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11 Attorneys for Receiver  
12 WILLIAM J. HOFFMAN

13 UNITED STATES DISTRICT COURT  
14 CENTRAL DISTRICT OF CALIFORNIA  
15 WESTERN DIVISION

16 SECURITIES AND EXCHANGE  
COMMISSION,

17 Plaintiff,

18 v.

19 NATIONWIDE AUTOMATED  
20 SYSTEMS, INC.; JOEL GILLIS; and  
EDWARD WISHNER,

21 Defendants,

22 OASIS STUDIO RENTALS, LLC;  
23 OASIS STUDIO RENTALS #2, LLC;  
and OASIS STUDIO RENTALS #3, LLC

24 Relief Defendants.  
25

Case No. CV-14-07249-SJO (FFMx)

**NOTICE OF MOTION AND  
MOTION FOR APPROVAL OF  
PROCEDURES FOR THE  
ADMINISTRATION OF INVESTOR  
AND CREDITOR CLAIMS  
AGAINST THE RECEIVERSHIP  
ESTATE**

Date: December 4, 2017  
Time: 10:00 a.m.  
Ctrm: 10C  
Judge: Hon. S. James Otero

1 **TO ALL INTERESTED PARTIES:**

2 **PLEASE TAKE NOTICE** that on December 4, 2017, at 10:00 a.m. in  
3 Courtroom 10C of the above-captioned Court, located at 350 W. 1st Street,  
4 Los Angeles, California, 90012, William J. Hoffman of Trigild, Inc. ("Receiver"),  
5 the Court-appointed permanent receiver for Nationwide Automated Systems, Inc.  
6 ("NASI"), Oasis Studio Rentals, LLC, Oasis Studio Rentals #2, LLC, Oasis Studio  
7 Rentals #3, LLC, and their subsidiaries and affiliates ("Receivership Entities"), will  
8 and hereby does move the Court for an order approving procedures for the  
9 administration of investor and creditor claims against the receivership estate  
10 ("Motion").

11 This Motion is based on this Notice of Motion and Motion, the attached  
12 Memorandum of Points and Authorities, the documents and pleadings already on  
13 file in this action, and upon such further oral and documentary evidence as may be  
14 presented at the time of the hearing.

15 **Procedural Requirements:** If you oppose this Motion, you are required to  
16 file your written opposition with the Office of the Clerk, United States District  
17 Court, 312 North Spring Street, Los Angeles, California 90012 and serve the same  
18 on the undersigned no later than 21 calendar days prior to the hearing.

19 **IF YOU FAIL TO FILE AND SERVE A WRITTEN OPPOSITION** by the  
20 above date, the Court may grant the requested relief without further notice.

21  
22 Dated: October 31, 2017

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

By:           /s/ Edward Fates          

EDWARD G. FATES  
Attorneys for Receiver  
WILLIAM J. HOFFMAN

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

As the Court-appointed permanent Receiver, the Receiver's primary charge is to secure, preserve, and protect the assets of the Receivership Entities for the benefit of investors and creditors. The Receiver is currently holding over \$34 million in cash and that amount continues to increase as additional recoveries are made, primarily through clawback settlements and judgments. The Receiver's forensic accounting of transfers to and from investors is sufficiently complete for him to identify the approximately 1,350 investors (or investor groups) with losses from their investments and the amounts of their losses.

Therefore, procedures for the administration of investor and creditor claims against the receivership estate should be established. By way of this Motion, the Receiver seeks approval of procedures for the efficient receipt, review, and determination of claims against the receivership estate. Once all claims have been received and reviewed, and reasonable efforts have been made to resolve any and all claim disputes, the Receiver will file a further motion seeking approval of all claim amounts (including determination of disputed claims), approval of a plan of distribution, and authorization to make interim distributions to investors and creditors with allowed claims.

The claim procedures proposed herein are designed to strike an appropriate balance between providing investors and creditors with a reasonable and fair opportunity to assert their claims and have their claims determined by the Court, on the one hand, and conserving judicial and receivership estate resources on the other hand. Accordingly, the Receiver asks that the Court approve the proposed procedures in its broad discretion regarding the administration of the receivership estate.

1 **II. FACTUAL BACKGROUND**

2 On September 14, 2014, the Securities and Exchange Commission  
3 ("Commission") filed its Complaint against Nationwide Automated Systems, Inc.  
4 ("NASI"); Joel Gillis ("Gillis"); and Edward Wishner ("Wishner," collectively with  
5 NASI and Gillis, "Defendants") and Oasis Studio Rentals, LLC; Oasis Studio  
6 Rentals #2, LLC; and Oasis Studio Rentals #3, LLC, and their subsidiaries and  
7 affiliates (collectively, "Receivership Entities"). The Commission simultaneously  
8 filed, *inter alia*, an Ex Parte Application for a Temporary Restraining Order and  
9 Orders (1) Freezing Assets; (2) Prohibiting the Destruction of Documents;  
10 (3) Granting Expedited Discovery; (4) Requiring Accountings; and (5) Appointing a  
11 Temporary Receiver, and Order to Show Cause Re Preliminary Injunction and  
12 Appointment of a Permanent Receiver. On September 30, 2014, the Court issued  
13 the Temporary Restraining Order and Orders (1) Freezing Assets; (2) Prohibiting  
14 the Destruction of Documents; (3) Granting Expedited Discovery; (4) Requiring  
15 Accountings; and (5) Appointing a Temporary Receiver, and Order to Show Cause  
16 Re Preliminary Injunction and Appointment of a Permanent Receiver ("TRO") and  
17 appointed Mr. Hoffman as temporary receiver. (Dkt. No. 17.) Mr. Hoffman's  
18 appointment was made permanent pursuant to the Preliminary Injunction and Orders  
19 (1) Freezing Assets; (2) Prohibiting the Destruction of Documents; (3) Requiring  
20 Accountings; and (4) Appointing a Receiver ("PI Order") stipulated to by the  
21 Commission, Gillis, and Wishner.

22 While the Ponzi scheme operated for more than 15 years, the funds raised  
23 from investors through ATM sale and leaseback transactions between January 2008  
24 and August 2014 total more than \$350 million. The Commission's Complaint  
25 alleges NASI investors were informed they could purchase ATMs from NASI and  
26 then lease these machines back to NASI in return for "rent" of 50 cents per ATM  
27 transaction, with a guaranteed investment return of at least 20% per year. However,  
28 during the period from January 2008 through August 2014, the vast majority of

1 NASI's revenue came from new investor funds; revenues generated from actual  
2 ATM transactions represented less than 3% of NASI's revenue. Thus, investor  
3 funds were not being used to acquire, place, operate and maintain the purported  
4 ATMs sold to investors, but were instead being used to pay returns guaranteed by  
5 NASI and already owed to earlier investors.

6 The Receiver has been very successful in recovering funds for the benefit of  
7 investors and creditors. Specifically, the receivership estate started with a balance  
8 of approximately \$481,000 and now has more than \$34 million cash on hand. As a  
9 result, the Receiver is in a position to distribute a large sum of money to investors  
10 and creditors with allowed claims.

### 11 **III. PROPOSED CLAIM PROCEDURES**

#### 12 **A. Investor Claims**

13 Through his ongoing forensic accounting, the Receiver has identified  
14 investors with net losses from the NASI Ponzi scheme. There are approximately  
15 1,350 such investors and their collective losses are approximately \$124 million. To  
16 maximize efficiency with respect to the administration of investor claims, the  
17 Receiver proposes to send each investor a notice together with a schedule showing  
18 their individual transactions with the Receivership Entities (deposits and  
19 disbursements) and their proposed net claim amount.<sup>1</sup> The claim notice package  
20 will also include an IRS Form W-9 to be completed and mailed back to the Receiver  
21 for tax reporting purposes. In order to send the notices to most current addresses,  
22 investors are encouraged to provide their updated contact information by visiting the  
23 Receiver's website ([www.nasi-receivership.com](http://www.nasi-receivership.com)) and clicking on the "Investor  
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26 <sup>1</sup> The Receiver will not send claim notices to profiting investors (a) who have  
27 acknowledged receiving a profit from the NASI Ponzi scheme by virtue of  
28 returning a portion of such profits to the Receiver pursuant to a settlement  
agreement, (b) against whom a judgment on a clawback claim has been entered,  
or (c) have filed a personal bankruptcy case in which the Receiver has an allowed  
claim for return of their profits from the NASI Ponzi scheme.

1 Questionnaire" link on the right hand side of the home page and enter the requested  
2 information.

3 Investors will then have 60 days from the date of the notice to dispute their  
4 proposed claim amount in writing and provide documentation supporting their  
5 calculation as to their claim amount. If investors agree with their proposed claim  
6 amount, they will not need to take any action and their proposed allowed claim  
7 amount will be recommended to the Court for approval. All investors, however,  
8 must complete and return the IRS Form W-9 in order to have an allowed claim and  
9 receive distributions.

10 *It is important to understand that proposed claim amounts are not the same*  
11 *as distribution amounts. A claim is simply the basis on which distributions from the*  
12 *receivership estate will be calculated. Actual distribution amounts will be a*  
13 *percentage of each investor's allowed claim.*

14 The Receiver will review all investor claim disputes and attempt to resolve  
15 them with the applicable investors. If, however, any claim disputes cannot be  
16 resolved, the Receiver will file a motion seeking approval of all allowed claim  
17 amounts and will ask the Court to resolve such claim disputes ("Claims Approval  
18 Motion"). The applicable investors can state their positions in opposition to the  
19 motion, the Receiver can respond, and the Court can determine the allowed claim  
20 amounts.

21 **B. Creditor Claims**

22 Over the course of the last three years since his appointment, the Receiver has  
23 had contact with vendors and creditors that did business with or provided services to  
24 the Receivership Entities prior to the Receiver's appointment. The Receiver will  
25 solicit claims from these known vendors and creditors and verify the amounts  
26 asserted against the records of the Receivership Entities. Like investors, all  
27 creditors will be instructed to complete and return an IRS Form W-9 in order to  
28 have an allowed claim and receive distributions.

1 As with investor claims, if disputes arise regarding creditor claims, the  
2 Receiver will attempt to resolve those disputes with the applicable creditors. If any  
3 claim disputes cannot be resolved, the Receiver will file the Claims Approval  
4 Motion seeking approval of all allowed claim amounts and will ask the Court to  
5 resolve such disputes. The applicable creditors can state their positions in  
6 opposition to the motion, the Receiver can respond, and the Court can determine the  
7 allowed claim amounts.

8 **C. Claims Bar Date**

9 In order to make interim distributions, the Receiver must have certainty about  
10 the aggregate amount of allowed claims. As noted above, the Receiver proposes to  
11 send notices to investors (other than those described in footnote 1) and that such  
12 investors be given 60 days from the date of the notice to return their completed IRS  
13 Form W-9 and respond with any disputes concerning their proposed claim amounts.  
14 All investor claim notices will be mailed out within 30 days of entry of an order on  
15 this Motion. Therefore, all investor IRS Form W-9s and disputes regarding their  
16 claims must be received, at the latest, within 90 days of entry of the order on this  
17 Motion.

18 With respect to creditors, there also must be a deadline, or bar date, for  
19 submitting claims, after which the Receiver can be confident that the universe and  
20 magnitude of possible creditor claims is set. Accordingly, the Receiver requests that  
21 the Court establish a date 90 days after entry of an order on this Motion as the date  
22 by which creditor claims against the Receivership Entities (including completed  
23 W-9 tax forms) must be submitted to the Receiver as a prerequisite to receiving a  
24 distribution from the estate. The Receiver proposes providing notice of the claims  
25 bar date to all known creditors by mail and via posting to the receivership website  
26 ([www.nasi-receivership.com](http://www.nasi-receivership.com)).

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1 **IV. DISCUSSION**

2 "The power of a district court to impose a receivership or grant other forms of  
3 ancillary relief does not in the first instance depend on a statutory grant of power  
4 from the securities laws. Rather, the authority derives from the inherent power of a  
5 court of equity to fashion effective relief." *SEC v. Wencke*, 622 F.2d 1363, 1369  
6 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly  
7 and efficient administration of the estate by the district court for the benefit of  
8 creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir 1986). As the appointment  
9 of a receiver is authorized by the broad equitable powers of the court, any  
10 distribution of assets must also be done equitably and fairly. *See SEC v. Elliot*,  
11 953 F.2d 1560, 1569 (11th Cir. 1992).

12 District courts have the broad power of a court of equity to determine the  
13 appropriate action in the administration and supervision of an equity receivership.  
14 *See SEC v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005). The Ninth  
15 Circuit explained:

16 A district court's power to supervise an equity receivership  
17 and to determine the appropriate action to be taken in the  
18 administration of the receivership is extremely broad. The  
19 district court has broad powers and wide discretion to  
20 determine the appropriate relief in an equity receivership.  
21 The basis for this broad deference to the district court's  
22 supervisory role in equity receiverships arises out of the fact  
23 that most receiverships involve multiple parties and complex  
24 transactions. A district court's decision concerning the  
25 supervision of an equitable receivership is reviewed for  
26 abuse of discretion.

27 *Id.* (citations omitted); *see also CFTC. v. Topworth Int'l, Ltd.*, 205 F.3d 1107,  
28 1115 (9th Cir. 1999) ("This court affords 'broad deference' to the court's supervisory  
29 role, and 'we generally uphold reasonable procedures instituted by the district court  
30 that serve th[e] purpose' of orderly and efficient administration of the receivership  
31 for the benefit of creditors."). Accordingly, the Court has broad discretion in the  
32 administration of the receivership estate.



1 If, for example, an investor's allowed claim amount is \$1.24 million and the  
2 total losses of all investors/creditors is \$124 million, the investor's *pro rata* loss is  
3 1.00%, *i.e.*, \$124 million divided by \$1.24 million. This investor would therefore be  
4 entitled to 1.00% of all distributions made by the Receiver. If, hypothetically, the  
5 total amount distributed for the first distribution by the Receiver is \$30 million, the  
6 investor's interim distribution amount would be \$300,000.

7 **B. Determination of Claim Disputes**

8 District Courts have the power to use "summary procedures in allowing,  
9 disallowing, and subordinating claims of creditors . . ." *United States v. Arizona*  
10 *Fuels Corp.*, 739 F.2d 455, 458 (9th Cir. 1984). Therefore, all claim disputes should  
11 be resolved via summary proceedings.

12 The proposed steps of the claims process are attached hereto as Exhibit A for  
13 clarity and ease of reference. Pursuant to the proposed process, investors and  
14 creditors can dispute the Receiver's proposed allowed amount of their claims by  
15 doing so directly with the Receiver, and if the disputes cannot be resolved, by  
16 opposing the Receiver's Claims Approval Motion. The Court can then hold a  
17 hearing, if necessary, and consider the arguments of investors and creditors before  
18 deciding their allowed claim amounts. Plenary proceedings to resolve claim  
19 disputes would unduly delay the administration of the case and consume  
20 receivership estate resources.

21 Finally, as in a bankruptcy case, it should be a claimant's burden to establish a  
22 valid claim against the receivership estate. *See Lundell v. Anchor Constr.*  
23 *Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000); *Revere Copper &*  
24 *Brass, Inc. v. Adriance Machine Works, Inc.*, 76 F.2d 876, 878 (2d Cir. 1935)  
25 (claimants failed to sustain burden of proving claims against receivership).  
26 Therefore, if a claimant fails to present evidence to establish a valid claim against  
27 the receivership estate, such claim should be disallowed.

28

1 **V. CONCLUSION**

2 The claim procedures proposed herein were formulated with the dual goals of  
3 (a) providing all investor and creditor claimants with a reasonable and fair  
4 opportunity to assert their claims and have their claims determined by the Court, and  
5 (b) establishing an efficient process that conserves judicial and receivership estate  
6 resources. Therefore, the Receiver respectfully requests the Court grant the Motion  
7 and approve the procedures proposed herein for the administration of investor and  
8 creditor claims against the receivership estate.

9  
10 Dated: October 31, 2017

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

By:           /s/ Edward Fates          

EDWARD G. FATES  
Attorneys for Receiver  
WILLIAM J. HOFFMAN

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# **EXHIBIT A**

## EXHIBIT A

### PROPOSED CLAIM PROCEDURES

Note, these procedures have not yet been approved by the Court and may be revised if deemed appropriate by the Court.

- Within 30 days of entry of an order approving this Motion, the Receiver will send out claims notices to investors. The claims notice will explain the claim procedures, state the proposed allowed claim amount for each investor, and provide the Receiver's calculation of the amount.

- If investors do not dispute the proposed allowed claim amount stated in their claims notice, they do not need to take any action. The Receiver will file a motion for approval of all proposed allowed claim amounts ("Claims Approval Motion") and recommend that their claims be allowed in the amount stated in the claims notice. If, on the other hand, investors dispute the proposed allowed claim amount stated in their claims notice, they will have 60 days from the date the claims notice is mailed to them to respond in writing to the Receiver's office, state their dispute, and provide copies of all documents supporting their calculation of their claims.

- The Receiver's office will review all disputes and documentation provided, contact investors who have disputed their claims, and attempt to resolve the claim disputes with them.

- For claim disputes that cannot be resolved by agreement between the Receiver and the investor, the Receiver state in the Claims Approval Motion that the claim is disputed, including the basis for the dispute. Investors with disputed claims, if they choose, can oppose the Claims Approval Motion, and the Receiver can respond to any and all oppositions filed. The deadline for investors to oppose the Claims Approval Motion will depend on the hearing date for the motion and will be stated in the motion. The deadline for oppositions to motions is generally 21 days prior to the hearing date for the motion.

- The Court, in its discretion, can hold a hearing and consider the oral arguments of the Receiver and the applicable investors regarding disputed claims. Whether or not a hearing is held, the allowed amounts of all claims, including disputed claims, will be decided by the Court in its order on the Claims Approval Motion.

As stated above, these procedures are only *proposed*, have not yet been approved by the Court, and may be revised if deemed appropriate by the Court. However, any changes to the proposed procedures will be noted in the claims notice sent to investors (see first bullet point above).