

16-11084 BLS

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CLERK
US BANKRUPTCY COURT
DISTRICT OF DELAWARE

The Honorable Brendan L. Shannon
Chief United States Bankruptcy Judge
824 North Market Street, 6th. Floor
Wilmington, DE 19801

March 27, 2017

Dear Honorable Judge Shannon,

I am writing to express concern over the additional conditions imposed on shareholders by DNIB Unwind's Liquidating Trustee Mr. Geoffrey Berman in the liquidation of the trust. Mr. Berman is attempting to add onerous conditions to receipt of liquidating distributions that are not contemplated in the plan. These conditions, namely the Equity Distribution Form (a/k/a Nominee Certification Form), put the beneficial holders of the trust at great risk of not receiving their property. In light of this, I support of B.E. Capital Management's Motion for Determination that Conditioning Distributions to Shareholders on their Submission of an Shareholder Certification Form is a material modification of a confirmed plan ex-post.

By way of background, I am a record holder as of the plan record date, August 30, 2016, and I held the equity through the date of record and October 11, 2016, when the plan was confirmed. The nominee which holds my shares is TD Ameritrade. Further, I received my pro rata share of the first \$8m distribution but I am now concerned about the onerous terms and conditions which Mr. Geoffrey Berman is unknowingly imposing on shareholders. I believe these conditions will deprive a large number of shareholders their legal right to their property.

The terms and conditions which Mr. Berman is imposing on shareholders has caused great confusion among beneficial holders and nominees. I have experience this first hand through the conversations I've had with TD Ameritrade. TD Ameritrade was not even aware this form existed until I pointed them to the docket submission. Upon review of the docket submission, they concluded that they would not provide their nominee signature. Please see the response below directly from TD Ameritrade (attached to this letter):

This reaction is not unique to TD Ameritrade. I've spoken with beneficial owners holding accounts at Fidelity, E-Trade, InteractiveBrokers, and Vanguard. These are some of the largest and most organized nominees, and there is great confusion over this process. The confusion is not only over what they must do, but what they must notify beneficial holders of, what action beneficial holders need to take, and the extent of the coordination needed with nominees.

Mr. Berman is requiring all beneficial shareholders on record as of August 30th get their nominee to fill out, medallion signature guarantee, and send a shareholder equity distribution form to Prime Clerk. Additionally, Mr. Berman is requiring beneficial holders to submit a W8/W9 to Prime Clerk. Upon discussing Mr. Berman's requirement with Prime Clerk, they have

requested that both documents be sent together. This requires coordination on the part of the beneficial holder with their nominee, who may not be a willing participant.

As B.E. Capital Management has pointed out in their motion for determination, Mr. Berman's request is unnecessary, overly onerous, and a material modification of the plan. While the plan allows for him to request W9's, it contemplates only that, nothing more. The plan does not allow him to request additional, unnecessary information and the latitude to condition receipt of future distributions on receiving that information. What Mr. Berman is doing, effectively, is taking an electronic, reliable, and efficient process and swapping it for manual, unreliable, and cumbersome one. This increases the cost of distributing the estate and the time to do so.

Moreover, his request exposes shareholders to a significantly increased probability of not receiving their property simply due to human error. This human error can occur at multiple points while trying to compile with the request:

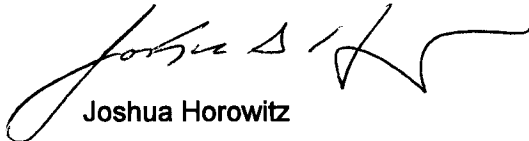
1. Since the instruction is confusing to nominees, one must have enough knowledge of the situation to bring this to the attention of their nominee.
2. One must then convince their nominee to medallion signature guarantee the equity distribution form.
3. The investor must then submit their W8/W9 to their nominee so the documents can be sent to Prime Clerk as one package. The W9 must match the beneficial holder the nominee puts on the guarantee form. This assumes the investor has the correct contact information at the nominee.
4. The nominee, simply due to human error, can misplace the W8/W9, fail to send both documents as one package, and/or send the package to the attention of the wrong party at Prime Clerk.
5. Assuming the package (the two required forms) arrives at Prime Clerk, there is further exposure to human administrative error if Prime Clerk misplaces or fails to record receipt of the documents properly.
6. If #5 is accomplished without issue then the potential for human error continues as Mr. Berman still needs to take the information from Prime Clerk, assuming it's correct, and proceed to process the distribution. Mr. Bermann can misplace the documents or fail to record the shareholder as a complying with his request.

Your Honor, I hope after your review of my concern and B.E. Capital Management's motion for determination coupled with their exhibits on other methods for handling distributions from liquidating estates, such as issuing a grantor letter, you can grant B.E. Capital's motion. This requirement was not outlined in the proposed plan nor the confirmed plan; instead, this condition comes five months after the approved plan and two months after the first distribution was completed.

I submit the support for B.E. Capital Management's motion because the liquidating estate still has two-thirds of their assets to be distributed to shareholders. Mr. Berman is substituting an

onerous, manual process for a simple, electronic one and putting shareholders at substantial risk of forfeiture. This also calls into question whether Mr. Berman is acting properly as a fiduciary for all the beneficiaries of the trust, as he is doing this with the bulk of the estate. This risks depriving shareholders of their legal right to their property due to complexity introduced to the process, confusion over what exactly needs to be done, by when, and by whom, as well simple clerical error.

Respectfully Submitted,



Joshua Horowitz

300 E 56th St 22C
NY NY 10022



Mon Mar 27 2017 6:04:34 pm ET

Re: Re: BINDQ Liquidation

From: Message Center Client Services | Date: 03/17/17 4:55 PM Message available until 03/17/19.

Mr. Horowitz,

Thank you for contacting TD Ameritrade!

I took a look at the document you have attached, and it appears this is not a TD Ameritrade form. Prime Clerk LLC is requesting this information including a W-9 or W-8, and has a contact phone number of 855-388-4576 on the bottom of page 2 with their mailing address. Since they are requesting the documents and this is their paperwork, I can only suggest to call them to get instructions on what needs to be done.

If there is anything else I may assist you with, please reply directly to this message!

Thank you for being a TD Ameritrade client!

Sincerely,

Jeremy Henderson
Client Services Forms
TD Ameritrade, Inc.

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Don't be a trader. Be the trader. Download our apps now! <http://bit.ly/1TWqOL4>

(KMM93264057V87678L0KM)



Mon Mar 27 2017 6:04:50 pm ET

Re: Re: Re: BINDQ Liquidation

From: Message Center Client Services | Date: 03/21/17 12:55 PM Message available until 03/21/19.

Thank you for contacting TD Ameritrade!

I reached out to my Transfer processors to see if they were familiar with this particular request. I got an answer from two separate processors that we are not required to sign this.

Our DTC number is 0188, and I was told that your signature would be acceptable on the Authorized line. However we are unable to complete the form for you.

If there is anything else I may assist you with, please reply directly to this message!

Thank you for being a TD Ameritrade client!

Sincerely,

Jeremy Henderson
Client Services Forms
TD Ameritrade, Inc.

Never Miss the Action. Follow us on Twitter: <https://twitter.com/TDAmeritrade> or <https://twitter.com/thinkorswim>
Don't be a trader. Be the trader. Download our apps now! <http://bit.ly/1TWqOL4>

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