

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

SECURITIES AND EXCHANGE COMMISSION,))	
)	
Plaintiff,))	
)	
v.))	Case No. 07-cv-10712-RGS
)	
LYDIA CAPITAL, LLC;))	
GLENN MANTERFIELD, and))	
EVAN ANDERSEN,))	
)	
Defendants.))	

**RECEIVER’S SECOND MOTION TO DISALLOW CERTAIN CLAIMS
AND REALLOCATE FUNDS FOR DISTRIBUTION**

COMES NOW, H. Thomas Moran II, Court-Appointed Receiver for Defendant, Lydia Capital, LLC (“Lydia”), and hereby moves this Court for an Order disallowing certain investor claims and to reallocate funds previously authorized for distribution on those claims on a pro-rata basis among the remaining approved claims. In support of this Motion, the Receiver would show the Court as follows:

I. INTRODUCTION AND BACKGROUND.

In discharging his duties under the Order of Appointment [Doc. No. 28], the Receiver instituted a claims procedure for the submission and review of claims against the Receivership Estate. Further, the Receiver notified potential claimants of the requirements to receive distributions on claims approved by the Court. Although the Court approved the claims of certain investors against the Receivership Estate and authorized distributions to them, these investor claimants have failed to provide the information and documentation that the Receiver must have in order for them to receive any distributions from the Receivership Estate. This Motion requests that the Court disallow those claims by investor claimants who did not submit

the information and documentation necessary for the Receiver to comply with tax reporting and filing obligations, to make distributions to investors and to close the Receivership Estate.

II. SUMMARY OF THE CLAIMS PROCEDURE, PRIOR MOTIONS FOR APPROVAL AND ALLOWANCE OF CLAIMS, AND THE MOTION TO DISALLOW CERTAIN CLAIMS.

On September 21, 2010, the Receiver submitted his First Motion for Approval of Claim Forms and Allowance of Claims, recommending the Court's approval of forty-seven claims totaling \$20,604,699.68. [Doc. No. 305.] The Receiver submitted his Second Motion for Approval and Allowance of Certain Claims and for Approval and Partial Disallowance of Certain Claims on January 4, 2011. [Doc. No. 311.] Therein, the Receiver recommended the approval of an additional eighteen investor claims totaling \$11,950,819.77. The Court granted both Motions and allowed the claims in the amounts recommended by the Receiver. [See Electronic Order, September 30, 2010 and Doc. No. 314.]

After publishing in two nationally distributed Taiwanese newspapers a notification regarding the submission of claims and the deadline for final submission of claims, the Receiver submitted his Final Motion for Approval and Allowance of Certain Claims, for Approval and Partial Disallowance of Certain Claims and for Full Disallowance and Bar of Other Claims, on June 15, 2011. [Doc. No. 328.] The Receiver recommended the approval of three additional claims totaling \$1,260,059.17, and requested that the Court fully disallow and forever bar all other claims or potential claims against Lydia or the Receiver. On June 17, 2011 the Court entered its order granting said Motion. [Doc. No. 333.]

On August 26, 2011, the Receiver filed his Motion for Approval and Authorization of an Interim Distribution [Doc. No. 336], requesting the approval and authorization to make an interim distribution of \$1,000,000.00. Following the submission of the Interim Distribution

Motion, the Receiver was contacted by two investors raising issues that necessitated supplementing and revising the Receiver's recommendations for approval and allowance of claims and, correspondingly, the distribution proposed in the Interim Distribution Motion. Accordingly, on September 2, 2011 the Receiver submitted a Supplement to Motion for Approval and Authorization of an Interim Distribution recommending the approval and allowance of an additional claim and an increase in the total amount of approved claims from \$33,815,578.52 to \$37,410,578.62. [Doc. No. 337.] The Court granted the Receiver's Motion for Approval and Authorization of an Interim Distribution on October 11, 2011 and authorized the Receiver to take all necessary actions to make an interim distribution of \$1,000,000.00 as proposed by the Receiver. [Doc. No. 347.]

Because the majority of Lydia's investors are Taiwanese citizens they do not have a United States Taxpayer Identification Number ("TIN"). The Internal Revenue Service requires the Receiver to withhold and pay to the IRS a percentage of each distribution to those investors who do not have a TIN. In an effort to assist investors as much as possible, the Receiver made a request on behalf of all foreign Lydia investors for the IRS to issue a TIN to each investor so that a distribution could be made without the necessity of withholding a percentage of the distribution. In April of 2012, the IRS notified the Receiver that notifications of the assignment of TINs had been mailed directly to the foreign investors individually. However, the IRS would not disclose the TINs issued or which investors had actually received TINs from the IRS.

On May 14, 2012, the Receiver mailed IRS W-8 BEN forms to each of the investors and requested that the investors provide their TINs to the Receiver. Example copies of that correspondence and notices sent to investors requesting TINs were attached as Exhibit "A" to Receiver's Motion to Disallow Certain Claims and Reallocate Funds for Distribution ("Motion to

Disallow”). [Doc. No. 358.] The Receiver requested that all forms be provided to the Receiver within 20 days. However, a number of foreign investors did not complete the necessary forms or provide a TIN to the Receiver. Based upon advice from the Receiver’s tax advisor, the Receiver concluded that a distribution could not be made to those investors who had not provided the Receiver with a TIN. Subsequently, the Receiver’s tax advisor determined that distributions could not be made to those investors who had not provided TINs because no Schedules K-1 could be issued for such investors, and, without the ability to issue Schedules K-1, the receivership’s final tax returns could not be filed and this receivership could not be closed. Therefore, the Receiver made additional efforts to obtain the necessary documents and information from each such investor.

On September 25, 2012, a letter translated into Chinese was sent via U.S. mail to those investors who had not yet provided the Receiver with a TIN. *See* Exhibit “B” to Motion to Disallow. This letter requested a response by October 30, 2012. In response to this letter, several investors sent their TINs to the Receiver and their interim distribution funds were released to them. Additionally, several investors notified the Receiver that they had not received a TIN from the IRS.

On May 14 and 15, 2013, an additional notification letter was sent to those investors from whom the Receiver had not yet received a TIN. *See* Exhibit “C” to Motion to Disallow. This notification letter was sent via email to those investors with an email address on file, and via UPS to those investors without a valid email address on file. This letter again informed the investors that the Receiver could not release any distribution of funds unless a TIN was provided to the Receiver. It also informed the investors that they must apply for a TIN from the IRS if one had not been received.

Out of the 70 Lydia investors, 23 had not provided the Receiver with a TIN as of June 13, 2013. On that date, a letter was sent to those investors who had not notified the Receiver's office that they had applied for a TIN. *See* Exhibit "D" to Motion to Disallow. This letter notified the investors that if they did not apply for a TIN and notify the Receiver's office that they had done so by June 30, 2013, the Receiver intended to file a motion asking the Court to disallow their claim. The Receiver then received notification from 10 investors that they were applying for a TIN. The Receiver did not receive a response from the remaining 13 investors, and as a result a Final Notice was sent with a deadline of August 12, 2013. *See* Exhibit "E" to Motion to Disallow.

The Final Notice informed all remaining investors that, unless an application for a TIN was submitted by the August 12, 2013 deadline, the Receiver would be forced to ask the Court to disallow their claim, their corresponding portion of the interim distribution and any additional distributions. *See* Exhibit "E" to Motion to Disallow. The Final Notice also informed the remaining investors that without a TIN the investors would not receive an IRS form 1065 K-1 which would show the investors' amount of loss on the Lydia investment for U.S. tax purposes. *See* Exhibit "E" to Motion to Disallow. Following the Final Notice, nine of the 13 investors notified the Receiver of their application for a TIN.

The remaining four investors did not submit the necessary TINs, nor did they inform the Receiver that an application for a TIN was being submitted to the IRS. As a result, on August 26, 2013, the Receiver submitted his Motion to Disallow Certain Claims and Reallocate Funds for Distribution, requesting that the remaining four claims be disallowed and that the corresponding interim distribution amounts be reallocated. [Doc. No. 358.] On August 28, 2013 the Court granted the Receiver's Motion to Disallow. [Doc. No. 360.] The Court ordered that

all funds attributable to the remaining four claims be reallocated for distribution on a pro rata basis to all remaining investor claims approved and authorized by the Court.

In his Motion to Disallow, the Receiver advised the Court that it may be necessary to move for the disallowance of additional claims should any investors who have applied for a TIN fail to complete the application process, fail to provide the TIN to the Receiver before distribution is to be made, or if the IRS denies the TIN application. *See* Doc. No. 358. As of November 12, 2013, a number of investors had pending TIN applications. On that date, a letter was sent to the remaining investors informing them that the Receiver was in the process of filing a final tax return and winding down the receivership. The Receiver gave a final deadline of December 16, 2013 to submit a completed W-8 BEN form with a TIN. Additionally, the correspondence informed the remaining investors with pending TIN applications that unless the necessary documentation was received by December 16, 2013, the Receiver would be forced to ask the Court to disallow their claim, their corresponding portion of the interim distribution, and any additional distributions. *See* Exhibit "A" attached hereto.

III. RESULTS OF THE FINAL NOTICE REGARDING PENDING TIN APPLICATIONS AND THE CLAIMS PROPOSED FOR DISALLOWANCE.

Two investors did not meet the December 16, 2013 deadline to provide the Receiver with a TIN. Further, those investors have not provided the Receiver's office with a TIN as of the date of this filing. Therefore, the two claims recommended for disallowance and the corresponding distribution amounts to be reallocated are as follows:

Investor ID	Investor Name	Approved Claim Amount	Interim Distribution Approved	Reference
CH16878	Li-Chao Chieh	\$95,010.00	\$2,506.16 ¹	Doc. Nos. 311, 344-1
MA17415	Seibun Machida	\$1,040,000.00	\$27,432.98	Doc. Nos. 311, 344-1

IV. THE PROPOSED DISALLOWANCE OF THESE CLAIMS AND REALLOCATION OF FUNDS IS IN THE BEST INTEREST OF THE RECEIVERSHIP ESTATE.

A court imposing a receivership has broad equitable authority to issue all orders necessary for the proper administration of a receivership estate. *See, e.g., S.E.C. v. Credit Bancorp, Ltd.*, 290 F.3d 80, 82-83 (2d Cir. 2002); and *S.E.C. v. Wencke*, 622 F.2d 1363, 1370 (9th Cir. 1980). The receiver serves as the court's agent in collecting, maintaining, administering and disposing of the property of the receivership estate. *Eller Indus., Inc. v. Indian Motorcycles Mfg.*, 929 F. Supp. 369, 372 (D. Colo. 1995); *see also F.T.C. v. Five Star Auto Club, Inc.*, 2000 WL 1609798 (S.D.N.Y. June 12, 2000). The court's authority includes the power to enter such orders as may be appropriate and necessary for a receiver to fulfill his duties to the receivership estate. *See, e.g., Official Comm. of Unsecured Creditors of WorldCom, Inc. v. S.E.C.*, 467 F.3d 73, 81 (2d Cir. 2006); *S.E.C. v. Fischbach Corp.*, 133 F.3d 170, 175 (2d Cir. 1997); *S.E.C. v. Wang*, 944 F.2d 80, 88 (2d Cir. 1991); *see also Liberte Capital Group, LLC v. Capwill*, 148 Fed. Appx. 426, 433 (6th Cir. 2005), *citing S.E.C. v. Basic Energy & Affiliated Resources, Inc.*, 273 F.3d 657, 668 (6th Cir. 2001).

¹ A previously referenced in footnote 2 to Receiver's Motion to Disallow, this investor also inadvertently received the first interim distribution, in the amount of \$1,754.31. Because of the amount involved, the Receiver does not believe that expenses should be incurred to seek the return of this amount, nor to reallocate this portion of the distribution. However, the Receiver does request that the remainder of this claim in the amount of \$751.85 be disallowed for purposes of a future final distribution.

Because the distribution of any funds must be made on a pro rata basis it is necessary to reallocate funds previously authorized for distribution on these claims on a pro-rata basis among the remaining approved claims. Therefore, the Receiver submits that it is in the best interests of the investors and the Receivership Estate that these claims be barred so that the corresponding funds can be reallocated on a pro-rata basis in a final distribution made at the conclusion of this Receivership.²

V. CERTIFICATE OF NOTICE.

The Receiver certifies that copies of this Motion, including the Exhibits hereto, are being provided to all of the Lydia investors either via verified physical delivery by United Parcel Service ("UPS") or via email, per the investor's previous instruction, as well as being posted on the Receivership website.

VI. RELIEF REQUESTED.

WHEREFORE, the Receiver requests that the Court enter an Order finding that:

1. The Receiver has provided proper, timely, adequate and sufficient notice to those investors of the necessary information and documentation to receive any distribution from the Receivership Estate;
2. The investors identified herein have failed to provide the Receiver with a valid TIN;
3. A distribution cannot be made to those investors without a valid TIN;
4. It is in the best interests of the investors and the Receivership Estate that the two claims set forth in herein should be entirely disallowed and forever barred; and

² The Receiver does not intend to reallocate the funds for distribution to the remaining investors as part of an additional interim distribution. Rather, the Receiver intends to reallocate the funds between the remaining claims approved for distribution to the investors in a final distribution.

5. Any and all funds attributable to these two claims should be reallocated for distribution on a pro rata basis to all remaining investor claims approved and authorized by the Court.

A proposed Order is attached hereto as Exhibit "B" attached hereto.

Respectfully submitted,

/s/ Melvin R. McVay, Jr.

Melvin R. McVay, Jr. (admitted *pro hac vice*)

PHILLIPS MURRAH P.C.

Corporate Tower, Thirteenth Floor

101 North Robinson Avenue

Oklahoma City, Oklahoma 73102

Telephone: (405) 235-4100

Facsimile: (405) 235-4133

mrmcvay@phillipsmurrah.com

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of January, 2014, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

Martin F Healey
healeym@sec.gov

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BernsteinD@sec.gov

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/s/ Melvin R. McVay, Jr.

Melvin R. McVay, Jr.

Exhibit A

H. Thomas Moran II, Receiver
for Lydia Capital, LLC

Office of the Receiver:
521 W. Wilshire Blvd., Ste 200
Oklahoma City, OK 73116

Phone: (405) 418-5710
E-mail: receiver@lydiacapital.com
Website: www.lydiacapital.com

FINAL NOTICE

PLEASE READ
YOUR RIGHTS MAY BE AFFECTED

November 12, 2013

RE: Securities and Exchange Commission v. Lydia Capital, LLC, et al. .
Case No. 07-cv-10712-RGS
Distribution of Funds

Dear Investor:

Our records show that you have applied for a Taxpayer Identification Number ("TIN") from the Internal Revenue Service ("IRS"). The Receiver is in the process of filing a final tax return and winding down the Receivership. In order to do so, he must have TINs for all investors who will receive distribution funds.

The Receiver must have a completed W-8BEN from you with a TIN no later than December 16, 2013.

If you require help in communicating with the IRS, some Lydia investors have been assisted by a CPA. While the Receiver cannot endorse any CPA or tax professional, some Lydia investors have received assistance from Amy Lee, a CPA in California (amy@cpaus.com), or Jeff Chen, a CPA in Taiwan (jeff.chen@tp.kedpcpa.com).

The Receiver must have a W-8BEN with your TIN by December 16, 2013, or he will have no other choice but to ask the court to disallow your claim. If this occurs, you will no longer be entitled to receive the first distribution or any distributions which may occur in the future.

If you have any questions please contact Erin Maxwell at the Receiver's office.

With Best Regards,

Tom Moran
H. Thomas Moran, Receiver

H. Thomas Moran II, Receiver
for Lydia Capital, LLC

Office of the Receiver:
521 W. Wilshire Blvd., Ste 200
Oklahoma City, OK 73116

Phone: (405) 418-5710
E-mail: receiver@lydiacapital.com
Website: www.lydiacapital.com

最後通知

請仔細閱讀
您的權利可能會受到影響

November 12, 2013

RE: Securities and Exchange Commission v. Lydia Capital, LLC, et al.
Case No. 07-cv-10712-RGS
分配資金發放

親愛的投資人：

根據我們的記錄，您已經向美國國稅局遞呈了稅號申請表。法定財產管理人目前正在準備它最後的稅表申報，並解散接管公司。因此，所有要求分配資金的投資人必須提供美國稅號。

法定財產管理人必須在 2013 年 12 月 16 號之前收到您完整及有註明美國稅號的 W-8BEN 表格。

已經有多位臺灣投資人經由會計師的協助申請到了美國稅號。以下是他們的聯繫方式：
美國加州會計師 Amy Lee (amy@cpaus.com)
臺灣會計師 Jeff Chen (Jeff.chen@tp.kedpcpa.com)

法定財產管理人必須在 2013 年 12 月 16 號之前收到您的 W-8BEN 表格，否則，管理人只有要求法院拒絕發放您的分配資金。因此，您將無法再收到任何款項。

如果您有任何疑問，請聯繫法定財產管理人辦公室的 Erin Maxwell 小姐。

商祺

Tom Moran
H. Thomas Moran,
財產管理人

Exhibit B

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

SECURITIES AND EXCHANGE)
COMMISSION,)

Plaintiff,)

v.)

Case No. 07-cv-10712-RGS

LYDIA CAPITAL, LLC;)
GLENN MANTERFIELD; and)
EVAN ANDERSEN,)

Defendants.)

**ORDER GRANTING RECEIVER'S SECOND MOTION TO DISALLOW
CERTAIN CLAIMS AND REALLOCATE FUNDS FOR DISTRIBUTION**

The Court has before it for review and consideration the Receiver's Second Motion to Disallow Certain Claims and Reallocate Funds for Distribution [Doc. No. ____]. The Court, being fully advised in the premises and having reviewed the relevant filings in this matter, finds that the relief requested in the Receiver's Second Motion to Disallow Certain Claims and Reallocate Funds for Distribution should be granted.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. The Receiver has provided proper, timely, adequate and sufficient notice to those investors of the necessary information and documentation to receive any distribution from the Receivership Estate;
2. The investors identified have failed to provide the Receiver with a valid TIN;
3. A distribution cannot be made to those investors without a valid TIN;
4. It is in the best interests of the investors and the Receivership Estate that the two claims set forth in Receiver's Second Motion to Disallow Certain Claims and Reallocate Funds for Distribution should be entirely disallowed and forever barred; and

5. Any and all funds attributable to these two claims should be reallocated for distribution on a pro rata basis to all remaining investor claims approved and authorized by the Court.

Dated this _____ day of January, 2014.

Richard G. Stearns
UNITED STATES DISTRICT JUDGE