commission may: (1) Prohibit the transfer of customer accounts; or (2) Permit transfers of accounts which do not comply with the requirements of this section.”). The Bankruptcy Code and the Part 190 Rules therefore recognize that the Trustee may make a partial distribution to the Futures Customers in order to effectuate the prompt transfer of customer funds in furtherance of the goal of an expeditious and fair liquidation of customer property for the benefit of Futures Customers.

38. In addition, section 105(a) of the Bankruptcy Code authorizes the Court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).

39. The Trustee requests authority to make the Proposed Distributions to holders of Allowed 4d Claims as they become allowed. For the purposes of the Proposed Distributions, Allowed 4d Claims shall not include any of the following: (i) proofs of claim subject to a pending Objection; (ii) proofs of claim subject to a disputed Assessment; (iii) proprietary

accounts, as defined in the CFTC Regulation 1.3(y), pursuant to the Debtor's books and records; or (iv) proofs of claim that have not been finally reconciled by the Trustee.

40. As authorized under the prior distribution orders, the Trustee seeks approval to use a deposit account at Union Bank for the purpose of making the Proposed Distributions ("Union Bank Distribution Account"). The Trustee intends to transfer 4d Seg. Funds and 30.7 Seg. Funds in an amount sufficient to fund the Proposed Distributions from the Trustee's accounts into a Union Bank Distribution Account to fund the Proposed Distributions. The Trustee estimates that the Proposed Distributions will require approximately \$13 million to be transferred to the Union Bank Distribution Account.

41. Importantly, Union Bank and the Claims Agent identified a number of attempts to negotiate counterfeit checks that were presented for payment at Union Bank in connection with the Prior Distributions. In response to that fraudulent activity, the Trustee, Union Bank and the Claims Agent took a number of steps to ensure that the counterfeit checks were not negotiated. As an additional measure, the Trustee requests authority to implement a "positive pay" payment system for the Proposed Distributions which will allow the Claims Agent to systematically authorize payment of each check upon presentment to Union Bank. The Trustee estimates that fees and expenses associated with implementing the "positive pay" payment system will be approximately \$1,000.

42. The Trustee proposes to make the Proposed Distributions directly to the holders by check utilizing the services of the Claims Agent. Alternatively, in the event that a holder is unable to negotiate the check received from Claims Agent, the Trustee requests authority to wire transfer the funds to the holder's bank account. All costs and expenses incurred by the Estate related to cancelling a check and either (i) initiating a wire transfer or (ii) reissuing a check will

be paid for by the applicable claimant and deducted from the Proposed Distribution. In order to reduce administrative expenses, the Trustee requests authority to withhold, in his sole discretion, any Proposed Distribution if (x) the amount to be distributed on account of an Allowed 4d Claim is less than \$100 or (y) the Prior Distributions were either returned to the Claims Agent as undeliverable or have not been negotiated by the holder of such Allowed 4d Claim.

43. With respect to a Proposed Distribution to any holder that is either (i) not negotiated by the holder within ninety (90) days of the date of the check or (ii) undeliverable by virtue of a bad address, bad transfer instructions or any other reason that prevents the Trustee from properly transferring the Proposed Distribution to the holder, the Trustee, in his sole discretion, may either (i) resend the Proposed Distribution, less any applicable stop payment fees, to the holder once an updated address or transfer instructions are provided or (ii) withhold such Proposed Distribution until the Court authorizes a subsequent distribution to such holder. If a dispute arises as to the identity of a holder who is to receive a Proposed Distribution, the Trustee may, in his sole discretion, withhold the Proposed Distribution until the disposition thereof can be determined by the Bankruptcy Court or by written agreement among the interested parties to such dispute.

44. In addition, the Trustee requests that the Court establish 11:59 p.m. (CST) on February 23, 2017, as the record date for the Proposed Distributions (“Record Date”). As of the Record Date, the claims register shall be closed and the Trustee shall have no obligation to recognize transfers of any claims occurring after the Record Date for the purposes of the Proposed Distribution. The Proposed Distribution checks will be mailed to the holder at the address contained in the Proof of Claim as of the Record Date.

B. Distribution of 30.7 Seg. Funds to Satisfy Allowed 4d Claims

45. Finally, the Trustee seeks authority to use a portion of the 30.7 Seg. Funds to satisfy Allowed 4d Claims. As discussed above, Section 766 of the Bankruptcy Code provides that the trustee in a commodity broker liquidation proceeding “shall distribute customer property ratably to customers on the basis and to the extent of such customers’ allowed net equity claims, and in priority to all other claims” except for certain administrative expenses. *See* 11 U.S.C. § 766(h). As such, “customers” of an FCM liquidating under subchapter IV of the Bankruptcy Code share *pro rata* in the applicable pool of “customer property” held by the failed FCM. *See* 11 U.S.C. § 766(h).

46. Under the Part 190 Rules, the CFTC provided that the pools of “customer property” are separated by “account class” and shared only by customers falling within each particular account class. *See* 17 C.F.R. § 190.08(c)(1).⁹ Each account class “will constitute a separate estate of the customer class and the account class to which it is allocated.” *Id.*; *see also* 17 C.F.R. § 190.07(c). In other words, distributions to Futures Customers are *pro rata* by account class rather than *pro rata* across all Futures Customers of the Debtor. 17 C.F.R. § 190.08(c)(1).

47. To the extent that customer property belonging to a particular account class cannot be allocated to that class, any remaining customer property must then be allocated to the estates of the remaining account classes of Futures Customers. 17 C.F.R. § 190.08(c)(2). In such a situation, the Part 190 Rules establish a comprehensive distribution scheme for allocating customer property from one account class to the separate estates of the other account classes

⁹ 17 C.F.R. § 190.08(c)(1) provides in relevant part that, subject to certain limitations for non-public customer accounts, “property held by or for the account of a customer, which is segregated on behalf of a specific account class, or readily traceable on the filing date to customers of such account class, must be allocated to the customer estate of the account class for which it is segregated or to which it is readily traceable.”

“until the public customer claims of each account class are paid in full.” 17 C.F.R. § 190.08(c)(2)(iii).

48. In this Case, the only remaining class of Futures Customers that has not been “paid in full” is the class of 4d Customers. This Court previously approved the Trustee’s recognition of the separate account classes of 4d Customers, 30.7 Customers and Delivery Customers. (Dkt. No. 598.) The Delivery Customer account class was satisfied in full in the early stages of the Case. All Allowed 30.7 Claims have either been paid in full or sufficient funds have been reserved to satisfy any unpaid Allowed 30.7 Claims. At this time, however, 4d Customers have only received sixty percent (60%) of their Allowed 4d Claims. Accordingly, the only remaining account class that has not been paid in full is that of 4d Customers.

49. Pursuant to 17 C.F.R. § 190.08(c), all remaining 30.7 Seg. Funds remaining after satisfaction of all Allowed 30.7 Claims must be distributed to 4d Customers until all Allowed 4d Claims are paid in full. 17 C.F.R. § 190.08(c)(2). The Trustee’s Proposed Distribution is consistent with 17 C.F.R. § 190.08(c)(2) since all excess 30.7 Seg. Funds (after satisfaction of all Allowed 30.7 Claims) will distributed to holders of Allowed 4d Claims prior to payment of all other claims except administrative expenses. *See* 11 U.S.C. § 766(h).

50. The Trustee submits that the Proposed Distributions are fair and reasonable, consistent with the Bankruptcy Code and the Part 190 Rules, and will mitigate the harm suffered by the Futures Customers by providing them with access to some or all of their assets during the claims administration process. Moreover, because the Trustee proposes to reserve approximately \$1.5 million of 4d Seg. Funds and \$1.5 million of 30.7 Seg. Funds for claims that subsequently become Allowed Futures Claims, no customer should be “overpaid” or prejudiced by the relief requested herein. Accordingly, it is reasonable and appropriate to authorize the Trustee to make

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
Eastern Division

In Re:)	BK No.: 12-27488
PEREGRINE FINANCIAL GROUP, INC.,)	
)	Chapter: 7
)	Honorable Carol A. Doyle
)	
Debtor(s))	

**ORDER GRANTING TRUSTEE’S MOTION FOR AN ORDER AUTHORIZING
ADDITIONAL INTERIM DISTRIBUTIONS ON ALLOWED 4D CUSTOMER CLAIMS**

Upon consideration of the motion (“Motion”) of Ira Bodenstein, not personally, but as chapter 7 trustee (“Trustee”) for the estate of Peregrine Financial Group, Inc. d/b/a PFG Best (“Debtor”), pursuant to 11 U.S.C. §§ 105(a) and 766 and 17 C.F.R. §§ 190.01 through 190.10, seeking the entry of an order authorizing and approving up to a sixty-three percent (63%) interim distribution to holders of Allowed 4d Claims (capitalized terms not defined herein shall have the meanings ascribed thereto in the Motion); sufficient notice having been provided; the Court having core jurisdiction to hear and determine the Motion; the Court having held a hearing on this matter on March 8, 2017 (“Hearing”); it appearing that there is good cause to grant the relief requested based on the legal and factual bases set forth in the Motion and by counsel at the Hearing; and, there being no objection to the relief requested; it is ORDERED:

1. The Motion is granted.

2. The Trustee is authorized to make distributions of segregated cash in an amount up to a sixty-three percent (63%) distribution to the holders of Allowed 4d Claims (“Distribution(s)”). With respect to holders of Allowed 4d Claims that received all Prior Distributions, the incremental distributions will be three percent (3%). To the extent that an unresolved claim becomes an Allowed 4d Claim after the entry of this Order, the Trustee is authorized to make the requisite pro rata distribution to the holder of such Allowed 4d Claim without further notice or order of this Court. The Trustee is authorized to use up to \$2.5 million of 30.7 Seg. Funds, in addition to any 4d Seg. Funds, to make the Distributions to holders of Allowed 4d Claims (“Holder(s)”).

3. For the purposes of this Order, Allowed 4d Claims shall include only those proofs of claim filed by 4d Customers that have been reconciled and deemed allowed by the Trustee; it being understood that Allowed 4d Claims shall not include any of the following: (i) proofs of claim subject to a pending objection pursuant to Fed. R. Bankr. P. 3007; (ii) proofs of claim subject to disputed Notice of Trustee's Assessment of Claim; (iii) proprietary accounts, as defined in the CFTC Regulation 1.3(y), pursuant to the Debtor’s books and records; or (iv) proofs of claim that have not been finally reconciled by the Trustee and his professionals. The Trustee shall be authorized, in his business judgment, to allow without further objection or reconciliation any proofs of claim filed by 4d Customers that have discrepancies with the Debtor’s books and records in an amount less than \$1,000. All proofs of claim that are deemed Allowed 4d Claims by the Trustee for the purposes of the Distributions shall be listed in the “Proof of Claim Docket” on the Trustee’s website (www.pfgchapter7.com).

4. The Trustee is authorized to use a deposit account at Union Bank for the purpose of making the Distributions ("Union Bank Distribution Account"). The Trustee is further authorized to transfer 4d Seg. Funds and 30.7 Seg. Funds funds from the Trustee's accounts into the Union Bank Distribution Account in amounts sufficient to fund the Distributions. The Trustee is authorized pay all costs and expenses incurred in connection with the implementation of a "positive pay" payment system for the Distributions.

5. The Trustee is authorized to make the Distributions directly to the Holders by check utilizing the services of the Claims Agent. Alternatively, in the event that a Holder is unable to negotiate the check received from Claims Agent, the Trustee is authorized to wire transfer the funds to the applicable Holder's bank account. All costs and expenses incurred by the Estate in connection with the cancellation of a check and either (i) initiating a wire transfer or (ii) reissuing a check (collectively, the "Bank Fees") shall be paid for by the applicable Holder and the Trustee is authorized to deduct the Bank Fees from the Distribution. The Trustee may, in his sole discretion, withhold any Distribution if (x) the total amount to be distributed on account of an Allowed 4d Claim is less than \$100 or (y) a Prior Distribution was either returned to the Claims Agent as undeliverable or was not negotiated by the Holder.

6. With respect to a Distribution to any Holder that is either (i) not negotiated by the Holder within ninety (90) days of the date of the check or (ii) undeliverable by virtue of a bad address, bad transfer instructions or any other reason that prevents the Trustee from properly transferring the Distribution to the Holder, the Trustee, in his sole discretion, may either (a) resend such Distribution, less any applicable stop payment fees, to the Holder once an updated address or transfer instructions are provided or (b) withhold such Distribution until the Court authorizes a subsequent distribution to such Holder. If any dispute arises as to the identity of a Holder who is to receive a Distribution, the Trustee may, in his sole discretion, withhold the Distribution until the disposition thereof can be determined by this Court or by written agreement among the interested parties to such dispute.

7. The record date for the Distributions shall be 11:59 p.m. (CST) on February 23, 2017 ("Record Date"). As of the Record Date, the claims register is closed and the Trustee shall have no obligation to recognize transfers of any claims occurring after the Record Date for the purposes of the Distributions. The Trustee is authorized to mail Distribution checks to each Holder at the address contained in the proof of claim as of the Record Date.

8. Nothing in this Order shall modify the Trustee's authority to make distributions to holders of Allowed 30.7 Claims pursuant to the Order Granting Trustees Motion for An Order (1) Authorizing up to 100% Distribution on Allowed 30.7 Customer Claims and an Interim Distribution on Allowed 4d Customer Claims and (2) Authorizing the Allocation of Certain Settlement Proceeds to the 4d Customer Estate [Dkt. No. 3256].

Enter:

Dated:

United States Bankruptcy Judge

Prepared by:

Allen J. Guon (#6244526)
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