

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

Docket No. 08-E-0053

**In the Matter of the Liquidation of
Noble Trust Company**

**AFFIDAVIT OF ROBERT A. FLEURY IN
SUPPORT OF LIQUIDATOR'S MEMORANDUM IN
SUPPORT OF PROPOSED PLAN OF LIQUIDATION AND
MOTION FOR APPROVAL OF CLAIMS RESOLUTION PROCEDURES**

I, Robert A. Fleury, hereby depose and say:

1. I am the former Deputy Bank Commissioner for the State of New Hampshire and former liquidator of Noble Trust Company ("Noble Trust") and Aegean Scotia Holdings, LLC ("Aegean Scotia"). I have been retained as Special Deputy Liquidator by Glenn A. Perlow, Bank Commissioner for the State of New Hampshire, in his capacity as liquidator (the "Liquidator") of Noble Trust and Aegean Scotia. I am involved in and have oversight of the liquidation of Noble Trust. I have familiarity with the books and records of Noble Trust and have participated in numerous meetings associated with the matters set forth herein.

2. I submit this affidavit in support of the Liquidator's Memorandum in Support of Proposed Plan of Liquidation and Motion for Approval of Claims Resolution Procedures (the "Memorandum"). As set forth more fully in the Memorandum, the Liquidator has filed the Amended Plan of Liquidation dated August 7, 2014 (the "Plan") and, in connection therewith, the Liquidator's Motion for Approval of the Claims Resolution Procedures (the "Claims Procedures Motion"). The Liquidator has filed the Plan and the Claims Procedures Motion to ensure an orderly and efficient liquidation for the benefit of creditors.

3. In 2003, Noble Trust was organized and chartered under the laws of the State of New Hampshire as a non-depository banking corporation, and subject to regulation by the New Hampshire Banking Department (the “Banking Department”).

4. As a result of irregularities discovered by the Banking Department’s 2008 examination of Noble Trust, on February 11, 2008, Commissioner Peter Hildreth commenced a liquidation proceeding by filing a Verified Petition for Liquidation (the “Liquidation Petition”) in this Court, seeking the appointment of a liquidator for Noble Trust pursuant to RSA 395:1, as well as related injunctive relief against Noble Trust pending the Court’s ruling on the Liquidation Petition (the “Liquidation Proceeding”).

5. On March 27, 2008, this Court entered an order (the “Liquidation Order”) appointing Commissioner Hildreth as liquidator of both Noble Trust and its parent company, Aegean Scotia. The Liquidator is the duly appointed successor liquidator of Noble Trust and Aegean Scotia by order of this Court dated February 1, 2013.

6. Colin P. Lindsey (“Lindsey”) was the president of Noble Trust and chairman of its board of directors, and he also was an owner of Aegean Scotia. During the course of its business, Noble Trust solicited and received funds from both new and existing clients. Noble Trust’s clients’ funds were deposited into individual management accounts or individual retirement accounts established for the benefit of those clients, or in charitable trusts for which Noble Trust clients were both the grantors and beneficiaries during their lives.

7. Lindsey also served as president or managing member of Balcarres Group, LLC (“Balcarres”),¹ a Nevada limited liability company. Both Lindsey and Balcarres were licensed

¹ Pursuant to this Court’s Order dated November 13, 2009, the assets of Balcarres were declared to be property of the Liquidation Proceeding.

by the New Hampshire Insurance Department and acted as insurance brokers in procuring insurance policies for the benefit of Noble Trust's clients.

8. The Liquidator's investigation has revealed that Noble Trust was undercapitalized and insolvent from its inception. Although Noble Trust's books showed the source of its starting capital was money loaned from its parent, Aegean Scotia, the money was actually taken from certain trusts of which an entity known as the Children's Community Foundation ("CCF") was the trustee. Those funds were transferred from these CCF clients' accounts to Aegean Scotia, Noble Trust's parent company, which in turn, "loaned" the money to Noble Trust, its wholly-owned subsidiary. Lindsey was the Executive Director of CCF.

9. When Noble Trust was chartered, many, but not all of CCF's clients became clients of Noble Trust. Initially, this was accomplished when Lindsey, as Executive Director of CCF, signed account administration agreements with Noble Trust. Lindsey, as Executive Director of CCF, later appointed Noble Trust as co-trustee of certain accounts of which CCF was the trustee.

10. Between June 2004 and September 2007, Noble Trust (acting as a trustee under its clients' trusts) invested approximately \$15 million in an entity known as Sierra Factoring, LLC ("Sierra"). Based upon information available to the Liquidator, the \$15 million investment in Sierra became substantially or entirely worthless, a fact that Lindsey did not disclose to the Banking Department or other state authorities or Noble Trust's clients.

11. Instead, Lindsey attempted to conceal the loss from Noble Trust's clients and other parties in interest (including the Banking Department. The Liquidator's examination of Noble Trust's cash flow has shown that most distributions made to Noble Trust customers that purported to be interest earned on investments in Sierra actually came either from the funds of

other clients or from commissions Lindsey and Balcarres earned on the issuance of certain predominantly fraudulent life insurance policies for elderly insureds with face values generally between \$3 million and \$10 million. Similarly, clients who closed their accounts throughout most of Noble Trust's history were able to do so only by virtue of such funds.

12. As a non-depository trust company, Noble Trust had clients with which it had a variety of relationships. In some cases, Noble Trust was trustee; in others, it served as an investment advisor, trust administrator, trust protector, or in another similar fiduciary capacity. Commingling of assets of Noble Trust clients was common to most, if not all, of these relationships. In addition, customers from all of these relationships were similarly situated with respect to their relationship to the ongoing fraud at Noble Trust.

13. Since early in this proceeding, the Liquidator has engaged in negotiations with numerous parties to resolve various disputes concerning assets of the liquidation estate. The negotiations have resulted in settlement agreements that have been approved by this Court and, in turn, the collection by the Liquidator of settlement sums for future distributions on account of allowed claims. Accordingly, the Liquidator has filed the Plan and the Claims Resolution Procedures to ensure an orderly and efficient liquidation for the benefit of creditors.

14. The Plan follows principles common to the liquidation of entities victimized by Ponzi schemes. Specifically, the Plan provides for the pooling of all assets and proceeds in the liquidation estate into a common fund, from which allowed claims will be paid based upon the statutory priorities for distributions established by New Hampshire law for depository institutions under RSA 395:30.

15. The Plan does not allow any client or creditor to claim title to any specific asset. As the Sierra Ponzi scheme unraveled and Noble Trust conducted its own schemes to cover-up

losses, Lindsey disregarded his fiduciary responsibilities with respect to individual accounts and used assets in those accounts as necessary to conceal clients' losses. The use of client omnibus accounts to process cash transactions, some of which records are not even available to the Liquidator, also makes tracing how clients' cash was actually used impossible. In addition, liquidation plans in Ponzi cases are based on the premise that anything other than a pro rata distribution of available assets is inequitable. Thus, the Plan calls for all Noble Trust's clients to share pro rata in the pool of cash and noncash assets available for distribution (taking into account the amount that a client already received from Noble Trust), and rejects an approach that would require the Liquidator to attempt to trace the actual use of cash and noncash assets administered by Noble Trust on an account by account basis.

16. As is also common in Ponzi cases in which noncash assets are addressed, all noncash assets held by Noble Trust in custodial accounts, trust accounts, or in some other fiduciary relationship to Noble Trust's clients, are treated no differently than cash. Many of the noncash assets that are part of the liquidation estate are still in their original form only because of an accident of time. When Noble Trust did not have enough cash to fulfill a customer's demands to close its account or expectations of earning a certain return on their investment, or to pay premiums on insurance policies entered into to generate commissions, Lindsey sometimes caused Noble Trust to liquidate another client's noncash assets to generate the necessary cash, thereby enabling Lindsey to continue the Noble Trust scheme. Noble Trust's charitable trust clients put noncash assets into a charitable trust prior to their sale as a means of avoiding a capital gains tax when the asset was sold. Thus, the intention from the outset with respect to these assets was that they would be turned into cash. The fact that some assets remained in an identifiable noncash form while others did not was in large part a function of the point at which

the Department stepped in and halted the Ponzi scheme. To allow any particular client or creditor to retain title to in-kind property that Noble Trust may still hold would inequitably allow some investors to recoup 100% of their investments while reducing or altogether eliminating any recovery for other similarly defrauded clients. To avoid such resulting inequity, the Plan pools even those limited noncash assets in which Noble Trust holds an interest but which might still be traceable to a specific client.

17. As a non-depository trust company, Noble Trust had clients with which it had a variety of relationships, none of which includes depositors. This fact, together with the fact that RSA 395 does not specifically address the treatment of clients of a non-depository trust company makes the application of the depository distribution scheme difficult. The Liquidator does not believe that any valid or allowable depositor, priority lien, or consumer deposit claims exist and believes that any employee claims that do exist are either invalid or should be subordinated. Claims against Noble Trust, including those of clients are generally non-priority claims. The Liquidator believes that clients of a non-depository institution such as Noble Trust, which received trust, fiduciary, investment management, trust administration, trust protection, or other similar services, are analogous to depositors in a depository institution, and, in equity, should be ranked ahead of other non-priority claims.

18. Consistent with the intent of the distribution priorities expressed in RSA 395:30, principles of equity, and the Liquidator's equitable powers, all Claims against Noble Trust are divided under the Plan into seven classes:

- Class One: Administration Costs – the costs and expenses incurred in connection with the liquidation of the Estates.
- Class Two: Employee Claims – wage, salary and other Claims of Noble Trust employees, to the same extent that such Claims would be accorded priority under the applicable provisions of the United States

Bankruptcy Code (the “Bankruptcy Code”). To the extent not otherwise subordinated or disallowed, any Claim held by a Noble Trust employee in excess of the amount entitled to priority under the Bankruptcy Code shall be treated as a Class Five (C) Claim.

- Class Three: Deposit Claims – the Liquidator does not anticipate any Claims for “deposits” within the meaning of RSA 395:30 (III).
- Class Four: Lien Claims – claims secured by valid, perfected, unavoidable statutory liens accorded priority under New Hampshire law, but not by contractual security interests.
- Class Five: All other Claims. Class Five consists of the following subclasses:
 - (A): Client Account Claims – claims for the recovery of property administered by the Liquidator that are asserted by a person or entity for whom Noble Trust was obligated to render trust, fiduciary, investment management, trust administration, trust protector or other similar services arising from the delivery to or administration by Noble Trust of any real or personal property for the direct or indirect benefit of such person.
 - (B): General Unsecured Claims, but excluding Claims in the junior classes described below.
 - (C): Claims held by Insurers arising from Insurance Policies issued to or for the direct or indirect benefit of Client(s).
- Class Six: Delayed Claims – claims determined to be not timely filed in the Liquidation Proceeding.
- Class Seven: Subordinated Claims – claims determined by the Liquidation Court either under applicable law (including principles of equitable subordination), or in accordance with agreements between the Liquidator and the holder of a Claim in any of the above classes, to be entitled to a subordinated priority of Distributions under the Plan.

19. For the Client Account Claims, the Plan calls for distributions to be made according to the “rising tide” method rather than by reference to what were generally inaccurate client account statements, in order to accomplish the greatest equity possible for the largest number of claimants by equalizing their recoveries. These account statements often added in an

amount for interest earned even though, in most instances, these accounts were not earning interest at all, and often included unsupported and exaggerated assertions of purported account values.

20. As in any Ponzi scheme where investors are paid from a pool of commingled funds, some Noble Trust clients received all or a significant portion of their principal back prior to the liquidation, while others received little or none of theirs. The essential objective of the “rising tide” method is to return money first to those clients who did not receive as much money—measured as a percentage of their principal—as other clients did during the course of Noble Trust’s operations. Once these similarly situated clients “catch up” to clients who previously received greater percentages of their principal, all clients share in any remaining distributions on a *pro rata* basis. In deciding to adopt the rising tide approach, the Liquidator considered and rejected certain other methods by which distributions are sometimes made in Ponzi cases, either because they favor earlier investors or because they are too cumbersome and likely to result in an undue delay in administering the Estates’ assets and distributing money to Noble Trust’s clients and other creditors.

21. The Plan calls for the calculation of Client Account Claims by first verifying the amount of investment put into an account at Noble Trust through bank statements and/or records. If a noncash asset was placed in the account, the Liquidator will use his best efforts to determine the fair market value of such asset at the time the account was established. For an account that was created under the auspices of CCF and predates Noble Trust’s charter, the Plan values the account at the time that Noble Trust first became trustee, trust administrator, account administrator, or investment advisor for this account. Interest is treated as an addition to the amount invested only in those instances when Noble Trust received a cash payment representing

a true return on investment. Any amount distributed to an individual is treated as a return of a portion of the amount invested. A calculation is then performed to determine what percentage of a client's investment has already been returned and what percentage was lost.

22. Pro rata distributions on account of claims classes 5(B), 5(C), 6 and 7 will be made only when the claims in the preceding classes have been paid in full (or an adequate reserve exists).

23. In light of the number of claims that have been filed, and the potential for significant number of disputed claims that may ultimately need to be decided by the Court, the Liquidator submits that it is desirable to establish a more detailed procedures regarding claims than exists under the statute, in particular to provide uniform processes for the orderly determination of disputed claims while allowing for claims of varying complexity. Consistent with due process of law, such procedures will provide claimants and the Liquidator, as well as any other directly affected persons, with a framework in which to resolve disputes that will reduce procedural issues and provide for the more efficient and economical determination of claims.

24. The Liquidator has filed the Claims Procedures Motion with an accompanying proposed Order Establishing Claims Resolution Procedures (the "Claims Resolutions Procedures"). The purpose of the Claims Resolution Procedures is to achieve uniformity and to provide procedures for the presentation, processing, determination and classification of claims and to assist all Claimants in the orderly presentation of their claims in the Liquidation Proceeding.

25. The Claims Resolution Procedures fills out the basic statutory framework described above by providing procedures for the following:

a. Filing of Claims. The Liquidator previously established August 10, 2008 as the deadline by which proof of all claims must be filed with the Liquidator, in the form of the Proof of Claim provided by the Liquidator.² Claims Resolution Procedures § 4.1. The Claims Resolution Procedures make clear that the Liquidator is authorized to require supplementary information. Claims Resolution Procedures § 4.2.

b. Determination of Claims. The Claims Resolution Procedures provide for the Liquidator to review all claims duly filed in the Liquidation and shall make such further investigation as he deems necessary. The Liquidator may compound, compromise or in any other manner negotiate the amount for which claims will be recommended to the Court. The Liquidator shall enter a determination, which shall either (1) allow the claim in whole or in part and classify the amount and priority of the allowed claim or (2) disallow the claim in whole. A determination that disallows a claim shall be deemed a “rejection” of the claim within the meaning of RSA 395:14. Claims Resolution Procedures § 5.1. The Liquidator will then mail a Notice of Determination to the claimant. Claims Resolution Procedures § 5.2. The claimant may (but need not) request reconsideration of the determination by the Liquidator by filing a Request for Review with the Liquidator within twenty-eight (28) days of the date on which the Notice of Determination was mailed to the claimant, in which case the Liquidator will review the claim and issue a Notice of Redetermination. Claims Resolution Procedures § 6. An interested party may submit an objection to any Claim not rejected by the Liquidator by

² Notice of the deadline was provided by direct mailing of the Court approved form of Proof of Claim and Instructions to all known clients, creditors, and vendors of Noble Trust and/or Aegean Scotia. The Liquidator also arranged for Notice of the Proof of Claim deadline to be published weekly for three consecutive weeks in the Manchester Union Leader and the Kansas City Star. The Liquidator has also made the claim forms available on the Noble Trust Liquidation website.

filing a copy of such objection with the Liquidator, who shall present the objection to the Court before making any subsequent distributions under the Plan. Claims Resolution Procedures § 5.4. The Court shall notify the Claimant of the objection and determine the validity of the Claim. Id.

c. Objection to Denial of Claims. The Claims Resolution Procedures require the claimant to file an objection with the Court within six (6) months from the mailing of the notice. The Claimant shall mail a copy of the Objection to the Liquidator. If no timely Objection is filed, the Claimant may not further object to the Determination, which shall be final and binding upon the Claimant with respect to all claims that are the subject of the Determination. Claims Resolution Procedures § 7.

d. Resolution of Disputed Claims. When a Claimant files a timely Objection, the Liquidation Court shall mail a Notice of Disputed Claim to the Claimant, with a copy to the Liquidator to initiate the Disputed Claim proceeding. The Liquidator and the Claimant are the only persons who shall be considered parties to the Disputed Claim proceeding. Claims Resolution Procedures § 8.1. The Claims Resolution Procedures provide for service of filings. Claims Resolution Procedures § 8.2.

e. Expedited Procedures for “Small Claims.” “Small Claims” – defined as any claim with an asserted value of less than \$50,000 – may be set for an immediate pre-hearing conference to attempt to resolve such Small Claims at which the Court may issue a final determination. Claims Resolution Procedures § 9.

f. Orderly Procedures for Other Claims. Other claims will be the subject of a Structuring Conference before the Court in accordance with N.H. Super. Ct. R. 5. Claims Resolution Procedures § 11. Claim disputes will be conducted based on the

written submissions and oral argument of the participants, unless a request for an evidentiary hearing is made and granted. Claims Resolution Procedures § 11.1. Written submissions will be filed in accordance with the schedule set forth in the Claims Resolution Procedures (or as determined in the Structuring Conference Order). Claims Resolution Procedures § 11.1. If an evidentiary hearing is granted, the hearing shall be conducted in accordance with the New Hampshire Superior Court Rules and New Hampshire Court practice. Claims Resolution Procedures § 12.1.

26. The Liquidator submits that the Claims Resolution Procedures provide appropriate processes for the determination of claims that will assist in achieving a more uniform, efficient and economical resolution of claims in the Liquidation Proceeding, while at the same time conserving judicial resources and satisfying due process. Similar procedures have been adopted by this Court In re Liquidation of the Home Ins. Co., Case No. 03-E-0106 and 03-E-0112.³

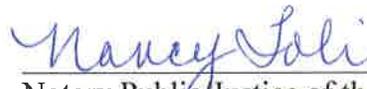
³ <http://www.hicilclerk.org/Hicil.nsf/vwAllOtherDocs?ReadForm&Court+Orders>

Signed under the pains and penalties of perjury this 7th day of August, 2014.


Robert A. Fleury

STATE OF NEW HAMPSHIRE
COUNTY OF Hillsborough

Signed before me on August 7, 2014 by Robert A. Fleury.



Notary Public/Justice of the Peace
My Commission Expires:

