

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

ARTHUR LAMAR ADAMS AND
MADISON TIMBER PROPERTIES, LLC,

Defendants.

Case No. 3:18-cv-252

Hon. Carlton W. Reeves, District Judge

Hon. F. Keith Ball, Magistrate Judge

MOTION TO APPROVE FIRST DISTRIBUTION

Alysson Mills, in her capacity as the court-appointed receiver for Arthur Lamar Adams and Madison Timber Properties, LLC, through undersigned counsel, respectfully moves the Court to approve a proposed first distribution to Madison Timber’s victims.

The Receiver proposes to make \$17,500,000 available to Madison Timber’s victims.

Madison Timber’s victims are its investors. The Receiver proposes that for this first distribution the Receivership Estate prioritize restoring each investor’s principal—that is, any principal still due to the investor under the investor’s promissory notes after subtracting any interest the investor ever received. The Receiver anticipates that this first distribution will pay back 36% of what she calls “Priority 1” losses.

The accompanying memorandum explains the Receiver’s proposal.

As this is the Receiver’s first distribution, she believes victims should have an opportunity to evaluate her proposal and, if they choose, be heard by the Court before the Court makes any decision to approve it. The Receiver submits the attached proposed Order Setting Hearing [**Exhibit A**] to facilitate.

April 19, 2021

Respectfully submitted,

/s/ Lilli Evans Bass

BROWN BASS & JETER, PLLC
Lilli Evans Bass, Miss. Bar No. 102896
1755 Lelia Drive, Suite 400
Jackson, Mississippi 39216
Tel: 601-487-8448
Fax: 601-510-9934
bass@bbjlawyers.com

/s/ Kristen Amond

FISHMAN HAYGOOD, LLP
Admitted pro hac vice
Brent B. Barriere, *Primary Counsel*
201 St. Charles Avenue, Suite 4600
New Orleans, Louisiana 70170
Tel: 504-586-5253
Fax: 504-586-5250
bbarriere@fishmanhaygood.com

MILLS & AMOND LLP

Admitted pro hac vice
Kristen D. Amond
650 Poydras Street, Suite 1525
New Orleans, Louisiana 70130
Tel: 504-383-0332
Fax: 504-733-7958
kamond@millsamond.com
Receiver's counsel

CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing with the Clerk of Court using the ECF system which sent notification of filing to all counsel of record.

Date: April 19, 2021

/s/ Kristen Amond

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

ARTHUR LAMAR ADAMS AND
MADISON TIMBER PROPERTIES, LLC,

Defendants.

Case No. 3:18-cv-252

Hon. Carlton W. Reeves, District Judge

Hon. F. Keith Ball, Magistrate Judge

**MEMORANDUM IN SUPPORT OF
MOTION TO APPROVE FIRST DISTRIBUTION**

Alysson Mills, in her capacity as the court-appointed receiver for Arthur Lamar Adams and Madison Timber Properties, LLC, through undersigned counsel, respectfully submits this memorandum in support of her motion to approve a proposed first distribution to Madison Timber's victims.

The Receiver has shared this memorandum with the U.S. Attorney's Office for the Southern District of Mississippi and the Securities & Exchange Commission. They do not object to the proposed equitable distribution described below. The Securities & Exchange Commission expressly takes no position on the proposed equitable advance.

INTRODUCTION

This Court appointed the Receiver to take any action necessary and appropriate to preserve the assets of Adams and Madison Timber, for the benefit of the Receivership Estate. Over the past two and a half years the Receiver and her counsel have seized and sold property, recovered

“commissions” and gifts, and filed several lawsuits, some of which have settled. These efforts make it now possible to make \$17,500,000 available to Madison Timber’s victims.

Madison Timber’s victims are its investors. The Receiver proposes that for this first distribution the Receivership Estate prioritize restoring each investor’s principal—that is, any principal still due to the investor under the investor’s promissory notes after subtracting any interest the investor ever received. The Receiver anticipates that this first distribution will pay back 36% of what she calls “Priority 1” losses.

BACKGROUND

Madison Timber

For more than ten years, Adams, through Madison Timber, operated a Ponzi scheme that defrauded hundreds of investors.

Investors believed that Madison Timber used investors’ money to purchase timber from Mississippi landowners; that Madison Timber sold the timber to Mississippi lumber mills at a higher price; and that Madison Timber repaid investors their principal plus interest with the proceeds of those sales. Investors received timber deeds that purported to secure their investments—but the deeds were fake. There was no timber and no proceeds from sales of timber. The money used to repay existing investors came solely from new investors.

Madison Timber had to continuously grow to repay existing and new investors, and it did. In 2011, Madison Timber took in approximately \$10 million from investors. By 2018 that number had grown by a factor of 16. In the one-year period prior to April 19, 2018, the date Adams surrendered to federal authorities and confessed to the Ponzi scheme, Madison Timber took in approximately \$164.5 million. Adams pleaded guilty to the federal crime of wire fraud on May 9, 2018. Today he is serving a 19.5-year prison sentence.

In contrast to other Ponzi schemes, the Madison Timber Ponzi scheme was straightforward.¹ Adams perfected it no later than 2010 and, with the help of professionals and institutions that gave Madison Timber the appearance of a far more sophisticated company, followed the same pattern for each investment, month after month, year after year:

1. For each investment, Madison Timber gave the investor a promissory note.
2. For each promissory note, Madison Timber made 12 monthly payments. Beginning in 2015, it skipped the month of December, such that it made 12 monthly payments over 13 months.
3. The promissory notes' interest varied over the years, but by March 15, 2017, the interest was, with few exceptions, 13%.
4. The monthly payments were, with few exceptions, the same: principal plus 13% interest, divided by 12. An investor who invested \$100,000 received 12 monthly payments of \$9,416.67 $((\$100,000 + \$13,000) / 12)$.
5. Madison Timber made monthly payments on either the 1st or 15th of each month, depending on a promissory note's date. Most investors received monthly payments via wire; others via checks. The monthly payments typically were made from Madison Timber's bank accounts at Trustmark and, beginning in 2016, RiverHills Bank.
6. Madison Timber instructed investors to write "Paid in Full" on their promissory notes after all monthly payments had been made and to return the promissory notes to Madison Timber.

Madison Timber made its last monthly payments on April 15, 2018. Federal authorities froze Madison Timber's accounts on April 20, 2018.

¹ Most people are familiar with the Madoff and Stanford Ponzi schemes. Until his recent death, Bernie Madoff was serving a 150-year prison sentence for running the biggest and longest-running Ponzi scheme of all time, robbing his clients of the nearly \$20 billion they entrusted to him. Instead of investing their money, Madoff deposited it into his own business account and then used fake trades to create the appearance of more than \$45 billion in fake returns. Allen Stanford is serving a 110-year prison sentence for running a sprawling \$7.2 billion Ponzi scheme. His companies sold certificates of deposit issued by Stanford International Bank, which misappropriated investors' money and falsified records to hide its fraud.

Both the Madoff and Stanford Ponzi schemes had complex structures made up of multiple entities (there were 130 Stanford entities), some with legitimate lines of business, having dozens (even hundreds) of employees. Madison Timber's business form was a single LLC that had no employees. If it looked more complex than it was, it was thanks to the professionals and institutions that lent it their sophistication.

Investor accounting

A straightforward Ponzi scheme makes for a straightforward investor accounting.² Any promissory note executed on or before March 15, 2017 (13 months prior to April 15, 2018) was paid in full. Any promissory note executed after March 15, 2017 (13 months prior to April 15, 2018) still has amounts due.

The Receiver reviewed a variety of records—including Madison Timber’s QuickBooks files; statements from Madison Timber’s Trustmark, First National Bank of Clarksdale, RiverHills Bank, and Southern Bancorp bank accounts; and records provided by investors and persons described as Madison Timber’s “recruiters”—to account for investments in Madison Timber from July 1, 2010 to April 20, 2018.

The Receiver concluded 184 investors hold 485³ promissory notes with amounts still due.⁴

In anticipation of a first distribution, on February 19, 2021, the Receiver mailed to each investor a statement of their losses, reflecting every promissory note ever held by the investor, along with any amounts due. The Receiver encouraged them to study their information closely and to contact the Receiver immediately if their information was incorrect. The Receiver advised that after 30 days, but no later than March 31, 2021, she would deem their information final.

² Because the Madison Timber Ponzi scheme was so straightforward, the Receiver and her counsel were able to account for investors’ promissory notes. This saved the Receivership Estate the expense of a forensic accountant.

The accounting nevertheless was time-consuming. The Receiver and her counsel have not billed the Receivership Estate for this time. Because the accounting is necessary to a distribution made possible by the Butler Snow settlement, they instead recorded their time to the Butler Snow case. Because that case is a contingency fee case, they do not bill the Receivership Estate by the hour for their work on it.

³ Early accountings reflected 501 promissory notes with amounts due. The Receiver later determined that certain of those promissory notes were paid in full. For other promissory notes, the Receiver confirmed that the anticipated principal investments were not received before Madison Timber’s accounts were frozen. For still other promissory notes, the Receiver obtained their forgiveness.

⁴ These investors are Madison Timber’s only creditors. Unlike the Madoff and Stanford business entities, Madison Timber does not have employees or ordinary business accounts to which it still owes money.

The Receiver has now confirmed each investor’s information, with few exceptions not material here.

The 485 promissory notes with amounts still due reflect \$155,822,000 in total principal investments and require Madison Timber to make approximately \$176,118,181 in total monthly payments. Before its accounts were frozen, Madison Timber made approximately \$75,919,744 in monthly payments pursuant to the 485 promissory notes. The total amount still due under the 485 promissory notes—the Receivership Estate’s debt to investors—is approximately \$100,198,437:

485 promissory notes

total invested	total due	total repaid, approximate	total still due, approximate
\$155,822,000	\$176,118,181	\$75,919,744	\$100,198,437

The Receiver and the Receivership Estate

The Receiver’s order of appointment sets forth her responsibilities and duties. Among other things, the order instructs her to take any action necessary and appropriate to preserve the assets of Adams and his businesses, to maximize funds available for distributions to victims.

Since her appointment on June 22, 2018, the Receiver has, among other things, seized bank accounts belonging to Adams and Madison Timber; seized and sold property belonging to Adams and Madison Timber; recovered “commissions” paid by Adams and Madison Timber to “recruiters” in exchange for their assistance in recruiting new investors to the Madison Timber Ponzi scheme; recovered gifts that Adams made with proceeds from Madison Timber; and sold or otherwise resolved Adams’s interests in six active LLCs. The Receiver has filed several lawsuits against “recruiters” and other persons and institutions who aided and abetted Adams and Madison Timber. The Receiver has documented these efforts, and the Receivership Estate’s growing

account balance, in reports that she provides every 60 days. These reports are filed in the Court's public record and the Receiver posts them to her website.

As a result of her efforts, today the Receivership Estate has approximately \$11,916,000 in its own account, not counting proceeds from the Court-approved \$9,500,000 settlement with Butler Snow.⁵

The Receiver proposes to make \$17,500,000 available solely to Madison Timber's victims, the 184 investors who hold 485 promissory notes with amounts still due. The proposed distribution would be the first, but hopefully not only, distribution to Madison Timber's victims.

The Butler Snow settlement makes this first proposed distribution not merely possible but meaningful. It is the first settlement with any defendant in any of the Receivership Estate's four biggest lawsuits.⁶ A lawsuit's outcome is never guaranteed, but the Receivership Estate's lawsuits remain its most valuable assets.

⁵ The Butler Snow case is one of four lawsuits in which the Receiver's counsel represents the Receivership Estate on a contingency fee basis. The Receiver's counsel separately will move the Court for approval of their fees, which will be paid out of the proceeds from the Butler Snow settlement. That separate motion, however, should not delay the proposed distribution to Madison Timber's victims.

⁶ See, e.g., *Alysson Mills v. Butler Snow, et al.*, No. 3:18-cv-866 (S.D. Miss.) (remaining defendants include Baker, Donelson, Bearman, Caldwell & Berkowitz, PC; Alexander Seawright, LLC; Brent Alexander; and Jon Seawright—a law firm and its agents who lent their influence, their professional expertise, and even their clients to Adams and Madison Timber); *Alysson Mills v. BankPlus, et al.*, No. 3:19-cv-196 (S.D. Miss.) (defendants include BankPlus; BankPlus Wealth Management, LLC; Gee Gee Patridge, Vice President and Chief Operations Officer of BankPlus; Stewart Patridge; Jason Cowgill; Martin Murphree; Mutual of Omaha Insurance Company; and Mutual of Omaha Investor Services, Inc.—financial institutions and their agents who lent their influence, their professional services, and even their customers to Madison Timber, establishing for it a de facto DeSoto County headquarters); *Alysson Mills v. The UPS Store, Inc., et al.*, No. 3:19-cv-364 (S.D. Miss.) (defendants include The UPS Store, Inc.; Herring Ventures, LLC d/b/a The UPS Store; Austin Elsen; Tammie Elsen; Courtney Herring; Diane Lofton; Chandler Westover; Rawlings & MacInnis, PA; Tammy Vinson; and Jeannie Chisholm—the notaries and their employers on whom Adams principally relied to notarize fake timber deeds); *Alysson Mills v. Trustmark, et al.*, No. 3:19-cv-941 (S.D. Miss.) (defendants include Trustmark National Bank, Bennie Butts, Jud Watkins, Southern Bancorp Bank, and RiverHills Bank—financial institutions and professionals who provided banking services that enabled and sustained the Madison Timber Ponzi scheme).

While the first proposed distribution is substantial, it is not enough to pay all amounts still due under the 485 promissory notes. The Receivership Estate necessarily must decide how to spread the \$17,500,000 equitably across all investors.

The Receiver's proposal has two parts: first, an equitable distribution of \$17,000,000; and second, an equitable advance funded by \$500,000 set aside from proceeds of the Butler Snow settlement.

Equitable distribution

The Receiver proposes that for this first distribution the Receivership Estate prioritize restoring each investor's principal. In other words, the Receivership Estate first would repay any principal still due to any investor under any promissory note, minus any interest the investor may have received under any promissory note. In the future, after what the Receiver calls "Priority 1" is paid, the Receivership Estate would pay any remaining amounts still due to any investor under any promissory note.

For each investor, the Receiver has determined how much of the Receivership Estate's debt to the investor qualifies for Priority 1 simply, by adding any principal still due to the investor under the investor's promissory notes and subtracting any interest the investor ever received. To illustrate, consider hypothetical Investor A (who has one paid-in-full promissory note and two promissory notes with amounts still due) with hypothetical Investor B (who has two paid-in-full promissory notes and one promissory note with amounts still due):

Investor A

		principal amount	interest rate	total due	monthly payment	no. monthly payments	total payments received	total interest received	total amount still due	total principal still due	total interest still due
1	2017-01-15	\$100,000	13%	\$113,000	\$9,416.67	12	\$113,000	\$13,000	-	-	-
2	2017-06-15	\$100,000	13%	\$113,000	\$9,416.67	9	\$84,750	-	\$28,250	\$15,250	\$13,000
3	2018-01-15	\$100,000	13%	\$113,000	\$9,416.67	3	\$28,250	-	\$84,750	\$71,750	\$13,000
								\$13,000		\$87,000	

total principal still due under unpaid promissory notes \$87,000
minus interest received under paid promissory notes \$13,000
\$74,000

priority 1 \$74,000

total principal still due under unpaid promissory notes \$87,000
minus priority 1 payments \$74,000
\$13,000

priority 2 \$13,000

total amount still due under unpaid promissory notes \$113,000
minus priority 1 and priority 2 payments \$87,000
\$26,000

priority 3 \$26,000

Investor B

		principal amount	interest rate	total due	monthly payment	no. monthly payments	total payments received	total interest received	total amount still due	total principal still due	total interest still due
1	2016-01-15	\$100,000	13%	\$113,000	\$9,416.67	12	\$113,000	\$13,000	-	-	-
2	2017-01-15	\$100,000	13%	\$113,000	\$9,416.67	12	\$113,000	\$13,000	-	-	-
3	2018-01-15	\$100,000	13%	\$113,000	\$9,416.67	3	\$28,250	-	\$84,750	\$71,750	\$13,000
								\$26,000		\$71,750	

total principal still due under unpaid promissory notes \$71,750
minus interest received under paid promissory notes \$26,000
\$45,750

priority 1 \$45,750

total principal still due under unpaid promissory notes \$71,750
minus priority 1 payments \$45,750
\$26,000

priority 2 \$26,000

total amount still due under unpaid promissory notes \$84,750
minus priority 1 and priority 2 payments \$71,750
\$13,000

priority 3 \$13,000

The Receiver's Priority 1 methodology has been used by other receivers and trustees to account for investor losses in other Ponzi scheme cases. It is this same methodology by which the Madoff trustee, 12 years into that case, has paid back \$14.16 billion (70%) of approximately \$20 billion worth of what he calls "allowed claims."⁷

Priority 1 accounts for approximately \$46,500,000 of the \$100,198,437 still due under the 485 promissory notes. If the Receiver applies \$17,000,000 to Priority 1, she will pay back qualified investors 36% of their Priority 1 losses on a pro rata basis.⁸

Equitable advance

Not all investors will qualify for Priority 1. Approximately 40 investors will not. These investors received, over time, interest that exceeds any principal still due to them under their promissory notes. To illustrate, consider hypothetical Investor C (who has five paid-in-full promissory notes and one promissory note with amounts still due):

⁷ See, e.g., February 26, 2021, Press Release, *Twelfth Pro Rata Interim Distribution to BLMIS Claim Holders Commences* ("Eligible BLMIS customers have now received almost 70 percent of their allowed claims, but we are optimistic that this figure will rise as we secure more recoveries and distributions in the future."). See also Varadarajan, Tunku, Nov. 30, 2018, *The Wall Street Journal*, *The Amazing Madoff Clawback* ("Only net losers would receive payments from money recovered by the trustee.").

⁸ Every case is different, but for context, the Stanford receivership estate's first distribution, made four years into that receivership, amounted to 1% of Stanford investors' losses. Of course, at \$7.2 billion, the Stanford Ponzi scheme was considerably bigger than the Ponzi scheme in this case. Docs. 1766, 1877, *Securities & Exchange Commission v. Stanford International Bank, Ltd., et al.*, No. 3:09-cv-0298 (N.D. Tex.).

The Cook/Kiley Ponzi scheme, at \$190 million, is closer in size. Within its first four years the Cook/Kiley receivership estate distributed \$6,457,450 to investors, representing 5.5% of known losses. Docs. 1019, 1023, *U.S. Commodity Futures Trading Commission v. Trevor Cook, et al.*, No. 09-cv-3332 (D. Minn.).

Investor C

		principal amount	interest rate	total due	monthly payment	no. monthly payments	total payments received	total interest received	total amount still due	total principal still due	total interest still due
1	2012-06-15	\$100,000	13%	\$113,000	\$9,416.67	12	\$113,000	\$13,000	-	-	-
2	2013-06-15	\$100,000	13%	\$113,000	\$9,416.67	12	\$113,000	\$13,000	-	-	-
3	2014-06-15	\$100,000	13%	\$113,000	\$9,416.67	12	\$113,000	\$13,000	-	-	-
4	2015-06-15	\$100,000	13%	\$113,000	\$9,416.67	12	\$113,000	\$13,000	-	-	-
5	2016-06-15	\$100,000	13%	\$113,000	\$9,416.67	12	\$113,000	\$13,000	-	-	-
6	2017-06-15	\$100,000	13%	\$113,000	\$9,416.67	9	\$84,750	-	\$28,250	\$15,250	\$13,000
								\$65,000		\$15,250	

total principal still due under unpaid promissory notes \$15,250
minus interest received under paid promissory notes \$65,000
- \$49,750

priority 1 \$0

total principal still due under unpaid promissory notes \$15,250
minus priority 1 payments \$0
\$15,250

priority 2 \$15,250

total amount still due under unpaid promissory notes \$28,250
minus priority 1 and priority 2 payments \$15,250
\$13,000

priority 3 \$13,000

Many of these approximately 40 investors are elderly persons who invested comparatively small amounts in Madison Timber for years. They relied on (again, comparatively small) monthly checks to pay for basic living expenses. They entrusted substantially all of their savings to Madison Timber; they did not know that Madison Timber was a Ponzi scheme. They discovered the truth only when, after Madison Timber's accounts were frozen, they could not cash their monthly checks.

These persons do not consider themselves "net winners." To the contrary, they lost not only the monthly checks on which they relied but also, in some instances, their entire life savings. They are victims of Madison Timber.

The Receiver believes providing for these persons is the right thing to do given the circumstances of this case, and provision can be made with minimal cost to others.

The Receiver proposes to set aside \$500,000 from proceeds of the Butler Snow settlement⁹ for the benefit of investors who do not qualify for Priority 1 but who establish a financial hardship based on objective measures including their age and income. Qualified “hardship” investors would be entitled to a non-recourse “equitable advance” of up to 36% of any principal still due to the investor under the investor’s promissory notes, pro rata as funds allow. Any funds remaining if the \$500,000 is not equitably advanced to qualified hardship investors would be returned to the Receivership Estate.

Disqualified investors

The Receiver proposes that this first distribution exclude any investors who the Receiver has sued or settled with (not counting Alexander Seawright, LLC, addressed below). There are only four such investors. Given the scarcity of resources available for distribution, it is appropriate that the Receivership Estate subordinate these investors’ claims.

Alexander Seawright, LLC

The Receiver sued Jon Seawright, Brent Alexander, and Alexander Seawright, LLC, along with Seawright’s and Alexander’s law firm and employer, Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, for their roles in the Madison Timber Ponzi scheme. The Alexander Seawright Timber Fund, a fund created and controlled by Seawright and Alexander, is an investor in Madison Timber and holds 10 promissory notes with \$3,153,640 total amounts still due.

⁹ The proposed equitable advance is atypical. The Receiver would not propose it but for the fact that it can be funded by proceeds from the Butler Snow settlement. That settlement was obtained as the result of a lawsuit that broadly seeks damages for, among other things, aiding and abetting the Madison Timber Ponzi scheme. (By contrast, other of the Receiver’s lawsuits and efforts have recovered money—including, for example, gifts and “commissions”—that can be characterized as actual proceeds of the Madison Timber Ponzi scheme.)

The Alexander Seawright Timber Fund separately has 33 investors. They invested in the Alexander Seawright Timber Fund, which invested solely in Madison Timber. They are victims of Madison Timber. Neither Seawright nor Alexander are among these 33 investors.

The Receiver proposes that, instead of giving the Alexander Seawright Timber Fund's share of any distribution to Seawright or Alexander, she give it to the Alexander Seawright Timber Fund's 33 investors. The Receiver advised Seawright and Alexander's counsel of her intent, but as of this filing they have not indicated their consent. The Receiver proposes to distribute the Alexander Seawright Timber Fund's share to its 33 investors on a pro rata basis, in consultation with them.

Timeline for proposed distribution

If the proposed distribution is approved without objection, the Receiver intends to issue checks to investors who qualify for a Priority 1 distribution within 30 days. The checks will represent each qualified investor's pro rata share of \$17,000,000.

The Receiver separately will advise investors who do not qualify for a Priority 1 distribution that they may apply for an equitable advance of up to 36% of any principal still due to them under their promissory notes, pro rata as funds allow. The Receiver will mail instructions for such application to each such investor and also post them on her website. The Receiver proposes that, following an initial 45-day application period, she be permitted to make equitable advances on a rolling basis to investors who meet objective financial hardship criteria including age and income.

Miscellaneous

The proposed distribution will reduce but not exhaust the Receivership Estate. Future distributions may be made with remaining funds and additional funds that may be obtained as the result of lawsuits or other efforts of the Receiver.

The Receiver takes no position in this motion on how any future distributions should be made, or whether they should require a hearing.

LAW

“Sitting in equity, the district court is a ‘court of conscience.’” *United States v. Durham*, 86 F.3d 70, 73 (5th Cir. 1996) (quoting *Wilson v. Wall*, 73 U.S. (6 Wall.) 83, 90 (1867)). It “is vested with broad discretionary power.” *S.E.C. v. Forex Asset Mgmt. LLC*, 242 F.3d 325, 331 (5th Cir. 2001) (citing *Quenzer v. United States*, 19 F.3d 163, 165 (5th Cir. 1993)). It is not required to adopt any particular plan merely because it is “permissible under the circumstances.” *Durham*, 86 F.3d at 73.

When considering a proposed distribution, the district court’s “primary job” is simply “to ensure that the proposed plan of distribution is fair and reasonable.” *S.E.C. v. Wealth Mgmt. LLC*, 628 F.3d 323, 332 (7th Cir. 2010) (citing *Official Comm. of Unsecured Creditors of WorldCom, Inc. v. S.E.C.*, 467 F.3d 73, 84 (2d Cir. 2006)). It has broad discretion to determine “a logical way to divide the money,” and tailor a proposed distribution accordingly. *Forex*, 242 F.3d at 331 (citing *Durham*, 86 F.3d at 73); *see also Wealth Mgmt. LLC*, 628 F.3d at 333 (quoting *SEC v. Enter. Trust Co.*, 559 F.3d 649, 652 (7th Cir. 2009)) (“[D]istrict courts supervising receiverships have the power to ‘classify claims sensibly.’”). Its decision is reviewed for abuse of discretion only. *Crawford v. Silette*, 608 F.3d 275, 278 (5th Cir. 2010) (“When fashioning equitable relief, a court acts with broad discretion, which we review for abuse of discretion.”); *Forex*, 242 F.3d at 331

(“we analyze the district court’s decision to approve the Receiver’s distribution plan for an abuse of discretion because the district court was ‘acting pursuant to its inherent equitable powers’ when it approved the plan”); *Durham*, 86 F.3d at 72 (5th Cir. 1996) (“we will review the lower court’s imposition of an equitable remedy for abuse of discretion”) (citing *S.E.C. v. AMX, International, Inc.*, 7 F.3d 71, 73 (5th Cir. 1993)).

The Court should approve the proposed distribution because it is fair and reasonable. The Receivership Estate does not have enough money to pay all amounts still due under the 485 promissory notes and so must spread the \$17,500,000 equitably across all investors. The proposed distribution does that by, first and foremost, excluding any investors who the Receiver has sued or settled with—because they bear responsibility for furthering the Ponzi scheme, that exclusion is fair, *see S.E.C. v. Byers*, 637 F. Supp. 2d 166, 184 (S.D.N.Y. 2009), *aff’d sub nom. S.E.C. v. Malek*, 397 F. App’x 711 (2d Cir. 2010) (“The Receiver’s proposal to treat differently those involved in the fraudulent scheme when distributions are being made is eminently reasonable and is supported by caselaw.”)—and thereafter treating all other investors equally.

Each investor’s losses have been calculated the same way, based on amounts still due under the promissory notes that they hold. The proposed distribution prioritizes restoring each investor’s principal—that is, repaying any principal still due to any investor under any promissory note, minus any interest the investor may have received under any promissory note—and would restore 36% of such losses, a substantial percentage for a first distribution in a Ponzi scheme case. The proposed distribution is fair and reasonable for those investors who qualify for it.

The Receiver is mindful that some investors who need it most may not qualify for the proposed distribution. She therefore proposes an equitable solution: to set aside \$500,000—a small fraction of the \$17,500,000 made available—for equitable advances to investors who

establish a financial hardship based on objective criteria including age and income. The equitable advances shall be made only as funds allow and shall in no event exceed 36% of any principal still due to the investor under the investor's promissory notes. The equitable advances make the proposed distribution fair and reasonable for those who need it but otherwise would not qualify.

In both cases, funds will be distributed on a pro rata basis only. "Courts have favored pro rata distribution of assets where, as here, the funds of the defrauded victims were commingled and where victims were similarly situated with respect to their relationship to the defrauders." *S.E.C. v. Credit Bancorp, Ltd.*, 290 F.3d 80, 88–89 (2d Cir. 2002) (citing cases). *See also Durham*, 86 F.3d at 72-73 (affirming pro rata distribution). Madison Timber's investors are similarly situated insofar as they all invested in Madison Timber through promissory notes that provided for the repayment of an investor's principal plus 13% interest in 12 monthly payments over 13 months. All investors in Madison Timber believed that Madison Timber used their money to purchase timber from Mississippi landowners. All investors in Madison Timber received fake timber deeds that purported to secure their investments. All investors' money was commingled. There is no reason to distinguish between classes or types of investors here. A pro rata distribution is equitable.

PROPOSED NOTICE AND HEARING

Madison Timber's creditors are the 184 investors holding 485 promissory notes with amounts still due. Because the Receiver already confirmed these investors' losses, she submits that a "claims" process such as those used in other cases is unwarranted here.¹⁰ The Receiver already accounted for victims' claims. An additional accounting would unnecessarily burden

¹⁰ Contrast this case with the Stanford case, which had 18,400 investor claims in addition to more than 2,000 claims from employees and insiders.

victims, would unnecessarily delay a distribution, and would cause the Receivership Estate to incur an unnecessary expense.¹¹

Nevertheless, victims should have an opportunity to evaluate the proposed distribution and, if they choose, be heard by the Court before the Court makes any decision to approve it.

The Receiver thus recommends that the Court address this motion to approve distribution in the same way that it has addressed motions to approve settlement and motions to approve the sale of real property: after providing notice and an opportunity for objectors to be heard. Along those same lines, the Receiver proposes the following:

- The Court shall set a hearing on the proposed distribution within 21 days, or as the Court's calendar allows.
- The Court shall enter an Order Setting Hearing [**Exhibit A**] that shall be filed in the Court's public record of the case styled *Securities & Exchange Commission vs. Adams, et al.*, No. 3:18-cv-00252 (S.D. Miss.).
- Victims or other interested parties who wish to submit comments or objections shall do so at least five days prior to the Court's hearing, either by submitting the comments or objections to the Court or to the Receiver, who shall submit them to the Court.
- Victims or other interested parties who wish to address the proposed distribution at the hearing shall be given an opportunity to be speak.
- The Receiver will provide via U.S. Mail this motion, the Order Setting Hearing, and instructions for submitting comments or objections to all victims. She shall publicize the same on her website and in any forthcoming Receiver's Report.

The proposed notice and hearing will give victims and interested parties a full and fair opportunity to be heard and will give the Court the benefit of their opinions as the Court assesses

¹¹ "Receivers have a duty to avoid overly costly investigations" *S.E.C. v. Wealth Mgmt. LLC*, 628 F.3d 323, 336 (7th Cir. 2010) (rejecting alternative distribution plan proposed by investors because it would have been costly). The Receiver avoids expense to the Receivership Estate where she can. She and her counsel avoided the expense of a forensic accountant by accounting for investors' promissory notes themselves, see footnote 2, and believe that by simplifying the process they can administer the proposed distribution without hiring a professional claims administrator.

the proposed distribution's merits. The Receiver believes the proposed notice and hearing is efficient and desirable under the circumstances, given the particular interests at stake.

CONCLUSION

The Receiver is pleased to be in a position to make a meaningful distribution to Madison Timber's victims. She submits that the proposed distribution is fair and reasonable, and the proposed equitable advances make it just. The Receiver respectfully requests that the Court enter the proposed Order Setting Hearing so that the proposed distribution may be presented and, if the Court agrees after notice and hearing, approved.

April 19, 2021

Respectfully submitted,

/s/ Lilli Evans Bass

BROWN BASS & JETER, PLLC
Lilli Evans Bass, Miss. Bar No. 102896
1755 Lelia Drive, Suite 400
Jackson, Mississippi 39216
Tel: 601-487-8448
Fax: 601-510-9934
bass@bbjlawyers.com

/s/ Kristen Amond

FISHMAN HAYGOOD, LLP
Admitted pro hac vice
Brent B. Barriere, *Primary Counsel*
201 St. Charles Avenue, Suite 4600
New Orleans, Louisiana 70170
Tel: 504-586-5253
Fax: 504-586-5250
bbarriere@fishmanhaygood.com

MILLS & AMOND LLP

Admitted pro hac vice
Kristen D. Amond
650 Poydras Street, Suite 1525
New Orleans, Louisiana 70130
Tel: 504-383-0332
Fax: 504-733-7958
kamond@millsamond.com
Receiver's counsel

CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing with the Clerk of Court using the ECF system which sent notification of filing to all counsel of record.

Date: April 19, 2021

/s/ Kristen Amond

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

ARTHUR LAMAR ADAMS AND
MADISON TIMBER PROPERTIES, LLC,

Defendants.

Case No. 3:18-cv-252

Hon. Carlton W. Reeves, District Judge

Hon. F. Keith Ball, Magistrate Judge

ORDER SETTING HEARING

Before the Court is the Motion to Approve First Distribution filed by Alysson Mills, in her capacity as the court-appointed receiver for Arthur Lamar Adams and Madison Timber Properties, LLC. The motion asks the Court to approve the Receiver's first distribution to Madison Timber's victims.

The Court agrees that, as this is the Receiver's first distribution, victims should have an opportunity to evaluate her proposal and, if they choose, be heard by the Court before the Court makes any decision to approve it. The Court therefore **ORDERS** as follows:

1. The Court shall hold a hearing on the Motion to Approve First Distribution on _____ at _____.
2. Unless the Court advises otherwise, the hearing shall be via Zoom, with a dial-in option for persons who wish to listen by telephone. The Receiver shall obtain a Zoom link and dial-in information from the Court and post it on her website at least 24 hours in advance of the hearing. The Receiver shall publicize any changes to the hearing's date,

- time, or place on her website. Interested parties shall check the Receiver's website for any changes.
3. Victims or other interested parties who wish to submit comments or objections shall do so at least five days prior to the Court's hearing, either by submitting the comments or objections to the Court or to the Receiver, who shall submit them to the Court.
 4. Victims or other interested parties who wish to address the proposed distribution at the hearing shall be given an opportunity to be speak.
 5. The Receiver will provide via U.S. Mail her motion, this Order Setting Hearing, and instructions for submitting comments or objections to all victims. She shall publicize the same on her website and in any forthcoming Receiver's Report.

The notice and hearing contemplated by this order shall give victims a full and fair opportunity to be heard and shall give the Court the benefit of their opinions as the Court assesses the proposed distribution's merits. The notice and hearing are efficient and desirable under the circumstances, given the particular interests at stake.¹

SO ORDERED, this the _____ day of April 2021.

Honorable Carlton W. Reeves
United States District Judge

¹ The Court takes no position at this time on whether notice or hearing is appropriate prior to the Court's approval of possible future distributions.