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**Scott G. Weber, Clerk  
Clark County**

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**SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY**

9 In re:

10 AMERICAN EAGLE MORTGAGE 100,  
11 LLC; AMERICAN EAGLE MORTGAGE  
12 200, LLC; AMERICAN EAGLE  
13 MORTGAGE 300, LLC; AMERICAN  
14 EAGLE MORTGAGE 400, LLC;  
15 AMERICAN EAGLE MORTGAGE 500,  
16 LLC; AMERICAN EAGLE MORTGAGE  
17 600, LLC; AMERICAN EAGLE  
18 MORTGAGE MEXICO 100, LLC;  
19 AMERICAN EAGLE MORTGAGE  
20 MEXICO 200, LLC; AMERICAN EAGLE  
MORTGAGE MEXICO 300, LLC;  
AMERICAN EAGLE MORTGAGE  
MEXICO 400, LLC; AMERICAN EAGLE  
MORTGAGE MEXICO 500, LLC;  
AMERICAN EAGLE MORTGAGE  
MEXICO 600, LLC; AMERICAN EAGLE  
MORTGAGE I, LLC; AMERICAN EAGLE  
MORTGAGE II, LLC; and AMERICAN  
EAGLE MORTGAGE SHORT TERM, LLC.

Case No. 19-2-01458-06

RECEIVER'S MOTION (1) TO FIX  
ALLOWED AMOUNTS OF INVESTOR  
CLAIMS AND (2) FOR AUTHORIZATION  
TO MAKE INTERIM DISTRIBUTION ON  
ALLOWED INVESTOR CLAIMS

DATE: July 2, 2021

TIME: 9:00 a.m.

JUDGE: David E. Gregerson

PLACE: Department No. 2

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**I. RELIEF REQUESTED**

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Clyde A. Hamstreet & Associates, LLC, the duly appointed general receiver herein (the "Receiver"), moves for one or more orders (1) allowing investor claims under RCW 7.60.060(1)(g) and (j) and (3), 7.60.190(6)(a), 7.60.210(1)-(2), and 7.60.220(1) in the amounts proposed by the Receiver, in each case subject to adjustment for recoveries that may be realized

1 by the holders of such claims from sources other than the receivership estate after May 10, 2019,  
2 and (2) authorizing the Receiver to make an interim distribution to investors in the amount of no  
3 less than \$3 million under RCW 7.60.060(1)(g) and (j) and (3), 7.60.190(6)(b), and  
4 7.60.230(1)(h).

## 5 **II. STATEMENT OF FACTS**

### 6 **A. Procedural History and Consolidation of Estates**

7 On May 10, 2019, the Receiver was appointed as the general receiver for the 15  
8 entities listed in the caption (each, an “Assignor” and collectively, the “Assignors”) pursuant to  
9 the Court’s Order Appointing General Receiver (the “Receivership Order”).

10 The Receivership Order provides that the Receiver has all powers afforded a  
11 receiver under the laws of the State of Washington including, but not limited to, the power and  
12 authority to do the following things:

13 To seek and obtain instructions from the Court with respect to any  
14 course of action as to which the Receiver is uncertain or wishes  
15 specific direction in the exercise of the Receiver’s powers, or the  
16 discharge of the Receiver’s duties, and those instructions will be full  
and complete authorization and protection regarding any action  
taken or suffered by the Receiver in accordance with those  
instructions[.]

17 (Receivership Order ¶ 6.g, at 4-6.)

18 On May 22, 2019, the Receiver mailed the Notice of Receivership and Claims Bar  
19 Date (the "Receivership Notice"), along with a proof of claim form, to all parties on the master  
20 mailing list. (*See* Certificate of Service re Notice of Receivership and Claims Bar Date, Proof of  
21 Claim Form, and Invitation to Introductory Receivership Meeting dated May 22, 2019.) The  
22 Receivership Notice advised that the deadline to file proofs of claim was June 21, 2019 (the “Bar  
23 Date”).

24 On various dates between June 3, 2019, and August 22, 2019, the Receiver caused  
25 the Receivership Notice to be published in the counties where the Assignors owned real  
26

1 property. (See Notice of Filing of Affidavits of Publication of Notice of Receivership and  
2 Claims Bar Date dated March 5, 2021.)

3 On November 22, 2019, the Court entered the Order Consolidating Receivership  
4 Estates (the “Consolidation Order”). Under the Consolidation Order, the Estates of all Assignors  
5 were consolidated into a single Estate for the purposes of administering and distributing the  
6 property of the Estates in this receivership proceeding, effective as of the entry of the  
7 Receivership Order. (See Consolidation Order ¶ 1, at 2.) In the Consolidation Order, the Court  
8 found, among other things, that

9 (a) although organized as discrete legal entities, the  
10 above-captioned Assignors have historically operated their affairs  
11 and utilized their cash and other assets in a significantly commingled  
12 manner without regard to the proper legal rights of purportedly  
13 separate entities, (b) as a result of these business practices, investors  
14 and other creditors of the respective Assignors were routinely paid  
15 from funds that should have been limited for the use and benefit of  
16 investors and creditors of other Assignors, (c) to regard the  
17 Assignors’ Estates as separate would aid the commission of a fraud  
18 or wrong upon others, (d) the Assignors’ operations prior to the  
19 commencement of this receivership proceeding constituted an abuse  
20 of the entity form, involving fraud, misrepresentation, or  
21 manipulation, that resulted in harm to the Assignors and their  
22 investors, (e) intentional conduct was the cause of the harm that  
23 disregard of the separateness of the Assignors will avoid, and (f)  
24 consolidating the Estates of all Assignors into a single Estate for the  
25 purposes of administering and distributing the property of the  
26 Estates in this receivership proceeding is the most fair and equitable  
remedy . . . .

(Consolidation Order at 1-2.)

20 Also on November 22, 2019, the Court entered the Administrative Order  
21 Authorizing Alternative Service of Motions and Other Papers (the “Service Order”). The  
22 Service Order provides that “motions involving the allowance or disallowance of any claim or  
23 claims shall, in each case, be served by mail on the particular creditor whose claims are the  
24 subject of such motion.” (Service Order ¶ 1, at 2.) “Service effected in accordance with this  
25 Order shall be deemed proper and sufficient under the circumstances of this case.” (*Id.* ¶ 3, at 2.)

1                   **B.       Claims Review and Receiver’s “MIMO Approach” to Determination**  
2 **of Allowed Amounts for Investor Claims**

3                   The overwhelming creditor constituency in this proceeding is investors holding  
4 promissory notes from the Assignors, most of the time for money that the investors paid to the  
5 Assignors on an unsecured basis, ostensibly for use by the Assignors for further lending to other  
6 borrowers secured by real estate. Ultimately, the Assignors’ operations amounted to a Ponzi  
7 scheme.

8                   The investors listed on Exhibit A to the Declaration of Hannah Schmidt filed  
9 contemporaneously herewith (the “Schmidt Decl.”)<sup>1</sup> have filed, or are deemed to have filed,  
10 proofs of claim with the Receiver, either directly or through its counsel. The Receiver has  
11 reviewed all proofs of claim filed or deemed filed with the Receiver, has compared them with the  
12 Assignors’ books and records, and has attempted to verify, with respect to each investor, the total  
13 amounts paid by the investors to the Assignors and the total amounts paid to the investors by the  
14 Assignors prior to the Receiver’s appointment.<sup>2</sup>

15                                   **1.       MIMO Method for Calculating Claims**

16                   Investors in the Assignors were to receive fixed rates of return on their  
17 investments in the form of interest, as documented by promissory notes that were issued by the  
18 Assignors to the investors. The investors were given the option of receiving monthly interest  
19 payments in cash or of “reinvesting” these monthly interest payments by having the accrued but  
20 unpaid interest added to the principal balance of their investment. The managers of the  
21 Assignors, American Equities, Inc. and American Eagle Mortgage Management, LLC  
22 (collectively, the “Managers”), also offered investors the ability to switch between the two  
23 options over the course of the investments and, on occasion, to receive early withdrawals on

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25 <sup>1</sup> Claims of creditors other than investors are not the subject of this motion and will be addressed in another motion  
at a date to be determined.

26 <sup>2</sup> Some investors filed duplicates of the same proof of claim (for example, by sending a soft copy by e-mail and a  
hard copy in the mail). The Receiver disregards the duplicate proofs of claim and is treating them as just one claim.

1 account of the principal balance of their investments. This structure meant that during the course  
2 of the Assignors' operations, some investors received payments in amounts greater than their  
3 original investments, and others received no payments at all. However, both types of investor  
4 would still have a principal balance that became a claim in this receivership proceeding.

5 The following fictional example illustrates how that structure would affect two  
6 investors who both invested \$100,000 on February 1, 2007, at 10% annual interest. One investor  
7 elects to receive monthly interest payments (Investor A), and the other investor elects to  
8 "reinvest" their monthly interest (Investor B). Investor A would have received approximately  
9 \$122,000 in cash payments by the time of the entry of the Receivership Order and would still  
10 have a principal balance of \$100,000. Investor B would have received no cash, but would have  
11 an account balance of approximately \$319,000.

12 If the Receiver were to make a distribution to these investors of \$20,000  
13 (approximately 4 cents on the dollar) based on the book value of their claims, Investor A would  
14 receive \$5,000, for a total of \$127,000 received over the course of that investment, and Investor  
15 B would receive \$15,000, as the only cash received over the lifetime of that investment. The  
16 comparison of claim balances and of a distribution made according to the book value approach  
17 can be seen in Chart 1 below:

18 *[Chart 1 follows on next page; remainder of page intentionally left blank]*  
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Chart 1: Investor A and Investor B – Book Values<sup>3</sup>

	Investor A Interest Paid Out	Investor B Interest Reinvested
Original Investment	\$ 100,000	\$ 100,000
Total Interest Earned	<u>122,000</u>	<u>219,000</u>
Cash Payments Received	222,000	319,000
	(122,000)	-
<b>Account Balance (Book Value Claim)</b>	<b><u>100,000</u></b>	<b><u>319,000</u></b>
<b>Book Value Distribution:</b>		
Distribution from Receiver	5,000	15,000
Cash Payments Received	<u>122,000</u>	<u>-</u>
<b>Total Cash Received</b>	<b>\$ 127,000</b>	<b>\$ 15,000</b>

A distribution of funds based on the proof of claim amounts or book value of the investors' claims would not take into account the disparity of cash paid out over the lifetime of the investment and would increase the inequality of returns on investments. In a Ponzi scheme, the interest reinvested by Investor B would allow the perpetrator to continue to fund the cash payments to Investor A, keeping the scheme alive.

The Receiver has concluded that the Assignors (sometimes referred to as "Pools") have been insolvent since at least January 31, 2007 (the "Insolvency Date"). This means that payments made to investors by the Pools after the Insolvency Date were, in reality, returns of principal rather than of interest income. Reclassifying the interest payments received by investors, like Investor A in the above example, over the lifetime of their loans would affect the claim balances allowed in the Receivership. To calculate these new balances, the Receiver proposes to utilize the money-in less money-out ("MIMO") method. The MIMO method—also referred to as the "net investment" method— for fixing the amounts of investor claims for the purposes of distributing receivership assets to investors of insolvent receivership entities is widely recognized today as the best means for achieving a fair and equitable result for investors, when viewed as a group.

<sup>3</sup> Amounts rounded to nearest thousand dollars.

1 To calculate MIMO, the Receiver started with the balance of the accounts as set  
 2 forth in the Assignors' books and records at the Insolvency Date as the principal balance of the  
 3 investment.<sup>4</sup> Since cash payments made to investors after the Insolvency Date would be  
 4 classified as return of principal due to the insolvency/Ponzi scheme, the Receiver subtracted the  
 5 total amount of those payments from the principal balance to determine the MIMO claim. In the  
 6 example set forth in Chart 1 above, Investor A has a negative claim (as Investor A received more  
 7 cash than originally invested) while Investor B (who received no cash payments) is still owed the  
 8 full amount of Investor B's original investment. The result is that the \$20,000 distribution made  
 9 according to the MIMO method would go entirely to Investor B.

10 Chart 2 below compares claim balances and cash received under the MIMO  
 11 approach.

12 **Chart 2: Investor A and B – MIMO<sup>5</sup>**

	Investor A	Investor B
	Interest Paid Out	Interest Reinvested
Account Balance at Insolvency (Money In)	\$ 100,000	\$ 100,000
Cash Payments Received (Money Out)	<u>(122,000)</u>	<u>-</u>
<b>MIMO Claim</b>	<b><u>(22,000)</u></b>	<b><u>100,000</u></b>
<b>MIMO Distribution:</b>		
Distribution from Receiver	-	20,000
Cash Payments Received	<u>122,000</u>	<u>-</u>
<b>Total Cash Received</b>	<b>\$ 122,000</b>	<b>\$ 20,000</b>

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 19 Along with creating a more equitable way of distributing receivership assets, the  
 20 MIMO approach will help reduce the impact of differences in loan terms between investors. For  
 21 example, the Managers waived investment fees and annual fees for select investors, offered  
 22 higher interest rates to select investors, and raised and lowered rates for some investors over the  
 23 course of their loans. As the Assignors sank deeper into insolvency, the Managers worked with

24  
 25 <sup>4</sup> The amounts set forth in the investors' proofs of claim are disregarded to the extent they do not match the amounts  
 in the Assignors' books and records.

26 <sup>5</sup> Amounts rounded to nearest thousand dollars.

1 investors to extend their loans or take partial payoffs, changing interest rates during the process.  
2 A sympathetic investor may have agreed to lower the interest rate by 1-2% to extend a note,  
3 while another more discerning investor may have had the rate raised by 1-2% in exchange for  
4 extending a note.

5 The Receiver believes that use of the MIMO method for determining the amounts  
6 of allowed investor claims in this proceeding will result in the most equitable recovery to  
7 investors in the circumstances. The MIMO formulation will not increase the disparity in the  
8 amounts of cash received by investors after the Insolvency Date, and it will account for cash  
9 payments received by investors after the Insolvency Date as return of principal rather than  
10 interest paid.

## 11 2. Calculation of MIMO Claims

12 The Receiver has calculated the MIMO balance for all the investor accounts with  
13 the Assignors from the Insolvency Date (January 31, 2007) through the date of entry of the  
14 Receivership Order (May 10, 2019).

15 For accounts that existed on the Insolvency Date, the Receiver used the balance of  
16 the investor's account as it appeared in the Assignors' QuickBooks at the Insolvency Date as  
17 their Money In. For accounts created after the Insolvency Date, the Receiver used the total value  
18 of the investment plus fees paid to the Managers as their Money In. Any additional cash  
19 investments made into an account after the Insolvency Date were treated as additional Money In  
20 at face value. These investments, the amounts stated in the investors' proofs of claim or deemed  
21 claims, and the proposed allowed claim amounts are listed on Exhibit A to the Schmidt Decl.

22 Certain accounts listed on Exhibit A to the Schmidt Decl. involve investments in  
23 one Pool having been transferred to an investment in another Pool. The transfer of balances  
24 from one investment Pool to another happened for a variety of reasons, including to account for  
25 inheritance following the death of an investor, to move a balance to another Assignor,<sup>6</sup> to split an

26 \_\_\_\_\_  
<sup>6</sup> Two investors were transferred from American Eagle Mortgage III, LLC and American Eagle Mortgage IV, LLC,



1 investment into two parts with one paying interest and the other reinvesting, to move a balance  
 2 to/from an IRA or other related legal entity, or as a gift to a friend or family member. The  
 3 Assignors generally issued new promissory notes when a new account number was issued,  
 4 though no new funds were contributed.

5 In the case of a transfer, the Receiver considers the MIMO calculation to follow  
 6 the investment. In cases where an investment was split, the Receiver prorated the MIMO based  
 7 on the transferred amount of the investment. Chart 3 contains an example of a transfer of an  
 8 entire balance and a partial balance.

9 **Chart 3: Transferred MIMO Example**

10 Type of Transfer	Book balance at transfer	MIMO balance at transfer	\$ transferred	% transferred	New account Inherited MIMO
11 Entire Balance	\$ 55,000	\$ 6,800	\$ 55,000	100%	\$ 6,800
12 Partial Balance	\$ 55,000	\$ 6,800	\$ 19,250	35%	\$ 2,380

13 The MIMO for each investment in the Assignors was calculated individually.  
 14 The Receiver has created a summary for each investor to show the proposed allowed amount of  
 15 the claim after application of the MIMO analysis. Where an investor has filed multiple claims,  
 16 that investor's claims have been consolidated, so that a single claim amount is proposed to be  
 17 allowed, on which a single distribution to that investor is calculated.<sup>7</sup>

18 Certain investments were made with assets other than cash. These usually took  
 19 the form of an assignment of a real estate receivable owned by the investor to the corresponding  
 20 Assignor, particularly by early investors into American Eagle Mortgage 100, LLC. In most of  
 21 these cases, the Receiver accepts the stated face value of the contract as the full amount of  
 22 Money In.

23 \_\_\_\_\_  
 24 which are not part of this proceeding. The assets of these entities were transferred to the Assignor along with the  
 investor. These investors have been counted as having a valid claim in this analysis.

25 <sup>7</sup> The claims of an investor who has accounts in the investor's personal name and in the name of the investor's  
 26 individual retirement account ("IRA") are combined into a single claim for the investor, because the investor  
 individually and through the IRA would have the same tax identification number.

1 In later years, there are several instances where an investor was “rolled in” to an  
2 Assignor from a related entity that is not part of this receivership proceeding (e.g., Ridgecrest III)  
3 and an unsecured loan receivable was created between the Assignor and the related entity for the  
4 value of the investment. In these instances, no assets were transferred to the Assignors in  
5 exchange for the “rolled in” investment. If these investors did not invest additional funds, then  
6 the Receiver believes their claims should also be rejected, and the Receiver will not attempt to  
7 collect on the loan receivable from the related entity. In cases where these investors invested  
8 new funds into the Assignors, they will get Money In value related to the new investment only.  
9 These non-cash and “rolled in” investments are accounted for in the amounts to be allowed in  
10 Exhibit A to the Schmidt Decl. and explained in additional detail on Exhibit B to the Schmidt  
11 Decl.

### 12 3. Comparison of MIMO vs. Book Value Claims

13 The claims analysis summary shows 245 discrete investors with one or more  
14 legitimate claims against the Estate. Forty-four entities have a negative or zero MIMO claim  
15 value—i.e., the total amount of payments they received between the Insolvency Date and the  
16 date of entry of the Receivership Order exceeds or equals their beginning balance, and such  
17 entities will have no allowed claim—leaving 201 positive MIMO claims entitled to allowance  
18 and distribution.

19 **Chart 4: Summary of MIMO vs Book Claims**

	<b>Total Value of Claims</b>	<b># of Positive Claims</b>
MIMO	16,834,354.10	201
Book	66,587,736.60	245

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23 The listed investors have received a total value of \$46.4 million in “Money Out”  
24 since the Insolvency Date. Sixty investors have received more than 95% of their principal  
25 balance in Money Out, while 65 investors have received less than 10% of their principal balance  
26 in Money Out.

1           The Receiver calculated and compared the potential distributions to investors  
2 based on both MIMO and book values. Some investors filed claims in amounts that differ from  
3 book value. The Receiver is using the book value as the starting point for the MIMO analysis,  
4 not the amount stated in the proof of claim. To the extent that the amount stated in a proof of  
5 claim differs from book value, the Receiver generally objects to such claims on the basis that the  
6 claim is inconsistent with the Assignors' books and records. As the Receiver is requesting  
7 authorization to make an interim distribution of at least \$3 million, the Receiver used a \$3  
8 million distribution value for the proposed minimum distribution on each allowed claim (subject  
9 to adjustment based on outside recoveries).<sup>8</sup>

10           Under the MIMO method, 44 investors who state claims based on book value will  
11 not receive a distribution, due to having a negative or zero MIMO, as listed on Exhibit A to the  
12 Schmidt Decl. These investors collectively invested \$19.9 million and received \$22.2 million in  
13 Money Out. In effect, they have already been paid in full or more. By using MIMO, the  
14 remaining investors will receive 17.82% of their allowed claims rather than 4.51% if book value  
15 were used.

16                           **4.       Adjustment for Recoveries Realized by Investors from Third**  
17                           **Party Sources**

18           Certain investors are plaintiffs in two civil actions brought under the securities  
19 laws of Oregon and Oklahoma that are presently pending in the state and federal courts sitting in  
20 Portland, Oregon. The investors named in these lawsuits as plaintiffs, or that are part of the class  
21 of Oregon investors yet to be certified, total about 100 in number, and they have filed proofs of  
22 claim in this receivership proceeding that exceed \$20 million in the aggregate. These lawsuits  
23 are *Diane Anderson, et al, v. Davis Wright Tremaine LLP, et al*, pending in the United States  
24 District Court for the District of Oregon as Case No. 3:20-cv-01194-AC (filed by eight Oregon  
25

26           <sup>8</sup> The Receiver anticipates that eventually the amount of funds available in the Estate for distribution will range from \$5 million to \$7 million.

1 investors seeking certification of a class of Oregon investors comprising 93 investors holding  
2 claims in excess of \$17 million), and *Sherry Beattie, et al, v. Davis Wright Tremaine LLP, et al*,  
3 pending in the Circuit Court of Multnomah County, Oregon, as Case No. 20CV09419 (filed by  
4 seven investors residing in Washington, Oklahoma, and Washington who hold claims in excess  
5 of \$3.7 million) (together, the “Oregon Securities Lawsuits”).

6 In order to account for these potential additional sources of recovery, these  
7 investors should be required to report to the Receiver any recoveries they realize in the Oregon  
8 Securities Lawsuits. The amounts realized by these investors should be applied to reduce, dollar-  
9 for-dollar, the amounts of their respective allowed claims against the Estate on account of which  
10 the Receiver will make distributions. In other words, recoveries realized by these investors in  
11 the Oregon Securities Lawsuits will be treated as Money Out for purposes of applying the  
12 MIMO formulation to the claims of these investors.

13 **C. Reservation of Rights as to Other Creditor Claims**

14 This motion does not address claims of creditors other than investors. The  
15 Receiver reserves the right to object to those claims at a later date on any basis.

16 **D. Interim Distribution**

17 The Receiver proposes to distribute, on an interim basis, no less than \$3 million  
18 pro rata to investors based on the amounts of their allowed unsecured claims.

19 **E. Notice**

20 The Receiver is mailing a copy of this motion, a proposed order, the citation for  
21 the hearing, the Schmidt Decl., and an individualized letter to each investor summarizing the  
22 amount in which such investor’s claim will be allowed and distribution to be received, at least 30  
23 days before the hearing date.

24 **F. Allowance or Disallowance of Late-Filed or Unfiled Claims**

25 The Receiver reviewed all proofs of claim and the Assignors’ books and records,  
26 and determined that certain investors did not file proofs of claim by the Bar Date. In order to

1 make sure that all investments were fully accounted for, the Receiver reached out to investors  
2 who had not filed proofs of claim and invited them to do so. Certain claims related to  
3 settlements were also amended or deemed to have been filed without requiring a proof of claim  
4 pursuant to settlements. Investors who filed proofs of claim after the Bar Date are identified in  
5 the Comments column of Exhibit A to the Schmidt Decl., and investors with deemed claims  
6 pursuant to settlements have such claims identified as "Settlement" in Exhibit A's "AEM Loan  
7 #" column. The Receiver believes there is cause for allowance or disallowance of claims filed or  
8 deemed filed after the Bar Date in order to ensure that the Estate is administered as fully as  
9 possible. Nonetheless, the few investors who did not file proofs of claim will simply not have  
10 allowed claims or be entitled to any distribution in this case. If a claim is not listed on Exhibit A  
11 to the Schmidt Decl., it will not be allowed.

12 **G. Conditional Allowance and Reserve for George Frank IRA.**

13 The Receiver is in litigation with George Frank IRA regarding affirmative claims  
14 for recovery that the Receiver may have against it. Based on the MIMO calculation without  
15 regard to the claims in the litigation, George Frank IRA would have an allowed claim of  
16 \$304,336.29 and be entitled to an interim distribution of \$54,193.80. However, the litigation  
17 could result in relief in favor of the Receiver that affects whether the claim should be allowed  
18 and in what amount. Pending the outcome of the litigation, the allowance of the George Frank  
19 IRA claim will be conditioned on the Receiver's filing of a notice that the claim is allowed or  
20 further order of the Court and the Receiver shall reserve the \$54,193.80 and any other  
21 distributions on such claim until the further notice or order of allowance has been filed.

22 **III. EVIDENCE RELIED UPON**

23 The Receiver relies on the Schmidt Decl. and the files and records herein.

24 **IV. LEGAL ISSUES**

25 Whether the court should enter an order (1) granting the Receiver's motion to  
26 allow claims pursuant to RCW 7.60.060(1)(g) and (j) and (3), 7.60.190(6)(a), 7.60.210(1)-(2),

1 and 7.60.220(1); and (2) authorizing the Receiver to make an interim distribution in the  
2 aggregate amount of at least \$3 million pro rata on such allowed claims under RCW  
3 7.60.060(1)(g) and (j), 7.60.190(6)(b), and 7.60.230(1).

4 **V. AUTHORITY AND ARGUMENT**

5 The Receiver proposes to allow investor claims in the amounts set forth in the  
6 “Proposed Allowed Amount” column of Exhibit A to the Schmidt Decl. and seeks authorization  
7 to distribute to investors with allowed claims at least the amounts set forth in the “Proposed  
8 Share of \$3 Million Distribution (MIMO basis)” column of Exhibit A to the Schmidt Decl.

9 The Court should instruct or empower the Receiver to use the MIMO formulation  
10 as the method of allowance of investor claims in this proceeding, allow the investor claims in the  
11 amounts proposed by the Receiver, and authorize the Receiver to distribute at least \$3 million  
12 pro rata on account of such allowed claims at this time. The Receiver has “[t]he power to seek  
13 and obtain advice or instruction from the court with respect to any course of action with respect  
14 to which the receiver is uncertain in the exercise of the receiver’s powers or the discharge of the  
15 receiver’s duties,” RCW 7.60.060(1)(g), and “[o]ther powers as may be conferred upon the  
16 receiver by the court or otherwise by statute or rule,” RCW 7.60.060(1)(j).

17 Only investors who filed proofs of claim are entitled to receive distributions. “All  
18 claims, whether contingent, liquidated, unliquidated, or disputed, other than claims of creditors  
19 with security interests in or other liens against property of the estate, arising prior to the  
20 receiver’s appointment, must be served in accordance with this chapter, and any claim not so  
21 filed is barred from participating in any distribution to creditors in any general receivership.”  
22 RCW 7.60.210(1). The Receiver is only proposing to allow claims of investors who filed or are  
23 deemed to have filed proofs of claim.

24 There is cause to allow or disallow proofs of claim filed or deemed to have been  
25 filed after the Bar Date. “Claims must be served by delivering the claim to the general receiver  
26 within thirty days from the date notice is given by mail under this section, unless the court

1 extends the period for cause shown.” RCW 7.60.210(2). In order to most fully account for all  
2 investments in the Assignors, the Receiver believes claims that it invited investors to file or are  
3 deemed filed pursuant to settlement after the Bar Date should be allowed or disallowed to the  
4 extent proposed in this motion.

5 The Receiver is authorized to move for allowance of claims—also referred to as  
6 filing an objection to claims—pursuant to the receivership statute:

7 At any time prior to the entry of an order approving the general  
8 receiver's final report, the general receiver or any party in interest  
9 may file with the court an objection to claim, which objection must  
10 be in writing and must set forth the grounds for the objection. A  
copy of the objection, together with notice of hearing, must be  
mailed to the creditor at least thirty days prior to the hearing.

11 RCW 7.60.220(1). No final report has been filed, and objections to investor claims are  
12 appropriate at this time so that the Receiver can have the Court determine the amounts in which  
13 they should be allowed in this receivership proceeding.

14 The Receiver may distribute funds from the Estate once claims are allowed.  
15 “Claims properly served upon the general receiver and not disallowed by the court are entitled to  
16 share in distributions from the estate in accordance with the priorities provided for by this  
17 chapter or otherwise by law.” RCW 7.60.220(1). The Receiver has been collecting and  
18 liquidating the assets of the Assignors for over two years now, and at least \$3 million is presently  
19 available for distribution to investors above amounts reserved for administrative expenses and  
20 other claims.

21 The distributions to the investors will be made pro rata based on the amounts  
22 allowed. “Allowed claims in a general receivership shall receive distribution under this chapter  
23 in the order of priority under (a) through (h) of this subsection and, with the exception of (a) and  
24 (c) of this subsection, on a pro rata basis.” RCW 7.60.230(1). The investors’ claims are all  
25 within the class of “[o]ther unsecured claims” under RCW 7.60.230(1)(h).

26 The Receiver may seek allowance of claims and distribution of funds from the

1 Estate on thirty days’ written notice. “Persons on the master mailing list are entitled to not less  
2 than thirty days’ written notice of the hearing on any motion or other proceeding involving any  
3 proposed: (a) Allowance or disallowance of any claim or claims; [and] (b) . . . distribution of  
4 estate property . . .” RCW 7.60.190(6)(a)-(b). Only investors with amounts listed in the  
5 “Proposed Allowed Amount” column of Exhibit A to the Schmidt Decl. will have allowed  
6 claims and be entitled to distributions. Claims of investors with no amount in the “Proposed  
7 Allowed Amount” column or not listed on Exhibit A to the Schmidt Decl. will be disallowed and  
8 not entitled to any distribution, and such investors will be removed from the master mailing list  
9 and not be entitled to further notice—and the Receiver shall not be required to give further notice  
10 to such investors—in this proceeding.

11 **1. MIMO is a proper method of allowance of claims.**

12 MIMO is a proper method for determining the allowed amounts of investor claims  
13 in the context of a general receivership concerning entities that engaged in Ponzi-like activities,  
14 and application of the MIMO formulation constitutes “grounds” for allowance of claims. In  
15 interpreting the meaning of a term under the receivership statute—particularly RCW  
16 7.60.220(1)—where neither the statute nor case law defines it, Washington courts look to  
17 “extrinsic aids, such as dictionaries, to find the word’s ordinary meaning.” *Bero v. Name*  
18 *Intelligence, Inc.*, 195 Wash. App. 170, 177, 381 P.3d 71 (Wash. Ct. App. Div. I 2016) (quoting  
19 *Dep’t of Labor & Indus. v. Kantor*, 94 Wash. App 764, 775, 973 P.2d 30 (1999)). The  
20 interpretation should also be “consistent with the statutory scheme for receiverships, which gives  
21 the court broad discretion and provides a general receiver with broad authority to manage  
22 receivership property.” *Bero*, 195 Wash. App. At 178, 381 P.3d. 71 (citing RCW 7.60.015).

23 A “ground” is “[t]he reason or point that something (as a legal claim or argument)  
24 relies on for validity.” Black’s Law Dictionary (11th ed. 2019) (“ground”). A “ground” is also  
25 “a basis for belief, action, or argument—often used in plural.” *Merriam-Webster.com*  
26 *Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/ground> (accessed



1 2/23/2021). The Receiver believes that the fair and equitable factual considerations explained in  
2 the MIMO analysis above are sufficient reason or basis for allowance of the claims in the  
3 amounts proposed by the Receiver. In light of the lack of statutory or case law definition of  
4 “grounds” as used in RCW 7.60.220(1), the Receiver requests the Court’s instruction under  
5 RCW 7.60.060(1)(g) that investor claims should be allowed using the MIMO method as  
6 proposed by the Receiver.

7 **2. The Receiver’s power to object to claims should include using MIMO.**

8 The facts involved in the MIMO analysis also constitute good cause for the  
9 expansion or modification of the Receiver’s powers and duties. “The various powers and duties  
10 of a receiver provided for by this chapter may be expanded, modified, or limited by order of the  
11 court for good cause shown.” RCW 7.60.060(3). In light of the facts outlined above, the  
12 Receiver believes that there is good cause for the Receiver’s proposed allowance of the investor  
13 claims using the MIMO method because it is the most fair and equitable under the  
14 circumstances.

15 The Court has authority to fix the amounts and priorities of claims upon notice  
16 and hearing by the Receiver, taking into account the facts and circumstances. “The  
17 determination of the priority of claims [is] a mixed one of law and fact. It [is] the duty of the  
18 court in determining the priority of claims to determine their character, and in order to do so to  
19 examine into questions of fact as to when, how, and for what purpose the claims originated or the  
20 debts the represented were incurred.” *Crawford v. Seattle, R. & S. Ry. Co.*, 97 Wash. 651, 654  
21 (1917) (affirming allowance of tort judgment claim as general unsecured claim).

22 Here, the Receiver is seeking to have the Court determine that the investors’  
23 claims are general unsecured claims under RCW 7.60.230(1)(h) and that, within that class of  
24 priority, the character or amount of the claims should be determined by the MIMO method as  
25 described above. The insolvency of the Assignors from and after the Insolvency Date mandates  
26 that the investors’ claims arising from their investments with the Assignors should be allowed

1 based on the principal amounts invested—or, in the case of investors whose investments were  
2 made before the Insolvency Date, the principal amounts invested plus interest accrued but unpaid  
3 before the Insolvency Date—and on the idea that any interest paid or earned on investments after  
4 the Insolvency Date was fictitious. Any payments that investors received after the Insolvency  
5 Date and before the entry of the Receivership Order should be applied to their principal using  
6 MIMO in determining the claim amounts for the purposes of distribution from the Estate, in  
7 order to ensure a fair and equitable result for all investors viewed as a group.

8 **3. MIMO is used to allow investor claims where there are limited funds.**

9 The Receiver has proposed allowance of claims under the MIMO method because  
10 there are insufficient assets to pay investors in full. Under MIMO, each investor’s share of the  
11 Estate is based upon the amount of money or other property that each investor actually paid the  
12 Assignors in exchange for their promissory note (or for those investors who made investments  
13 before the Insolvency Date, the amount of money or other property actually invested plus interest  
14 accrued but unpaid before the Insolvency Date), less any money that the investor received back  
15 from the Assignors after the Insolvency Date.

16 The Ninth Circuit has held in federal receivership proceedings, where the trial  
17 court has broad powers and wide discretion to determine appropriate relief, that MIMO plans are  
18 equitable and particularly appropriate where there are limited assets and those assets are  
19 insufficient to pay all claims. *See SEC v. Capital Consultants, LLC*, 397 F.3d 733, 737-38 (9<sup>th</sup>  
20 Cir. 2005)(affirming approval of MIMO plan). Under the MIMO formula, the investor’s “net  
21 loss is measured by the total amount invested in private assets (money in) minus the total amount  
22 returned to the [investor] before the receivership (money out). Each [investor] receives its pro  
23 rata share (computed by that [investor]’s loss to total loss of all [investors]) of its net loss under  
24 this formula.” *Id.* at 737 (footnote omitted). Courts regularly authorize the use of MIMO as a  
25 reasonable and practical method of ascertaining the size of allowable claims. *See Securities and*  
26 *Exchange Commission v. Total Wealth Mgmt., Inc.*, Case No. 15-cv-00226-BAS-RNB, 2018 WL

1 4353151, at \*2-\*3 (S.D. Cal. Sept. 11, 2018) (overruling investor’s objection to receiver’s use of  
2 MIMO method and holding that method was appropriate, for the benefit of all investors rather  
3 than a privileged subset) (citing *Capital Consultants, LLC*, 397 F.3d at 798; *Commodity Futures*  
4 *Trading Commission v. Topworth Int’l, Ltd.*, 205 F.2d 1107, 1116 (9<sup>th</sup> Cir. 1999); *In re Tedlock*  
5 *Cattle Co., Inc.*, 552 F.2d 1351, 1354 (9<sup>th</sup> Cir. 1977); *In re Taubman*, 160 B.R. 964, 980-82  
6 (Bankr. S.D. Ohio. 1993). In this proceeding, the Receiver has \$3 million to distribute (out of an  
7 anticipated total recovery of \$5 to \$7 million) against proposed allowed claims in the amount of  
8 approximately \$16.5 million using the MIMO method. Without using MIMO, the total amount  
9 of claims would be higher, and privileged investors who already received all or a substantial  
10 portion of their investments back would receive even more at the expense of the others.  
11 Accordingly, the Court should allow claims in the amounts proposed by the Receiver on the  
12 basis of MIMO in this proceeding.

13 **4. Third-party recoveries should be offset against allowed claims.**

14 In addition, the Receiver proposes that each investor’s claim be further reduced  
15 by amounts recovered in respect of the investor’s investment with the Assignors from a source  
16 other than the Estate after the date of the entry of the Receivership Order. The Court should  
17 authorize the Receiver to offset against the allowed amounts of the claims any third-party  
18 recoveries obtained by investors. In particular, when making distributions, investors who are  
19 plaintiffs or part of a certified class of investors in the Oregon Securities Lawsuits (described  
20 above) should certify to the Receiver the amount of any recoveries realized by them in such  
21 litigation so that the Receiver can reduce the allowed amounts of their claims by the amounts of  
22 such recoveries and adjust future distributions to such investors. “The offset provision together  
23 with the other terms of the distribution plan represent an administratively workable and equitable  
24 method of allocating the limited assets of the receivership. The offset provision imposes a  
25 reasonable compromise that balance the goal of encouraging [investors] to seek third-party  
26 recoveries and rewarding them for their efforts, and the goal of distributing the limited assets of

1 the receivership in a roughly equal fashion.” *Id.* at 738. Until any such recoveries are obtained,  
2 the Receiver will nonetheless make distributions on the allowed amount of the claims to such  
3 investors, subject to adjustment in future distributions after the recoveries are certified and offset  
4 is applied.

5 WHEREFORE, the Receiver respectfully requests that the Court (1) fix the  
6 allowed amounts of the investor claims in the amounts proposed by the Receiver, in each case,  
7 subject to adjustment for recoveries realized by the holders of such claims from third-party  
8 sources after the entry of the Receivership Order (i.e., May 10, 2019), (2) require investors,  
9 including those who are plaintiffs or part of a certified class of investors in the Oregon Securities  
10 Lawsuits, to promptly report and certify their recoveries from third-party sources to the Receiver  
11 from time to time so that the Receiver can reduce the allowed amounts of their claims by the  
12 amounts of such recoveries and adjust future distributions to such investors accounting for the  
13 reduced claim amounts, (3) authorize the Receiver to distribute cash from the Estate in the  
14 amount of \$3 million, or of such greater amount as the Receiver determines can be made  
15 consistent with the proper management of the Estate, pro rata on allowed investor claims, and (4)  
16 grant such other relief as is just and proper. A proposed order is attached hereto as Exhibit 1.  
17 The Receiver reserves the right to submit a revised proposed order and to modify Exhibit A to  
18 the Schmidt Decl. and/or the proposed allowed amounts of the claims and distributions to  
19 account for any additional information obtained by the Receiver, agreements reached with  
20 investors, or rulings of the Court relating to this motion.

21 DATED this 28<sup>th</sup> day of May, 2021.

22 MILLER NASH LLP

23 /s/ John R. Knapp, Jr.

24 John R. Knapp, Jr., P.C., WSB No. 29343

25 David A. Foraker, OSB No. 812280

(admitted *pro hac vice*)

26 Joseph Vance, P.C., WSB No. 25531

Attorneys for Receiver

Clyde A. Hamstreet & Associates, LLC

# EXHIBIT 1

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SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

In re:

AMERICAN EAGLE MORTGAGE 100, LLC; AMERICAN EAGLE MORTGAGE 200, LLC; AMERICAN EAGLE MORTGAGE 300, LLC; AMERICAN EAGLE MORTGAGE 400, LLC; AMERICAN EAGLE MORTGAGE 500, LLC; AMERICAN EAGLE MORTGAGE 600, LLC; AMERICAN EAGLE MORTGAGE MEXICO 100, LLC; AMERICAN EAGLE MORTGAGE MEXICO 200, LLC; AMERICAN EAGLE MORTGAGE MEXICO 300, LLC; AMERICAN EAGLE MORTGAGE MEXICO 400, LLC; AMERICAN EAGLE MORTGAGE MEXICO 500, LLC; AMERICAN EAGLE MORTGAGE MEXICO 600, LLC; AMERICAN EAGLE MORTGAGE I, LLC; AMERICAN EAGLE MORTGAGE II, LLC; and AMERICAN EAGLE MORTGAGE SHORT TERM, LLC.

Case No. 19-2-01458-06

ORDER (1) FIXING ALLOWED AMOUNTS OF INVESTOR CLAIMS AND (2) AUTHORIZING INTERIM DISTRIBUTION ON ALLOWED INVESTOR CLAIMS

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THIS MATTER having come before the Court on July 2, 2021, to consider the Motion (1) to Fix Allowed Amounts of Investor Claims and (2) for Authorization to Make Interim Distribution on Allowed Investor Claims (the "Motion") filed by Clyde A. Hamstreet & Associates, LLC, the duly appointed general receiver herein (the "Receiver"); the Court having considered the Motion, the GR 14.1(d) appendix to the Motion, the declaration of Hannah

1 Schmidt in support of the Motion (the “Schmidt Decl.”), the citation, the argument of counsel,  
2 the declarations of mailing, and the files and records herein; the Court finding and determining  
3 that good and sufficient grounds exist in the circumstances of this case for the allowed amounts  
4 of the claims listed in Exhibit A to the Schmidt Decl. (the “Investor Claims”) to be fixed utilizing  
5 the money-in less money-out (or net investment) method in the manner proposed by the Receiver  
6 in the Motion under RCW 7.60.060(1)(g) and (j) and (3), 7.60.210(1)-(2), and 7.60.220(1) and  
7 for the Receiver to make an interim distribution in the aggregate amount of at least \$3 million  
8 pro rata on allowed Investor Claims under RCW 7.60.060(1)(g) and (j) and (3) and  
9 7.60.230(1)(h); and the Court further finding that the form and manner of the notice of the  
10 hearing on the Motion were proper and sufficient under the circumstances of this case under  
11 RCW 7.60.190(6)(a) and (b), it is hereby

12 ORDERED:

13 1. The Investor Claims are allowed in the amounts set forth in the “Proposed  
14 Allowed Amount” column on Exhibit A to the Schmidt Decl., in each case, subject to adjustment  
15 under paragraph 2 below. For the avoidance of doubt, where there is no amount in the  
16 “Proposed Allowed Amount” column or a claim of an investor is not listed on Exhibit A, such  
17 Investor Claims are disallowed. The holders of disallowed Investor Claims shall be removed  
18 from the master mailing list and not entitled to further notice, and the Receiver shall not be  
19 required to give further notice to such holders, in this proceeding.

20 2. Investor Claims allowed under this Order are subject to adjustment from  
21 time to time for recoveries realized by the holders of such claims from third-party sources after  
22 May 10, 2019. The allowed amounts of Investor Claims shall be reduced by the amounts of such  
23 recoveries, and future distributions made by the Receiver on such claims shall be adjusted, in  
24 each case, to take into account all amounts previously distributed on account of such claim and  
25 the reduced claim amount. The holders of Investor Claims shall, from time to time promptly  
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1 Presented by:

2 MILLER NASH LLP

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4

John R. Knapp, Jr., P.C., WSB No. 29343

5 David A. Foraker, OSB No. 812280

(admitted *pro hac vice*)

6 Joseph Vance, P.C., WSB No. 25531

7 Attorneys for Receiver

8 Clyde A. Hamstreet & Associates, LLC

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