

Joseph M.R. Covey (7492) (jcovey@parrbrown.com)
Jeffery A. Balls (12437) (jballs@parrbrown.com)
PARR BROWN GEE & LOVELESS, P.C.
101 South 200 East, Suite 700
Salt Lake City, Utah 84111-3105
Telephone: (801) 532-7840

Attorneys for Jonathan O. Hafen as Receiver for the Rust Rare Coin Receivership

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

<p>TRAVIS GREGORY, NICOLE GREGORY, ALAN LAMBERT, and ROBERT BAKER, on behalf of themselves and all others similarly situated,</p> <p>Plaintiffs,</p> <p>vs.</p> <p>ZIONS BANK BANCORPORATION, N.A.,</p> <p>Defendant.</p>	<p>NOTICE OF SETTLEMENT DISTRIBUTION PLAN</p> <p>Case No. 2:19-cv-00015-HCN-DBP</p>
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Plaintiffs’ Unopposed Motion for Preliminary Approval of Settlement, Certification of Class, and Appointment of Class Representative and Class Counsel (ECF 197) and the Notice of Pendency of Class Action, Proposed Class Action Determination, Proposed Settlement of Class Action, Final Approval Hearing and Right to Appear (“Class Notice”) that was approved by the Court at ECF 200, and disseminated to Settlement Class Members, contemplates that the Receiver in the Rust Rare Coin Receivership action,¹ Jonathan O. Hafen, who will be acting as

¹*Commodity Futures Trading Commission, et al., v. Rust Rare Coin, Inc. et al.*, No. 18-cv-00892 (D. Utah) (the “Receivership Action”).

the Settlement Distribution Administrator in the above-captioned action (the “Class Action”), would submit to the Court a Notice of Settlement Distribution Plan (the “Distribution Notice”) which provides further background to the Court and to Settlement Class Members about the Receiver’s role in this action, and additional detail about the claims process.

The fact that the Receiver will be acting as Settlement Distribution Agent and the specific criteria for distribution of the proceeds to be paid to the qualifying class members were explained to the Settlement Class Members in the Class Notice previously sent to members of the Settlement Class. The Distribution Notice, attached as Exhibit 1 hereto, is intended to provide additional information on the Settlement Distribution Plan and the reasons for the Receiver’s involvement in distribution of the Class Action settlement funds.

I. BACKGROUND OF THE RECEIVER’S INVOLVEMENT IN THE CLASS ACTION.

A. The Extensive Work Already Done by the Receiver.

On August 8, 2019, the Court in the Receivership Action granted the Receiver’s Motion Seeking Approval of the Proposed Claim Procedures, Claim Deadline, and Claim Forms (the “Claims Motion”). See Receivership Action ECF 239. Pursuant to the Claims Motion, the Receiver established a claims process through which individuals and entities who believed they were owed money from any Receivership defendant could make a claim for payment.² The Receiver established a claim submission deadline of October 4, 2019, for all claims. Through the claims process, the Receiver received over 618 claims (the “Claims”) seeking recovery from the Receivership Estate.

²Receivership Action ECF 236.

In connection with the claims process, the Receiver and his team thoroughly reviewed the books and records of the Receivership defendants in conjunction with the Claims and evidence provided by Claimants in the Receivership. Working with the Receiver's forensic accountants, the Receiver and his team reviewed each Claim, compared the Claim and supporting documents to the books and records of the Receivership defendants, and determined which Claims—or portions of claims—should be allowed. In addition, the Receiver filed a motion to establish a process through which Claimants in the Receivership Action will have an opportunity to challenge the Receiver's treatment of their claim and through which any such disputes will be resolved, either informally, or through their presentation to the Receivership Court. See "Claims Resolution Motion," Receivership Action ECF 453. At the end of the Claims resolution process, the Receiver intends to reach a final resolution as to the amount of each allowed, valid Claim. Such resolution may result from either a consensual process between the Claimant and the Receiver or a determination of the Receivership Court.

B. The Receiver's Involvement in the Class Action.

Following an agreement in principle to settle, the parties to the Class Action contacted the Receiver and discussed and agreed that substantial efficiencies would be realized using the extensive work already performed by the Receiver in connection with his Claims process in the Receivership Action in the distribution of the settlement proceeds in the Class Action.

Following a series of discussions, on June 20, 2022, the Receiver filed a Motion Seeking Approval for Receiver to Assist in Distribution of Class Action Settlement in the Receivership Action. See Receivership Action ECF 462. In his Motion, the Receiver explained that the Receiver has already expended significant time and resources to review each Claim submitted by

potential Claimants in the Receiver Action, and to develop a distribution methodology and an objections process based on his extensive knowledge of the losses, if any, of various investors in the Rust Rare Coin silver trading scheme. *Id.* In order to develop a settlement distribution plan for the settlement of the Class Action, all of that effort would need to be duplicated, and the expense therefor subtracted from the Settlement Fund, if the parties to the Class Action were to select a different agent to do so. In order to streamline the Class Action Settlement Fund distribution process, reduce the costs associated with that distribution and increase the funds available for distribution to eligible Settlement Class members, and increase the consistency of methodology and results applicable to distributions of the fund in the Receivership Action and the Class Action, the Receiver sought the approval of the Receivership Court to assist in the distribution of the Class Action settlement.

As the Receiver further explained in his motion, “the process of examining the books and records of the Receivership Defendants to determine which individuals and entities would be entitled to a valid claim for payment and the proper amount of each claim has been long and involved.”

The Receiver believes that assisting with the distribution of the Class Action settlement will result in significant cost savings to the class members—many of whom are also Claimants in this matter—and will result in greater returns to defrauded investors. The Receiver’s assistance will work to streamline the distribution of the Class Action settlement and avoid the necessity for the parties to the Class Action to engage in the same Claims analysis process the Receiver has already conducted.

To that end, the Receiver proposes—after consultation with counsel for the Class Action parties—to use the analysis he has already conducted and the final Claim amounts as determined through the proposed Claims resolution process to conduct an additional distribution of the Class Action settlement to Claimants. ***The amount of each Claim will already be determined, and the Receiver will simply disburse the funds in accordance with the distribution plan approved by Judge***

Nielson in the Class Action. The Receiver anticipates that this will result in minimal additional costs to the Receivership Estate and that Claimants—who are also Class members—will benefit from the fact that the Claims analysis process will not need to be repeated in the Class Action. As such, the Receiver requests that it be allowed to do the following vis-à-vis the claimants in the Class Action:

- a. Receive any claim forms from Class Action settlement class members who did not previously submit timely, valid Claim Forms in connection with this action;
- b. Apply the Receiver’s existing Claims analysis methodology (or relevant modifications thereto) as approved by this Court and as implemented through the proposed Claim Resolution Motion to determine the amount, if any, of each Class Action settlement class member’s recognized loss;
- c. Issue and mail payments to Class Action settlement class members from the Class Action Settlement Fund consistent with the final Claims determination reached through the Claims resolution process established by this Court and the settlement distribution plan approved by the *Gregory* court;
- d. Perform such other and further actions as are necessary and appropriate to assist in the distribution of the Class Action Settlement Fund.

Id. (Emphasis supplied).

On June 24, 2022, Judge Campbell granted the Receiver’s motion and approved the Receiver’s role in assisting in the distribution of the Class Action settlement funds, noting that “allowing this would ultimately conserve Receivership Estate assets.” See Receivership Action ECF 467.

C. Differences Between the Class Action Settlement Distribution Plan and the Receiver’s Plan.

While the Settlement Distribution Plan incorporates much of the settlement distribution plan approved by Judge Campbell in the Receivership Action, the primary exceptions are (a) the use of a “pro rata” rather than a “rising tide” method to distribute the net settlement proceeds to the Class Action Settlement Class members, and (b) a different bar date for claims. The plan

prepared by the Receiver and Class Counsel was set forth in the Class Notice and is set forth below. The Receiver intends to have the plan posted to the Notice Provider's website and the Receiver's website and sent to members of the Settlement Class by Strategic Claims Services no later than March 15, 2023, unless this Court deems otherwise.

RESPECTFULLY SUBMITTED THIS 8th day of March, 2023.

PARR BROWN GEE & LOVELESS

/s/ Jeffery A. Balls

Joseph M.R. Covey

Jeffery A. Balls

*Attorneys for Jonathan O. Hafen as Receiver for the
Rust Rare Coin Receivership*

EXHIBIT 1

TO: ALL PERSONS AND ENTITIES WHO WERE HARMED IN CONNECTION WITH THEIR INVESTMENT IN THE RUST RARE COIN SILVER POOL

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. YOUR RIGHTS MAY BE AFFECTED BY THE LEGAL PROCEEDINGS IN THIS ACTION.

I. THE PURPOSE OF THIS NOTICE.

The purpose of this Notice is to inform you of how the Settlement Fund will be distributed by the Receiver. This document establishes the claim procedure for those who did not timely file a claim in the Receivership by the October 4, 2019 deadline, the dispute resolution procedures for resolving claim disputes, and how funds will be distributed to claimants.

II. THE SETTLEMENT DISTRIBUTION PLAN.

A. How the Receiver Will Calculate Each Claim.

Zions Bank will pay \$2.5 million in cash (the “Settlement Amount” or “Settlement Fund”) to resolve the claims of Plaintiffs and the Settlement Class. The Settlement Class and each member of the Class is limited solely to the Settlement Fund for the satisfaction of all Released Claims against all Releasees (as defined in the Settlement Agreement, sometimes referred to as the “Agreement”).

A Net Cash Settlement Amount will be distributed to Authorized Claimants pursuant to the Settlement Distribution Plan, or order of the Court. The Net Cash Settlement Amount will be the Settlement Fund, less: (1) any award of Attorneys’ Fees and Expenses, and any Incentive Award to the Representative Plaintiffs the Court might award; (2) the costs and expenses reasonably incurred in connection with providing Notice and administration of the Settlement; and (3) any taxes and tax expense incurred in connection with the Settlement Fund.

“Authorized Claimant” means a Class Member whose claim for recovery of losses has been found to be timely and valid under the terms of the Settlement Agreement and the Settlement Distribution Plan.

As explained in the Class Notice, if you submitted a timely Claim in connection with the Receivership Action by the October 4, 2019 deadline, you do not need to submit, and should not submit, an additional claim in connection with the Class Action. Also as set forth in the Class Notice, if you did not submit a timely claim to the Receiver in the Receiver Action, the Class Notice and settlement webpage explained that you may submit a claim in this action no later than March 10, 2023. Claim Forms are available by contacting Strategic Claims Services via email at info@strategicclaims.net, via mail at 600 N. Jackson Street, Suite 205, P.O. Box 230, Media, PA 19063, or by phone at (866) 274-4004. You may also request a Claim Form from Class Counsel via email at pscarlato@rscounsel.law or by phone at (888) 998-0530.

If you are submitting a claim in this action, you are required to complete all applicable sections of the Claim Form, signed under penalty of perjury, and submit adequate supporting documents to have an allowable claim to the Net Cash Settlement Amount. As set forth in the Class Notice and on the settlement webpage at www.strategicclaims.net/zions, claims may be submitted to the Receiver by first class U.S. Mail, postage prepaid, hand delivery, or by email at the addresses set forth below no later than March 10, 2023:

Parr Brown Gee & Loveless
Attn: Rust Rare Coin Response Form
101 South 200 East, Suite 700
Salt Lake City, Utah 84111-3105
rustclaims@parrbrown.com

Claims that are not timely submitted or are not complete will be denied, provided that the Receiver may accept untimely or incomplete claim forms in his discretion, or the Court may order acceptance of such Claim Forms. Each Claim Form received by the Receiver will be date-stamped and assigned a claim number.

Based on prior rulings in the Receivership Action, and the claims deadline established by the Court in this action, the Receiver will not allow claims for the following categories:

- **Claims submitted after the claims deadline of March 10, 2023.** To the extent a claim is submitted after the claims deadline in this action, it will be disallowed, provided that the Receiver may accept untimely or incomplete Claim Forms in his discretion, or the Court may order acceptance of such Claim Forms.
- **Claims for promised “profits” or “gains” from the Silver Pool.** It is well established that an innocent investor in a Ponzi scheme is not entitled to returns in excess of their initial principal investment amount. *See Miller v. Wulf*, 84 F. Supp. 3d 1266, 1274 (D. Utah 2015); *see also Donell v. Kowell*, 533 F.3d 762, 777 (9th Cir. 2008) (noting that amounts returned to innocent investors in excess of the initial principal investment merely “keep the fraud going by giving the false impression that the scheme is a profitable, legitimate business”). To perpetuate the Ponzi scheme, Rust provided regular statements to investors purporting to show increases in the value of the investor’s share of the Silver Pool. Claims are limited to the total of the investor’s principal investment amount, less any distributions.

- **Claims for taxes, interest, penalties, and loan repayment.** In promoting the Silver Pool, Rust aggressively pushed investors to cash-out or borrow from their 401(k) and other retirement accounts, to cash-out their life insurance policies, and to mortgage their homes or take out home equity credit lines to fund their principal investment in the Silver Pool. In these transactions, many investors paid taxes and penalties for withdrawing funds from their retirement accounts. All such taxes, interest, penalties, and loan repayments are disallowed.
- **Claims for inter-investor transfers.** At times investors would make purchases for goods or services between themselves and request that ounces of silver be “transferred” to pay for those real-world goods and services. For instance, one investor sold a motorcycle to a second investor. In exchange for the title to the motorcycle, the buyer requested that \$4,000.00 worth of silver ounces be “transferred” from his account to the seller’s Silver Pool account. Although these transfers were reflected on the fraudulent statements prepared by Rust, no actual value was exchanged because there was, in fact, no silver to be exchanged. All such inter-investor transfers will be disregarded when calculating the allowed amount.
- **Claims associated with third-party investors.** Many investors acted as intermediaries on behalf of friends and family. Unfortunately, the books and records of the Receivership Defendants only reflect the investments and disbursements made from and to the intermediary investor and do not reflect the investment activity of the third parties. Although the parties recognize the very

real harms suffered by these third-party investors, these are not harms that can be remedied through the Class Action. It would impose enormous administrative burdens to evaluate the third-party transactions that are not reflected in the books and records of the Receivership Defendants. The Receiver will calculate the intermediary's allowed claim amount by relying on the books and records of the Receivership Defendants, which would not take into account any contributions from or disbursements to third-party investors. Third-party investors will not be barred from seeking to recover any losses sustained through the intermediary from the intermediary.

After reviewing each Claim Form and all supporting documentation, the Receiver will publish a claims registry showing how he is handling each claim filed. Two separate claims registries will be published: (1) a claims registry of all claims submitted to the Receiver in the Receiver action by the October 4, 2019 deadline and (2) a claims registry of all claims newly submitted as part of this Class Action. Each claims registry will include the following information for each claim filed:

- a. The "Claim Number" and the individual Claimant's name;
- b. The "Claimed Amount," which reflects the self-reported amount sought by the Claimant as reflected on the Claim Form submitted;
- c. The "Allowed Amount," which reflects the amount of the claim the Receiver has determined to be valid and allowable based on the books and records of Receivership Defendants and the evidence submitted by the Claimant;

d. The “Claim Class” which reflects the classification of each Claim for the purpose of determining a priority for distribution under the Receivership Court’s previously approved distribution plan;

e. An “Explanation of Receiver’s Claim Determination,” which will outline the specific basis for the Receiver’s determination and include, when applicable, the Receiver’s objections to each claim as submitted.

B. Dispute Resolution Procedures.

Due to the complex nature of the Receivership Defendants’ Ponzi scheme, the Receiver anticipates his analysis of individual claims may differ from a Claimant’s own accounting. The Receiver will attempt to resolve any disputes between his analysis and a Claimant’s analysis directly with the individual Claimants. The Receiver anticipates that some potential disputes with respect to the Receiver’s treatment of a particular claim may be easily resolved through the submission of additional evidence or a corrected Claim Form that aligns the claim with the Receivership Action court’s prior orders.

If you submitted a timely Claim Form in connection with the Receiver Action by the October 14, 2019 deadline, or the March 10, 2023 deadline in this Class Action, any dispute regarding the Receiver’s treatment of your claim must be resolved pursuant to the dispute resolution procedures established in the Receivership Action. Those procedures are set out fully in the Motion Seeking Approval of Claims Objection Resolution Procedures and Claims Bar Date (Receivership Action ECF 453) and Order Granting Approval of Claims Objection Resolution Procedures and Claims Bar Date (Receivership Action ECF 460) and summarized as follows:

Any Claimant wishing to challenge the Receiver's determination regarding a claim, must submit to the Receiver a completed Response Form no later than 45 days after the Receiver's publication of the claims registry. The Response Form must address each ground upon which the Receiver has objected to a particular claim. The Response Form must also be accompanied by all documents and other evidence upon which the Claimant will rely. No additional evidence will be permitted after the 45-day limit. If a Claimant does not file a response within 45 days of the Receiver's publication of the claims registry, the Receiver's determination of the claim as reflected in the claims registry will be deemed final. If a Response Form is timely received, the Receiver and his team will endeavor to reach a consensual resolution with the Claimant. If no consensual resolution can be reached, the Receiver will request a hearing from the Receivership Action court and submit, at least five days prior to the hearing, the material relied upon by the Receiver in objecting to the Claim and the materials submitted by the Claimant with the Response Form.

If you did not submit a timely claim in the Receivership Action, and you submit a claim in this Class Action, your ability to challenge the claim will be governed by the same procedures established by the Receivership Action court as set forth above, except the deadline to challenge the Receiver's determination regarding the claim will be 45 days after the Receiver publishes the claims registry in this Action. Any hearing to resolve any dispute that cannot be resolved consensually between the parties will be held in front of Judge Campbell, under the same procedures set forth in the Motion Seeking Approval of Claims Objection Resolution Procedures and Claims Bar Date (Receivership Action ECF 453) and Order Granting Approval

of Claims Objection Resolution Procedures and Claims Bar Date (Receivership Action ECF 460).

C. Distribution of Settlement Proceeds and How it Differs From the Plan Approved in the Receivership Action.

The Net Cash Settlement Amount will be distributed using a “pro rata” method considering the net losses of the Claimants. This differs from the rising tide methodology used by the Receiver in the Receivership Action. Under a “pro rata” analysis, each authorized Claimant would receive a *pro rata* share of the Net Cash Settlement Amount based on each claimant’s out-of-pocket loss as determined by the Receiver. The out-of-pocket losses will be calculated by the Receiver using the same claims data provided in the Receivership action or as supplemented pursuant to the process herein. The Receiver will then calculate each claimant’s recovery here by multiplying the Net Cash Settlement Amount by a fraction: (a) the numerator of which is the Claimant’s out-of-pocket loss (b) the denominator of which is the sum of all the authorized Claimant’s out-of-pocket losses.

D. Scope of This Notice.

This Notice is not all-inclusive. The references in this Notice to the pleadings in the Class Action, the Settlement Agreement, and all other papers or proceedings herein are only summaries and do not purport to be comprehensive. For the full details of the Class Action, the claims that have been asserted in the Class Action and the terms and conditions of the Settlement, including a complete copy of the Settlement Agreement and related Orders and proposed forms of Orders, you are referred to Strategic Claims Services’ website at www.strategicclaims.net, or to the Court file for the Action.