

procedure also provides each claimant with notice and an opportunity to be heard in accordance with applicable due process obligations.

The Receiver respectfully requests the Court adopt the following objection procedure (the “**Proposed Objection Procedure**”):

- a) Within three (3) business days after the date of the order on this motion, the Receiver will post the order on his website, [www.nadelreceivership.com](http://www.nadelreceivership.com). A copy of this motion will be posted soon after it is filed.
- b) Within ten business (10) days after the date of the Order on this motion, the Receiver will mail each claimant by U.S. First Class Mail at the address provided on the Proof of Claim Form a letter setting forth the procedure for objecting to the Receiver’s determination of a claim (the “**Receiver’s Claim Determination**”), claim priority, or plan of distribution as approved by the Court. The letter will provide notice that the Court’s order on this motion is available on the Receiver’s website. The letter will further provide that a claimant may contact the Receiver’s office for a copy of the motion and/or order if a claimant does not have access to the internet or cannot otherwise access the motion and/or order.
- c) Any claimant that is dissatisfied with the Receiver’s Claim Determination, claim priority, or plan of distribution must serve the Receiver in accordance with the service requirements of Rule 5 of the Federal Rules of Civil Procedure with a written objection no later than thirty (30) days after the date of mailing of the Receiver’s letter advising the claimant of the order on this motion. All objections must be served on the Receiver at Burton W. Wiand c/o Maya M. Lockwood, Esq., Wiand Guerra King P.A., 5505 West Gray Street, Tampa, Florida 33609, and should not be filed with the Court. Such objections shall clearly state the nature and basis of the objection, and provide all supporting statements and documentation the claimant wishes the Receiver and the Court to consider.
- d) Failure to properly and timely serve an objection to the Receiver’s Claim Determination, claim priority, or plan of distribution shall permanently waive the claimant’s right to object to or contest the Receiver’s Claim Determination, claim

priority, and plan of distribution and the final claim amount shall be set as the Allowed Amount determined by the Receiver as set forth in the Exhibits attached to this motion as approved by the Court.

- e) If a claimant timely serves an objection, the Receiver will notify the objecting claimant of his ruling on the pertinent objection no later than forty-five (45) days after the end of the objection period (the “**Notification**”). The claimant will then have thirty (30) days from the date of the Notification to serve the Receiver with a written response to the Notification which must clearly state whether the claimant maintains the objection or accepts the Receiver’s further determination of the claim as set forth in the Notification. Failure to properly and timely serve this written response will be deemed as an acceptance of the Receiver’s ruling as set forth in the Notification.
- f) Although each objecting claimant previously submitted to this Court’s jurisdiction by filing a claim with the Receiver, by serving an objection the objecting claimant shall be deemed to have confirmed submission to the exclusive jurisdiction of this Court. A person serving an objection to the Receiver’s Claim Determination, claim priority, or plan of distribution, shall be entitled to notice, but only as it relates to adjudication of the particular objection and the claim to which the objection is directed.
- g) The Receiver may attempt to settle and compromise any claim or objection subject to the Court’s final approval.
- h) At such times as the Receiver deems appropriate, he will file with the Court any settlements or compromises that the Receiver wishes the Court to rule upon.
- i) If the Receiver and an objecting claimant are unable to resolve an objection, no later than forty-five (45) days from the date of the claimant’s written response to the Receiver’s Notification, the Receiver will file with the Court: (1) the Receiver’s further determination of the claim with any supporting documents or statements he considers are appropriate, if any; and (2) the unresolved objection, with supporting statements and documentation, as served on the Receiver by the claimant;
- j) The Court may make a final determination based on the submissions identified in the previous paragraph or may set the

matter for hearing and, following the hearing, make a final determination. The claimant shall have the burden of proof. The Receiver will provide notice of such hearing as provided in paragraph (f) above.

The Proposed Objection Procedure satisfies due process and is similar to the procedure approved by this Court in the Hedge Funds Claims Process. Due process essentially requires that the proceeding be fair and that affected parties be given notice and an opportunity to be heard. *See Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985); *Elliott*, 953 F.2d at 1566. The use of summary proceedings to implement claims procedures is customary in receiverships and satisfies due process requirements when claimants receive an opportunity to be heard, to object to their claim determination, and to have their claims considered by a court. *See id.; Basic Energy*, 273 F.3d at 668-671. The Proposed Objection Procedure achieves each of these requirements.

*F.D.I.C. v. Bernstein* explains,

One common thread keeps emerging out of the cases involving equity receiverships – that is, a district court has extremely broad discretion in supervising an equity receivership and in determining the appropriate procedures to be used in its administration.

In keeping with this broad discretion, “the use of summary proceedings in equity receiverships as opposed to plenary proceedings under the Federal Rules of [Civil Procedure] is within the jurisdictional authority of a district court.” Such procedures “avoid formalities that would slow down the resolution of disputes. This promotes judicial efficiency and reduces litigation costs to the receivership,” thereby preserving receivership assets for the benefit of creditors.

786 F. Supp. 170, 177-78 (E.D.N.Y. 1992) (citations omitted). This Court should approve the Proposed Objection Procedure because it satisfies due process and is logical, fair, and

reasonable. *See Elliott*, 953 F.2d at 1567 (summary proceedings are appropriate where party has full and fair opportunity to present claims and defenses). Specifically, the Proposed Objection Procedure provides for (1) notice to claimants of the Receiver's determination of their claims, claim priority, and plan of distribution; (2) the opportunity for claimants to object to these matters; and (3) the review of unresolved objections by the Court.

Importantly, the Proposed Objection Procedure eliminates the need for any objections to be filed with the Court in direct response to this motion. In turn, that will preclude inefficient piecemeal presentation and adjudication of objections by the Court. Such a piecemeal process would result in an inefficient claims process for both the Court and the Receivership. As such, the Proposed Objection Procedure promotes judicial efficiency and reduces litigation costs.

### CONCLUSION

For these reasons, the Receiver respectfully requests the Court enter an order:

- (1) Approving the Receiver's treatment and determination of claims as set forth in this motion and in attached **Exhibits B through H**;
- (2) Authorizing the Receiver to pool and consolidate all of Quest's assets and liabilities for all purposes, including for payment of administrative costs, receipt of third-party recoveries, and making distributions to holders of allowed claims;
- (3) Approving the Net Investment Method as set forth above and in the attached Exhibits as the proper method for calculating Allowed Amounts for Investor Claimants;
- (4) Approving the Proposed Plan of Distribution as set forth above in Section III;
- (5) Approving the Proposed Objection Procedure as set forth above in Section IV for objections to the plan of distribution and the Receiver's claim