IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA CHARLOTTE DIVISION

3:01CV205-MCK 3:98MC96-MCK/

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IN RE: ALL FUNDS ON DEPOSIT IN)
ACCOUNT NUMBER 000669829075 in)
THE BANK OF MM ACME BANQUE DE)
COMMERCE, INC., AT NATIONSBANK,)
N.A., CONSISTING OF)
\$18,756,420.97, more or less.)
	_)
GEORGE AND DOLORES ROLLAR,)
Plaintiffs,)
v.)
U.S.A.,) ORDER
Defendants)
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THIS MATTER IS BEFORE THE COURT upon the Receiver's amended motion for Order Establishing Distribution Procedures and request for evidentiary hearing (doc. 46 in 3:98MC96 and 78 in 3:01CV205).
The request for hearing was granted and the hearing was held on October 10, 2002. Notice of the motion and hearing was given to all parties and known claimants by the court-appointed Receiver, Michael Quilling. Present at the hearing were the Receiver; Plaintiff Rollar's attorney, Rodney Alexander; Defendant's attorney, Assistant U.S. Attorney Bill Brafford; and various claimants' representatives.

The receiver moves this Court to issue an Order establishing distribution procedures to claimants on a pro rata or equitable

The Receiver filed an original motion for Order Establishing Distribution Procedures and request for evidentiary hearing (doc. 44 in 3:98MC96 and 76 in 3:01CV205) but has since amended the motion due to tax liability issues arising since the filing of the original motion.

distribution basis according to their contributions (less any payments received). At the hearing, Plaintiff Rollar and the government expressly consented to this method of distribution. There is no opposition to the motion from any claimant.

The "use of a pro rata distribution has been deemed especially appropriate for fraud victims of a 'Ponzi scheme,'" as claimants are here. SEC v. Credit Bancorp, 1td. 290 F. 3d 80, 88 (2nd Cir. 2002). Further, the claimants are "similarly situated" in that every claimant's funds were deposited into the tainted accounts prior to the seizure, eliminating the need to trace, and fully refund, any portion of the funds. U.S. v. Vanguard, 6 F. 3d 222, 226 (4th Cir. 1993); Anderson v. Stephens, 875 F. 2d 76 (4th Cir. 1989); SEC v. Forex, 242 F. 3d 325 (5th Cir. 2001).

After considering the arguments of the Receiver, the government, and Plaintiff Rollar in support of a pro rata or equitable distribution, the undersigned finds that such distribution is appropriate in this case. Accordingly IT IS HEREBY ORDERED THAT the Receiver's amended motion is GRANTED; and the Receiver's original motion is DENIED AS MOOT.

IT IS SO ORDERED, this 16 day of October, 2002.

H. BRENT MCKNIGHT

UNITED STATES MAGISTRATE JUDGE