

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
Miami Division**

CASE NO. 04-60573-CIV-MORENO/STRAUSS

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

MUTUAL BENEFITS CORP., *et al*,

Defendants.

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**TRUSTEE’S MOTION TO APPROVE INTERIM TRUST ACCOUNTING,  
LIMITATION NOTICE, AND DISCHARGE OF TRUSTEE UPON  
COMPLETION OF FINAL ACCOUNTING AND FINAL DISTRIBUTIONS**

Barry Mukamal, as Trustee (“Trustee”) of the Mutual Benefits Keep Policy Trust (“Trust”), submits this motion to approve (1) his Interim Trust Accounting, including an accounting of the amounts distributable to investors from the proceeds of sale of the Keep Policies, together with a complete accounting of all financial activity of the Trust (“Trust Accounting”) from the Trust’s inception on September 25, 2009 through March 31, 2024; (2) the limitation notice to Keep Policy Investors together with the delivery of this Interim Trust Accounting; and (3) the discharge of the Trustee upon making final distributions as proposed in the Trust Accounting, and upon providing a final accounting for the period from March 31, 2024 to the final distribution. In support of this Motion, the Trustee states:

**BACKGROUND**

**The Receivership and the Trust**

This case began in 2004 as an S.E.C. receivership action brought against Mutual Benefits Corporation (“MBC”), which was unlawfully selling fractional interests in viaticated insurance policies. The Court appointed Roberto Martinez as receiver (“Receiver”) to take control of and

administer the assets of MBC, which consisted primarily of these viaticated policies in which thousands of investors had been fraudulently induced to purchase fractional interests. During the receivership, the Receiver, at the Court's direction, gave investors the option to "sell" or "keep" the policies in which they had acquired interests. After a time-consuming "voting" process, policies in which a majority of the investors (by dollar amount) voted to "sell" were designated for sale, and policies in which a majority of the investors voted to "keep" were retained ("Keep Policies"), with the investors in such policies ("Keep Policy Investors" or "KPIs") becoming responsible for their pro rata share of the premiums and administrative fees associated with the continued maintenance of the policies.

In 2009, as the receivership was reaching its conclusion, the Receiver created the Trust through the execution of the Mutual Benefits "Keep Policy" Trust Agreement ("Trust Agreement"), dated as of September 25, 2009, and approved by the Court's August 14, 2009 and December 14, 2009 Orders. (DE#2322, 2367). The express purpose of the Trust was to "take custody of the Trust Assets and maintain and administer the Trust Assets for the benefit of the Keep Policy Investors, consistent with the terms and procedures set forth in this Trust Agreement." Trust Agreement Section 2.2. The Trust Agreement granted the Trustee certain powers, among others, to "receive and hold the Trust Assets" subject to the terms of the Trust Agreement, to hold and execute certain powers under the "Policy Administration Orders" previously entered by the Court addressing the Receiver's management of the Keep Policy Investors' interests in the Keep Policies, to monitor the performance of the Trust's third-party Servicer,<sup>1</sup> to approve the Disposition Services<sup>2</sup> provided under

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<sup>1</sup> Simultaneously with approval of the Trust Agreement, the Court also approved a Servicing Agreement between the Trustee and the third-party servicer, Litai Assets, LC ("Litai"), which had been negotiated by the Receiver, along with Litai's acquisition of the servicing operations of Viatical Services Inc., an entity related to MBC which had been performing its servicing functions. (DE#2322, 2367).

the Servicing Agreement, and to collect, apply and adjust, as appropriate, the Administrative Fees charged to investors under the Servicing Agreement. Trust Agreement Section 3.1.

The Trustee was not given any power or authority under the Trust Agreement to actively manage the Keep Policies on behalf of the KPIs, i.e., to make decisions or provide advice as to whether the entire portfolio or any particular policy should be maintained, sold or surrendered or whether KPIs should continue to pay premiums and administrative fees for their policies. The Trustee was only authorized to sell, surrender or lapse policies (1) if a KPI “forfeited” their interest and a policy became a “Zero-subscribed Policy”; or (2) if the Trustee determined that the continued servicing of all the Keep Policies was unfeasible, in which event he was authorized to direct the sale, surrender or lapse of the Keep Policies, and to distribute the proceeds, if any, in such manner as the Trustee determined to be appropriate. Trust Agreement Section 3.1(b)(xvii). Accordingly, until the Trustee determined that the continued operation of the Trust had become unfeasible, his obligation was to continue to hold and maintain the Keep Policies for the benefit of the KPIs.

When the Trust was created, it initially held approximately 2,400 policies with a total face value of approximately \$860 million. By December 2022, the Trustee had distributed more than \$500 million in death benefits as policies matured, and the Trust continued to hold 872 policies with

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<sup>2</sup> The Court had previously approved procedures so that when a KPI failed to pay its share of the premium or administrative fee obligations for a policy, the KPI’s interest would be “forfeited,” and the interest would be offered by the Servicer for resale to third party purchasers. If 100% of the KPI fractional interests in a particular policy were forfeited, it would become a “Zero-subscribed Policy” and the entire policy would be sold; if only some of the KPI fractional interests in a policy were forfeited, it would become an “Under-subscribed Policy” and the fractional interests would be offered for resale. As a result of such sales, various trusts managed by Acheron Capital, Ltd. – all of which the Trustee has been advised have now been assigned to Acheron Portfolio Trust (collectively the “Acheron Parties”) – acquired, and held, in excess of 60% by face amount of the fractional investment interests in the Keep Policies as of December 2022.

a total face value of approximately \$167 million in which there were 1,689 fractional investment interests held by Keep Policy Investors.

**The Wind-Down Motion and Request for Instructions Regarding Trust Termination**

After more than a decade of operating the Trust, on February 24, 2020 the Trustee filed the *Trustee’s Motion to Authorize the Initiation of Trust Wind Down and Termination* (“Trustee Wind Down Motion”) (DE#2609), indicating his intention to initiate an orderly wind down and eventual liquidation of the Trust through a process that was expected to take 18-36 months. The anticipated wind down of the Trust was driven by the fact that the cost of administering the Trust had become prohibitively expensive due in large part to increased litigation costs as a result of actions filed by the Acheron Parties. *Id.* at 3. The Trustee Wind Down Motion noted that the Trust Agreement expressly addressed the ultimate termination of the Trust and directed the manner by which the “Keep Policies” would be liquidated:

This Trust Agreement shall terminate upon the final disposition of all Keep Policies, whether by maturity, sale, surrender, or lapse, and the distribution of all other Trust Assets in accordance with the terms of the Servicing Agreement.

Trust Agreement at Section 8.

[T]he Trustee shall have the following powers and duties: ... ***In the event that the Servicing Agreement is terminated or expires and the continued servicing of the Keep Policies becomes unfeasible, to authorize and direct the sale, surrender, or lapse of the Keep Policies, and to distribute the proceeds, if any, of the Keep Policies upon such sale, surrender or lapse, to the Keep Policy Investors in such manner as the Trustee determines to be appropriate.***

*Id.* at Section 3.1(b)(xvii) (emphasis added).

The Court on July 27, 2020 entered a Report and Recommendation to approve the Trustee Wind Down Motion, determining that the Trust Agreement “uncontrovertibly authorizes the Trustee to take the steps he proposes.” (DE#2723 at 18, 20). On November 16, 2020, Judge Moreno adopted the Report and Recommendation (DE#2825).

After the Court ruled on the Trustee Wind Down Motion, the Trustee continued to explore and evaluate mechanisms for the Trust's ultimate liquidation. On March 15, 2021, the Trustee filed a Status Report (DE#2882) reflecting his intention to proceed with a sale of the Keep Policies through an auction process following the selection of a "stalking horse" bid that would set the floor and parameters for further bidding and the Trustee's intended protocols for such a sale. The Court treated the March 2021 Status Report as a request for instructions from the Trustee, and ultimately issued a Report and Recommendation that the request for instructions be granted (DE#2941). Judge Moreno entered an Order adopting the Report and Recommendation, determining that "the Trustee is empowered to sell whole Keep Policies as part of his wind down and liquidation of the Trust," and that "the Trustee is not required to sell the Keep Policies on a policy-by-policy basis nor that the Trustee is required to value the Keep Policies on a policy-by-policy basis in order to sell the Policies as part of the Trust's wind down and liquidation." ("Instructions Order") (DE#2967).

On April 27, 2021, the Trustee, with Court approval, sent a *Notice to Keep Policy Investors Regarding Intent to Sell Policies and Wind Down the Mutual Benefits Keep Policy Trust* (DE#2919). The Notice described the Trustee's intention to proceed with the wind down and termination of the Trust through the sale of the remaining policies, and to distribute the net sale proceeds to the investors. With respect to policies for which 100% of the beneficial interests are held by a single KPI, the Trustee established procedures for the KPI to transfer ownership of the policy to itself, subject to certain conditions (DE#3056, 3074). With respect to policies where the insured was over 100 years old and there was no longer any premium due under the policy terms, the Trustee advised of his intention to sell such policies as a separate "tranche" so that the value of such policies was reflected in their sale price. These ultimately became "Tranche A-1," as described further below.

### **Sale Procedures Motion**

On January 21, 2022, the Trustee filed his *Trustee's Motion to Approve Procedures for Sale of Policies in Connection with Trust Termination* ("Sale Procedures Motion") (DE#3065), requesting that the Court: (1) authorize the Trustee to implement procedures for the sale of the remaining Keep Policies; (2) authorize the Trustee to enter into an Asset Purchase Agreement with a prospective buyer (or buyers) of the Keep Policies; (3) approve the bidding procedures for submission of higher and better offers for the Keep Policies; (4) approve the form of notice to be provided to interested parties; and (5) schedule a final hearing to approve the sale of the Keep Policies to the highest and best bidder (or bidders).

The Sale Procedures Motion described the Trustee's intention to divide the Keep Policies into three "tranches" for submission of offers: Tranche A, consisting of all policies in which the Acheron Parties hold investment interests (exclusive of those in Tranche A-1); Tranche A-1, consisting of all policies in which the Acheron Parties hold investment interests for which the insured is 100 years old or more, and for which no additional premiums are required to keep the policy in force; and Tranche B, consisting of all other policies, in which the Acheron Parties did not hold any investment interests.<sup>3</sup> The Sale Procedures Motion also described the Trustee's proposed procedures for selling the Keep Policies, including solicitation of "stalking horse" initial bids for each of the relevant tranches, marketing of the sale through solicitation to interested parties, and an auction process for the submission of higher and better bids for each tranche. The Sale Procedures Motion further noted that the expenses of the sale process, as well as the Trust's expenses in

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<sup>3</sup> There were no policies for which the insured was 100 years old and for which no additional premiums were required to keep the policy in force in which the Acheron Parties did not own an interest, and accordingly there was no Tranche B-1.

continuing to manage and maintain the Keep Policies pending completion of a sale, would be payable from the proceeds of the sale prior to distributions to the KPIs.

After addressing objections, the Court on April 9, 2022 issued a Report and Recommendation (“Sale Procedures R&R”) (DE#3130) recommending, with certain qualifications, that the Sale Procedures Motion be granted. On June 29, 2022, after addressing further objections to the Sale Procedures R&R, the Court issued its *Order Adopting Magistrate Judge’s Report and Recommendation and Granting Trustee’s Motion to Approve Procedures for Sale of Policies in Connection with Trust Termination* (“Sale Procedures Order”) (DE#3142), granting, with certain qualifications, the Sale Procedures Motion.

### **Proceedings Following Entry of the Sale Procedures Order**

#### **A. Selection of Stalking Horse Bids**

Consistent with the Sale Procedures R&R, the Trustee ultimately selected stalking horse purchase offers for Tranche A (\$16,500,000) and Tranche A-1 (\$10,500,000) (“Stalking Horse Bids”) from Sheck Alpha LP as buyer, as reflected in the *Trustee’s Notice of Selection of Stalking Horse Bids* filed on May 26, 2022 (DE#3140).<sup>4</sup> The Trustee did not receive a satisfactory stalking horse bid for Tranche B and accordingly determined to proceed with an open auction for Tranche B, with the option to set a minimum reserve price.

#### **B. Scheduling of Auction and Solicitation of Bids**

After entry of the Sale Procedures Order, on July 8, 2022 the Trustee filed his *Trustee’s Notice of Filing Regarding Stalking Horse Bids and Auction* (DE#3147), giving notice of (a) the selection of the Stalking Horse Bids for Tranche A and A-1; (b) the scheduling of an auction on September 15, 2022; (c) the deadline and conditions for submission of a qualifying bid; and (d) the

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<sup>4</sup> The Purchase Agreement provided for a downward adjustment to the purchase price if policies became “Excluded Assets” prior to closing (i.e., by maturity, expiration or agreed upon removal).

proposed schedule for remaining steps in the sale process (“Sale Approval Order”). The auction was rescheduled to December 8, 2022 as a result of a Stay Order (DE#3157), which was subsequently vacated after an appeal by Acheron Capital was dismissed (DE#3168). In the period between the execution of the Stalking Horse Bids and the re-solicitation of potential bidders for a new auction, there had been several maturities of Policies in Tranche A. As of November 10, 2022, fifteen Tranche A Policies had matured, and as a result the Purchase Price for Tranche A under the Stalking Horse Bid, as adjusted per the terms of the Purchase Agreement, was \$14,740,326.74. In Tranche A-1, one Policy with a face value of \$4,522,330.00 had matured, and another policy with a face value of \$4,000,000.00 was removed because it had expired. As a result, the Purchase Price for Tranche A-1 under the Stalking Horse Bid, as adjusted, was \$5,368,602.00.

**C. Consideration of Qualifying Bids and Settlement with Acheron Parties**

Prior to the auction, the Trustee and Acheron Parties engaged in good faith settlement discussions regarding potential resolution of disputes relating to the sale and the Acheron Parties’ objections thereto, which led the Trustee, in his business judgment, to postpone the scheduled auction for a week. On December 8, 2022, the Trustee and the Acheron Parties participated in an all-day settlement conference, which resulted in the execution of a Settlement Term Sheet pursuant to which the Trustee and Acheron Parties agreed to the Acheron Parties’ purchase of all the Keep Policies in Tranche A, A-1 and B for \$24 million, their withdrawal of objections to the sale, and an agreed-upon process for allocation of the purchase price among the individual policies and the allocation and reimbursement of the Trust’s costs of liquidation from the proceeds. The terms were ultimately incorporated into a Settlement Agreement and presented to the Court for approval.



**Motion to Approve Sale, Allocation and Distribution Procedures**

On December 27, 2022, the Trustee filed his *Trustee's Motion to Approve (1) Sale of Policies to Acheron Portfolio Trust; (2) Proposed Allocation and Distribution Procedures; and (3) Settlement with Acheron Capital, Ltd.* ("Sale & Allocation Motion") (DE#3188). By the motion, the Trustee requested that the Court:

- (a) Approve the proposed sale of the Policies to APT for the \$24 million Purchase Price on the terms set forth in the Settlement Agreement and APT APAs (the "APT Sale") and enter a Sale Approval Order authorizing and directing the parties to proceed accordingly;
- (b) Approve the Settlement Agreement between the Trustee and the Acheron Parties; and
- (c) Approve the Allocation and Distribution Procedures set forth therein as the exclusive process for allocating the proceeds of sale of the Policies and applying and deducting the Liquidation Costs from the interests of all parties in the Keep Policies, including the KPIs and the Acheron Parties.

The Allocation and Distribution Procedures set forth in the Sale & Allocation Motion are attached hereto as Exhibit "A". They provide for:

- (a) An independent actuarial firm to perform an analysis and calculation to assign a value to each policy sold based upon the total sale proceeds for each Tranche and the underlying valuation characteristics of each policy using information and considerations typically considered by actuaries performing valuations of viaticated insurance policies and/or life settlement investments;
- (b) A reconciliation process in the event of any disputes between the Trust and the Acheron Parties with respect to the allocation performed by the independent actuarial firm with respect to the actuarial allocation for Tranche A and A-1;
- (c) The allocation of policy sale value for each policy, as determined by the actuarial analysis, to each investor's interest in a policy based upon the percentage of their investment interest in the policy relative to the face value of the policy;
- (d) The application of the Liquidation Costs of the Trust (including, without limitation, broker's fees, stalking horse break-up fees, accrued and unpaid professional fees, securities intermediary fees, repayment of the Trust's line of credit, actuary fees, costs of distribution of sale

proceeds, fees for calculation of premium refunds, fees for interim and final accounting, tax reporting and tax returns, back-up servicer termination fees, litigation expenses and reserves, and other miscellaneous operating expenses), on a pro rata basis (with certain limited exceptions), to each policy based on the relative value allocated to the policy, and then to each investor's interest in a policy based on the percentage of their investment interest relative to the face value of the policy;

(e) The setoff against any net proceeds allocated to an investor's interest in a policy for any premiums advanced by the Trust for the benefit of the investor to keep the policy in force.

Except for specific "per policy" costs which can be allocated on a policy-by-policy basis, Liquidation Costs are allocated to the Policies in the same percentage as the relative value of the Policy within each tranche. Each investor in a policy is to receive their share of the net proceeds, if any, based on their percentage ownership interest in the Policy, after adjustment for any premium obligations due from the KPI which had been advanced by the Trust.

The Trustee, in seeking approval of this process, heeded the Court's comments in the Sale Procedures R&R that "the reality is that each KPI's interest has been tied to specific trust assets, with their obligations and fortunes tied to specific policies. The KPIs have paid premiums associated with particular policies, and they have received payouts when those particular policies have matured (as opposed to, say, owing a pro rata portion of all premiums owed on all of the policies in the Trust and receiving a pro rata payment whenever any policy matured)." (DE#3130 at 19-20). Consistent with this reality, the Sale Procedures R&R recognized:

On the one hand, what each KPI receives should be tied to the policy(ies) in which they have an interest. In other words, simply because two KPIs each invested \$10,000 at the same time does not mean that each KPI should receive the same return (unless they have identical interests tied to the same policies). On the other hand, though, as the Trustee has emphasized, he needs to pursue a course of action that will do the most good for the most KPIs. I find that the Trustee has sought a reasonable balance of the competing interests of the remaining KPIs by attempting to maximize the value of the entire Trust portfolio through an auction while planning a distribution weighted to reflect the relative actuarial value of the individual policies with which individual KPIs' interests are associated.

DE#3130 at 20-21.

In the Sale & Allocation Motion, the Trustee advised that it was likely that several policies would have minimal or even zero value upon the conclusion of the actuarial allocation and application of the Liquidation Costs (DE#3188 at 28). This was particularly likely where the insured was relatively young and the initial basis for a life expectancy estimate was an HIV positive diagnosis. The Keep Policies were viaticated twenty or more years ago, and there have been dramatic changes in HIV treatment and prognosis in the interim. As a result, there were likely to be a number of policies with marginal or no value, and which if the Keep Policy portfolio had been actively managed (rather than simply maintained and preserved, as the Trustee was directed to do in the Trust Agreement) would have been surrendered or lapsed some time ago. One of the reasons for the Trustee's proposed process was to ensure that the determinations of relative value were made by an independent third party based on all information available with regard to all of the Keep Policies.

The Trustee requested that any objection to the proposed allocation and distribution procedures be asserted and adjudicated in response to the motion, rather than at the conclusion of the allocation process. While a particular KPI might be disappointed with the results of that process with regard to a particular Policy, the Trustee believed that an actuarial determination of value was the appropriate methodology and a reasonable exercise of the discretion and authority granted to him under the Trust Agreement.

The Sale & Allocation Motion also sought approval of the Trustee's return of any unused premium paid by KPIs (or the Acheron Parties), and which is held by the Trustee or the Trustee's servicer, Litai, based on an accounting of such premium payments to be provided by Litai, upon making the initial distribution of the net sale proceeds. At the time, the Trustee anticipated receiving sufficient information from Litai to be able to promptly assess the amount, if any, due to each investor with regard to such premium refunds.

The Sale & Allocation Motion also requested that in the event any distribution checks remain uncashed by a KPI for a period of 90 days after issuance, or to the extent a KPI failed to complete tax or other documentation required by the Trustee before making a distribution to such KPI within 90 days after the Trust's initial distribution, and after reasonable efforts to communicate with the KPI, obtain alternate contact information, or obtain required documentation, as applicable, have been exhausted ("Unclaimed Distributions"), the Trustee may treat such Unclaimed Distributions as Trust Assets to be used to pay Trust expenses prior to the application of such expenses as Liquidation Costs in any final distribution.

The Court conducted a hearing on the Sale & Allocation Motion on January 26, 2023. With the exception of a letter to the Court which it interpreted to in part be a response thereto, no other objections were filed with the Court or lodged at the hearing. On February 3, 2023, the Court issued a Report and Recommendation approving the Sale & Allocation Motion ("Sale & Allocation R&R") (DE#3201). The Sale & Allocation R&R recommended approval of the Sale & Allocation Motion, finding that the proposed sale "represents a reasonable exercise of the Trustee's business judgment."

*Id.* at 13. The Court noted:

Continued maintenance of the Trust's policies is not costless, and the Trustee cannot simply hold on to the policies until they mature and realize the entire face value. Rather, further premiums would need to be paid (potentially for several decades for many policies), and further expenses would be incurred. Moreover, as policies continue to mature, those expenses would be borne by a shrinking universe of KPIs (and without the benefit of certain funds that had been subsidizing such expenses) thus significantly increasing the costs to those remaining KPIs.

*Id.* At 14. The Court further noted that given the extensive efforts the Trustee undertook to market the policies for sale, "the market has spoken" with regard to the value realized through the sale. *Id.* at 14-15. With regard to the proposed allocation and distribution procedures, the Court found that those "are reasonable as well" and were "reasonably designed to ensure that allocation and distribution

occur in a fair and equitable manner.” *Id.* at 15. On March 2, 2023, the Court entered an Order adopting the Sale & Allocation R&R (DE#3206), and on March 3, 2023 entered its *Order Granting Trustee’s Motion to Approve (1) Sale of Policies to Acheron Portfolio Trust; (2) Proposed Allocation and Distribution Procedures; and (3) Settlement with Acheron Parties (“Sale & Allocation Order”)* (DE#3207).

### **Completion of the Sale & Allocation Process**

On March 29, 2023, the Trustee closed on the sale of the Trust’s policies to APT in accordance with the Sale & Allocation Order, and thereafter provided a Notice to KPIs of the closing of the sale and the steps that would follow pursuant to the Allocation and Distribution Procedures. (DE#3211). Following the closing of the sale, the Trustee proceeded to obtain the independent allocation analysis from the Trustee’s retained actuary, and to review the results of that allocation with APT, in accordance with the process set forth in the Allocation and Distribution Procedures. APT ultimately did not dispute the results of the allocation performed by the Trust’s independent actuary. Therefore, the actuarial allocation process is complete. The Trustee, consistent with the Allocation & Distribution Procedures, has applied the Liquidation Costs and an estimated reserve for future costs pending trust termination to the actuarial value attributed to each policy and each investor’s interest in such policy. That process has also been completed.

### **Interim Distribution and Premium Refunds**

Consistent with the Allocation and Distribution Procedures, the Trustee, simultaneously with the filing of this Motion, is making an interim distribution of 50% of the net sale proceeds allocable to each investor’s interest in a policy, net of any setoff due for amounts advanced by the Trust for premium obligations associated with such interest.<sup>5</sup> As anticipated by the Sale & Allocation Motion,

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<sup>5</sup> The Trustee first applied any unused premiums to recover premium advances, and if such funds

there are several policy interests for which zero or minimal value has been assigned after the completion of the actuarial allocation, application of the Liquidation Costs, and deduction for any recovery of premium advances. Under commonly accepted industry standards, not all life insurance policies have investment value to a buyer of a viatical or life settlement – the future cost of the expected premium payments over the expected remaining lifespan of the insured, at an appropriate discount rate, may exceed the future value of the policy’s death benefit, discounted at the same rate. In such cases, where the present value of the policy premium payment outflows is equal to or greater than the future value of the policy death benefit inflow, no proceeds would be allocated from the total sale proceeds to the policy. As a result, not all KPIs will be receiving distributions from the sale, and several will be receiving relatively small distributions.

As reflected in the Notice to Investors sent upon the closing of the sale, in addition to the sale proceeds, the Trust also holds certain funds which had been paid by investors for premium obligations, but which had not been utilized by the Trust’s servicer, or which were previously refunded by APT as purchaser to the Trust in connection with the closing of the sale. The information provided by the Trust’s servicer required substantial analysis and reconciliation in order to determine the appropriate amounts due to certain investors and provide reporting of same. That process has also now been completed. Investors who paid premium funds which are still held by the Trust will receive a repayment of those funds at the same time that the interim distribution of net sale proceeds is made.

### **Trust Accounting**

In 2020, this Court issued a Report and Recommendation, adopted in part by Court Order, in which the Court held that the Trust is an irrevocable trust governed by Florida law, and accordingly

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were insufficient, they were then reimbursed from the net sale proceeds.

governed by the Florida Trust Code, Fla. Stat. Chapter 736, including its trust accounting provisions (DE#2705, 2824). In furtherance of that ruling, the Court subsequently issued an Order clarifying that: (1) in the absence of an individual request from a qualified beneficiary, “individual accountings” of a particular investor’s interests in and transactions with the Trust are not necessary, but rather the Court contemplated that the Trustee would provide accountings of the “Overpayment Balance and the Trust as a whole,”<sup>6</sup> which should comply with Florida Statutes’ requirement that it be a “reasonably understandable report” and should specifically include “compensation paid to the trustee and the trustee’s agents”; and (2) the accounting need not address KPI interests that were forfeited or have matured (DE#2837).

Consistent with the Court’s rulings, the Trustee on January 14, 2021 filed a Notice of Compliance advising that the Trustee had conformed the Trust’s financial disclosures provided to KPIs in accordance with the Court’s directions by preparing and providing: (a) balance sheets for the Trust as of December 31, 2009 through 2019; (b) cash and investment account balances for the Trust as of December 31, 2009 through 2019; (c) reports of Trust operations (excluding policy-specific activity and investor-paid servicing fees) for the years ended December 31, 2009 through 2019; and (d) reports of investor-paid servicing fees for the years ended December 31, 2009 through 2019. (DE#2847). Those reports reflected, on an annual basis, the compensation paid to the Trustee

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<sup>6</sup> “Overpayment Balance” refers to an amount which had accumulated from the Receiver’s billing of KPIs in accordance with prior court orders which was transferred to the Trustee upon the creation of the Trust, and which was used to pay for the operations of the Trust, including the expenses of the Trustee and subsidies of the Administrative Fees payable by KPIs to the Servicer. The “Overpayment Balance” was supplemented with the proceeds from sales of “forfeited” investor interests in accordance with the Trust Agreement and prior court orders.

and Trustee's agents and to each of the professional firms engaged by the Trust.<sup>7</sup> The reports were made available to KPIs via the Trust website at [www.mbckeeptrust.com](http://www.mbckeeptrust.com).

In contemplation of making the distributions of net sale proceeds to investors, the Trustee has undertaken to provide a complete accounting to KPIs for both the sale proceeds, and the activities of the Trust generally. The Trustee believed it appropriate upon the liquidation of the remaining Keep Policies and anticipated termination of the Trust to provide KPIs with a specific accounting of how their distribution amount from the sale proceeds, if any, was determined, as well as a complete accounting of all Trust activity from the inception of the Trust. Consistent therewith, the Trustee is providing all KPIs with a Trust Accounting from the September 25, 2009 inception of the Trust through March 31, 2024 which is comprised of the following:

**(A) Summary of Net Cash Flows in Accounts Administered by the Servicer (Schedule A):** This Schedule reports, on an annual basis, all inflows and outflows from accounts managed by the third-party servicer on behalf of the Trust. A Detail of Cash Transactions in Accounts Administered by the Servicer (Schedule A-1) is included, which constitutes a report of all receipts and disbursements in the Servicer accounts from inception of the Trust through March 31, 2024. The Schedule also summarizes:

- (i) Funds Received from Carriers (i.e., death benefit proceeds, dividends and premium refunds, and other amounts paid by carriers) (Schedule A-2),
- (ii) Investor Related Activity (i.e., premiums, administrative fees and related expenses paid by investors) (Schedule A-3),
- (iii) Death Benefits (i.e., death benefits and related amounts paid to the servicer and distributed to investors, and related withholdings and amounts paid to the servicer) (Schedule A-4),
- (iv) Other cash flows in servicer-managed accounts (i.e., premium payments to carriers, premium refunds, administrative, mailing and death benefit fees) (Schedule A-5),
- (v) Disposition Related Activity (i.e., disposition proceeds paid to the Trust and commissions paid to the Servicer for dispositions) (Schedule A-6),

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<sup>7</sup> The Notice of Compliance also certified the Trustee's compliance with Trust provisions regarding Trustee compensation, and the Trustee's return to the Trust of amounts which had inadvertently been paid in excess of the "cap" on the Trustee's fees established in 2009 of \$395 per hour.



- (vi) Trust Related Activity (i.e., premium advances by and repayments to the Trust, and investment activity in the accounts) (Schedule A-7),
- (vii) Other Activity (i.e., bank fees and other miscellaneous transactions) (Schedule A-8).

Each of these categories in the Summary is detailed in a separate sub-schedule, as identified above.

**(B) Summary of Net Cash Flows in Accounts Administered by the Trust (Schedule B):** This Schedule reports, on an annual basis, all inflows and outflows from accounts administered directly by the Trust (i.e., what has been referred to as the “Overpayment Balance,” and other accounts managed by the Trustee). A Detail of Cash Transactions in Accounts Administered by the Trust (Schedule B-1) is included, which constitutes a report of all receipts and disbursements in the Trust accounts from inception of the Trust through March 31, 2024. The Schedule also summarizes:

- (i) Income Related Activity (i.e., net disposition proceeds, additional administrative fees collected for the Trust, and other receipts) (Schedule B-2),
- (ii) Operating Related Expenses (i.e., accounting fees, actuary fees, back-up servicer fees, bank fees, information technology expenses, legal fees, servicing agreement renewal fees paid to Litai under Court-approved renewal agreements, Trustee’s fees, wind down and other expenses) (Schedule B-3); (iii) Other Activity (i.e., investment activity, intra-bank transfers, premium advances and repayments, and various other activities) (Schedule B-4),
- (iv) Line of Credit Activity (i.e., borrowing and repayment of the line of credit obtained in connection with the proposed sale) (Schedule B-5); and
- (v) Portfolio Sale Related Activity (i.e., sale proceeds received, pre-transfer expenses reimbursed by the purchaser, and specific sale related expenses including broker fees, interest on the stalking horse bid deposit, and stalking horse bid break-up fee) (Schedule B-6).

Each of these categories in the Summary is detailed in a separate sub-schedule, as identified above.

**(C) Assets on Hand (Schedule C).** This schedule lists all assets under the control of the Trust as of March 31, 2024, consisting of (a) \$5,125,683.49 in the Premium Account; (b) \$20,529,493.30 in the Sale Proceeds Account; (c) \$825,432.26 in the Death Benefit Account; (d) \$96,398.18 funds in the Trust’s Operating Account; (e) \$263,216.06 in unclaimed funds;<sup>8</sup> and (f) a small group of policies or claims relating thereto which the Trust continues to administer. Sub-schedules C-1 through C-8 provide further detail including:

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<sup>8</sup> This amount represents unused premiums from matured policies or investors who forfeited their fractional interest, and death benefits from policies which matured prior to the closing of the sale. Litai did not distribute because KPIs did not process their checks or provide required tax forms or other necessary documentation.

(i) **Reconciliation of Premium Account to Distribute 100% of Unused Premiums as of the March 28, 2023 (the “Closing Date”) (Schedule C-1).** This schedule reconciles the \$5,125,683.49 in funds available in the Trust’s Premium Account as of March 31, 2024, plus \$868,931.04 in pre-transfer expenses recovered to the Premium Account from the sale, less interest, loan receivables recovered by the Trust, and various other adjustments, with the net amount of \$4,884,330.96 distributable to investors as premium refunds.

(ii) **Summary of Sale Proceeds Account (Schedule C-2).** This schedule reconciles the total \$23,657,082.08 gross sale proceeds received from the sale of the Policies, plus net pre-transfer expenses reimbursed by the purchaser in accordance with the Purchase Agreements of \$904,644.24, less \$952,027.12 of deferred professional fees and \$4,024,906.88 of Liquidation Costs, with the \$20,529,493.30 available for distribution in the Sale Proceeds Account as of March 31, 2024.

(iii) **Reconciliation of Sale Proceeds Account to Distribute 50% of Sale Proceeds (Schedule C-3).** This schedule reconciles the \$20,529,493.30 in funds in the Sale Proceeds Account to the adjusted balance of \$18,519,353.64 available for distribution after adjusting for outstanding checks, reimbursements of pre-transfer expenses due to the Premium Account and other accounts, as well as \$944,700.98 in accrued dividends and interest which will be distributed, net of expenses, in connection with the final distribution. It also reflects the allocation of the Liquidation Costs among Tranche A, A-1 and B, and the application of the Liquidation Costs to each of those proceeds to yield the net balance available to distribute in the initial distribution, net of expenses, for each tranche, totaling \$9,189,402.20.

(iv) **Reconciliation of Death Benefit Account (Schedule C-4).** This schedule provides a reconciliation of the \$825,432.26 in funds in the Trust’s Death Benefit Account as of March 31, 2024, which includes \$433,823.44 of proceeds from Trust policies matured prior to the sale which have not been distributed to KPIs due to lack of tax forms or other necessary documentation, \$89,681.34 in checks which were outstanding as of March 31, 2024, and \$301,927.48 in interest and other funds.

(v) **Reconciliation of Operating Account (Schedule C-5).** This schedule reconciles the \$96,398.18 in funds in the Trust’s Operating Account as of March 31, 2024 to the Trust’s adjusted bank balance as of March 31, 2024 of \$621,937.54, which includes an additional \$525,539.36 recoverable to the Trust’s Operating Account for premiums advanced by the Trust, either from unused premium funds or from sale proceeds allocated to policies for which advances were made, as well as pre-transfer expenses reimbursed by the purchaser. The total amount of \$621,937.54 will be a holdback from the initial distribution, as discussed further below.

(vi) **Reconciliation of Unclaimed Funds Account (C-6).** This schedule accounts for the \$263,216.06 held by the Trust in the Unclaimed Funds Account. This balance includes \$260,474.65 distributable to KPIs for unused premiums from matured policies or to investors who forfeited their fractional interest, and from death benefits on policies which matured prior to the sale. Litai did not distribute these funds either because the KPI failed to maintain current contact information and did not negotiate their check, or the KPI did not provide necessary tax forms or other required documentation. Prior to termination of the Trust, the Trustee will undertake further reasonable efforts to distribute these funds, and if unable to do so will turn them over to the

appropriate governing authority as unclaimed funds. The remaining \$2,741.41 represents the interest earned in this account and will be a holdback from the initial distribution, as discussed further below.

(vii) **Summary of Holdbacks (C-7).** This schedule summarizes all funds that are not being distributed in the initial distribution, and which, net of expenses, will be available for the final distribution, comprised of (a) \$725,344.62 in interest and other funds in the Premium Account; (b) \$301,927.48 in interest and other funds in the Death Benefit Account; (c) \$621,937.54 in the Operating Account; (d) \$944,700.98 in dividend and interest earnings on the Sale Proceeds Account; (e) \$2,741.41 in interest in the Unclaimed Funds Account ((a), (b), (c), (d) and (e) collectively, the “Holdback”); and (f) \$9,189,392.04 constituting the remaining 50% of the sale proceeds after the initial distribution.

(viii) **Proposed Budget and Allocation of Holdbacks (C-8).** This schedule summarizes the incurred and estimated expenses after March 31, 2024 and through the anticipated final distribution, which includes (a) \$271,155.71 in expenses incurred from April 1, 2024 through July 31, 2024; and (b) an additional estimated \$905,000 in expenses from August 1, 2024 through February 28, 2025. The latter figure is an estimate only and may vary substantially depending on whether this motion is approved, whether objections are made to the interim and proposed final distributions or any other matters addressed by the Trust’s accounting, and other variables not presently knowable by the Trustee. In accordance with the Allocation and Distribution Procedures, the Holdback will be used to pay Liquidation Costs and other expenses of the Trust before application of the net sale proceeds to such expenses. To the extent sufficient funds are available, Liquidation Costs previously advanced from the net sale proceeds will be reimbursed to the Sale Proceeds Account from the Holdback prior to final distribution. Based on this estimate, \$10,609,888.36 would be available to distribute in the final distribution in accordance with the Allocation and Distribution Procedures.

(D) **Gains & Losses (Schedule D).** This schedule details the gains and losses on investment activity of the Trust’s accounts (i.e., primarily interest and dividend income, as well as purchases, redemptions and reported unrealized gains and losses) on financial instruments held by the Trust from inception through March 31, 2024.

(E) **Trustee Fees (Schedule E).** This schedule details all disbursements of Trustee fees to the Trustee, from the inception of the Trust through March 31, 2024.

(F) **Professional Fees (Schedule F).** This schedule details all disbursements of professional fees to professionals engaged by the Trustee, including his accounting firm, legal fees and expenses, industry advisors and consultants, information technology professionals, back-up servicers, disbursing agents and others, from the inception of the Trust through March 31, 2024.

(G) **Distribution of Sale Proceeds and Unused Premiums (Schedule G).** This schedule details the net sale proceeds distributable, and unused premium distributable, to each policy (by AP#) to reflect the application and distribution of the \$18,378,794.24 available for distribution in the Sale Proceeds Account and the \$4,884,330.96 available for distribution in the Premium Account.

(H) **Estimated Final Distribution (Schedule H).** This schedule lists, as to each policy (by AP#), the anticipated final distribution to be made of the remaining net sale proceeds available upon the anticipated termination of the Trust.

(I) **Policy-Level Investor Settlement Statement (“Settlement Statement”)** which reflects, for each individual KPI, the amount of any Initial Distribution and Premium Refund, as well as: (i) the “tranche” of the policy in which they held an investment interest, (ii) the allocation percentage value within the tranche assigned to the policy by the third-party actuary, (iii) the Gross Proceeds allocated to the policy as a result, (iv) the application of the Liquidation Costs and Estimated Remaining Costs to the policy, (v) the Policy-Level Net Sale Proceeds, after application of Liquidation Costs and Estimated Remaining Costs, (vi) the Investor Share of Net Sale Proceeds, after application of the investor’s percentage ownership interest in the policy, (vii) any Premium Due from the investor being set off against the Investor Share of Net Sale Proceeds, (viii) the amount of the Initial Distribution of 50% of the Net Sale Proceeds, (ix) the amount of the anticipated Final Distribution of the remaining 50% of the Net Sale Proceeds, and any remaining Trust operating account funds and accrued interest and dividends, (x) the calculation of any Premium Refund due to the KPI, and (xi) all collections and disbursements, on a policy level, with respect to the policy (i.e., premiums, administrative fees, and related payments and expenses).

Schedules A through H, and related sub-schedules, will be referred to as the “Accounting Schedules,” and the Accounting Schedules together with the Settlement Statement will be referred to as the “Trust Accounting”. The Trustee is also providing KPIs with a Glossary of Terms for both the Settlement Statement and for the Accounting Schedules to provide further explanations of their contents. The Trustee will submit a separate Notice of Filing to provide the Court with the Settlement Statement, the Accounting Schedules, and the Glossary of Terms for each of them.

Through the Trust Accounting, KPIs are being provided with a detailed report of how their distribution of net proceeds from the sale of the Trust’s remaining policies, if any, has been determined, as well of how any premium refund payable to them has been calculated. KPIs are also being provided with a comprehensive accounting of all activities of the accounts of the Trust from the inception of the Trust through March 31, 2024.

### Notice

The Trustee has engaged Stretto, Inc. (“Stretto”) to provide noticing and distribution services on behalf of the Trust in connection with the interim and final distributions and delivery of the

Trust's accounting. On behalf of the Trust, Stretto is distributing the Trust Accounting, together with the Glossaries of Terms, as well as a Notice to Investors in the form attached as Exhibit "B" and a copy of this Motion, to all KPIs who held investment interests in Trust policies as of the effective date of the sale (i.e., whose interests had not already been forfeited, or whose policies had not already matured), together with their interim distribution and/or premium refund, if applicable. Given the volume of the Trust Accounting and the cost of mailing printed copies, Stretto will be delivering to KPIs by U.S. Mail or reputable third-party carrier (a) a printed copy of the Notice to Investors; (b) a printed copy of the KPI's Settlement Statement; (c) printed copies of Schedules A and B of the Accounting Schedules (the summary schedules without the detailed sub-schedules) and Glossaries; and (d) a "flash drive" containing complete copies, in PDF format, of (i) this Motion; and (ii) a complete set of the Accounting Schedules. The Notice to Investors contains instructions for accessing the materials on the flash drive. The Notice to Investors and Motion will also be posted to the Trust website, and the complete Accounting Schedules will be available through the investor login on the Trust website as well.

The Notice to Investors contains a "Limitation Notice" as authorized by the Florida Trust Code, advising that any action for breach of trust based on matters disclosed in a trust accounting or other written report of the trustee or a trust director may be subject to a 6-month statute of limitations from the receipt of the trust accounting or other written report. *See Fla. Stat. § 736.1008(2), (4)(a)*. The Notice to Investors further advises that any potential objection to the relief sought by this Motion should first be communicated to the Trustee's counsel in an effort to resolve the objection without court intervention, and if unresolved, should be filed with the Court within thirty (30) days of the date of this Motion.

## DISCUSSION

### A. Jurisdiction

This Court has previously addressed in this case the standard for its exercise of ancillary jurisdiction. *Sec. & Exch. Comm'n v. Mut. Benefits Corp.*, No. 04-60573, 2021 WL 1520643 (S.D. Fla. Feb. 22, 2021) (DE#2871, *report and recommendation adopted*, DE#2883):

A federal court may exercise ancillary jurisdiction in two instances: (1) to permit disposition by a single court of claims that are, in varying respects and degrees, factually interdependent; and (2) to enable a court to function successfully, that is, to manage its proceedings, vindicate its authority, and effectuate its decrees.

*Id.* at \*6 (cleaned up), citing *Peacock v. Thomas*, 516 U.S. 349, 354 (1996) (quoting *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375 at 379-80) (1994)), and *Nat'l Mar. Servs., Inc. v. Straub*, 776 F.3d 783, 786 (11th Cir. 2015). The Court found the second type of ancillary jurisdiction applicable here., explaining that:

[C]ourts consider four factors in determining whether to exercise ancillary jurisdiction: “(1) [whether] the ancillary matter arises from the transaction that was the basis of the principal proceeding, during the principal proceeding, or as an integral part of the main proceeding; (2) [whether] the Court will be able to determine the matter without a substantial new fact-finding proceeding; (3) [whether] the failure to determine the matter will deprive a party of an important procedural or substantive right; and (4) [whether] deciding the matter is necessary to protect the integrity of the principal proceeding or ensure its disposition is not frustrated.

*Mut. Benefits*, 2021 1520643 at \*6 (citations omitted). In considering those four factors, the Court determined that it had ancillary jurisdiction to address and determine the Trustee’s request for declaratory relief regarding the Trust’s ownership of data relating to the Trust’s Policies that was in the possession and control of the Servicer, Litai.

The Court found that the first factor weighed in favor of ancillary jurisdiction because the requested relief was a collateral matter that arose from the receivership proceeding; i.e., the Trustee was asking the Court to confirm the Trust’s ownership of assets that the Court had previously

ordered would be owned by the Trust as part of the transaction bringing the receivership action to a conclusion. The Court explained that “the Trust was the vehicle by which ‘the Receiver’s present ownership and nominal beneficiary status with respect to the Keep Policies [was] transferred to [an] independent third party’” (i.e., the Trustee). *Id.* at \*7. The Court found that the second factor likewise weighed in favor of the exercise of ancillary jurisdiction because no substantial new fact-finding was required to determine the issue at hand. *Id.* The Court found that the third factor also weighed in favor of ancillary jurisdiction because failing to provide the requested declaratory relief would deprive the Trustee of significant procedural and substantive rights and could limit the Trustee in pursuing effective remedies. *Id.* at \*8. Finally, the Court found that the exercise of ancillary jurisdiction was necessary under the fourth factor because the Court had previously entered an order vesting the Trustee with all rights in and to the Trust Assets, including the data at issue, and that granting declaratory relief “is necessary to protect the integrity of the principal proceeding,” and “will ensure that the disposition of the underlying case is not frustrated.” *Id.*

The same is at least equally true here:

(1) The relief sought here – approval of the Trust Accounting, the interim and final distributions, and the discharge of the Trustee upon completion of all distributions – arises from the transaction that was the basis of the principal proceeding, i.e., the Court’s Orders approving the creation of the Trust, the transfer of the Keep Policies to the Trust, and the establishment of a structure for the Trustee to maintain and administer the Keep Policies in accordance with the Trust Agreement. (DE#2266, 2267, 2367).

(2) The Court can determine the matter without substantial new fact-finding: the Trustee asks the Court to (a) determine that the Trust Accounting satisfies the requirements of the Florida Trust Code; (b) determine that the six-month limitations period under the Florida Trust Code is



effective as to all matters disclosed in the Trust Accounting; (c) determine that notice of the Trust Accounting is adequate; (d) authorize the Trustee to dispose of unclaimed funds as set forth in this Motion; and (e) determine that upon making the interim and final distributions and providing a supplemental final accounting for the period after March 31, 2024, and in the absence of successful objections, the Trustee may be discharged and the Trust terminated. That does not require substantial additional fact-finding beyond a review of the format and contents of the Trust Accounting and consideration of the relevant provisions of the Florida Trust Code and the Trust Agreement itself.

(3) The failure to determine the matter will deprive the Trustee of important procedural and substantive rights: absent such a court order, the Trustee will be unable to determine with certainty that the Trust Accounting and Limitations Notice effectively limit the assertion of potential claims against the trust and trustee. Such uncertainty will affect not only the Trustee – it will affect all of the KPIs, as well as APT, as it will make it effectively impossible for the Trustee to timely complete the final distribution of the remaining Trust assets, as without such relief, the Trust will arguably be at risk of potential claims for a four-year statutory period. *See Fla. Stat. § 736.1008(1).*<sup>9</sup>

(4) Deciding the matter is necessary to protect the integrity of the principal proceeding or ensure its disposition is not frustrated: the Court authorized the creation of the Trust so that the Trustee could administer and maintain the Keep Policies consistent with the “Disposition Orders” that had been previously entered by the Court during the receivership case, and to do so until the

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<sup>9</sup> The Trustee’s estimated expenses through final distributions are predicated on the assumptions that (1) the limitations period for potential claims will be six months; and (2) no such claims will be asserted. If the Trust may face claims for up to a four-year period, or if claims are timely asserted, then the Trustee will need to substantially increase the reserves and may not be in a position to make final distributions at all while the possibility of such claims continues to exist. Under the Trust Agreement, the Trustee is entitled to indemnification from all claims, including fees and expenses incurred in defense of such claims, except for acts that constitute bad faith, gross negligence, willful misconduct, or fraud. Trust Agreement Section 3.1(b)(xxv), Section 6.6. In accordance with the Allocation and Distribution Procedures, any such expenses will be paid first from the Holdback before deduction from net sale proceeds.



continued operation of the Trust was no longer feasible. The Trustee has sought and obtained Court approval of each meaningful step in that process, including the initiation of the wind-down of the Trust, the process and procedures for marketing and selling the Keep Policies, and the approval of the sale, along with the allocation and distribution procedures, pursuant to the Sale & Allocation Order. The approval of the Trust Accounting and related relief – including, ultimately, the termination of the Trust and discharge of the Trustee upon the completion of all distributions – remain the last meaningful steps in culminating the process this Court authorized and implemented through its approval of the Trust.

The Trust Agreement which was approved by the Court authorizes the Trustee to seek instructions from the Court on the management or disposition of the Trust’s assets: “The Trustee shall have the right (but not the duty) at any time to seek instructions from the Court concerning the management or disposition of the Trust Assets.” Trust Agreement § 6.7. The Trust Agreement further expressly provides that this Court “shall have jurisdiction of all matters related to this Trust Agreement and all Actions with respect to this Trust Agreement, including without limitation the determination of all controversies and disputes arising under or in connection with this Trust Agreement, unless the Court shall not have subject matter jurisdiction in respect thereof.” Trust Agreement § 7.2. The Trustee properly invokes that jurisdiction here to seek approval of the Trust Accounting, and Court approval of the termination of the Trust and discharge of the Trustee upon the completion of all distributions contemplated herein.

**B. Compliance with Trust Accounting Provisions**

As noted above, this Court has ruled that the Trust is an irrevocable trust governed by Florida law and is subject to the Florida Trust Code. Under Fla. Stat. § 736.0813(1)(d), a trustee of an irrevocable trust is to provide a trust accounting at least annually and on termination of the trust.

Under Fla. Stat. § 736.08135(1), a trust accounting “must be a reasonably understandable report from the date of the last accounting or, if none, from the date on which the trustee became accountable, that adequately discloses the information required in subsection (2).” Subsection (2), in turn, provides that:

- (a) The accounting must begin with a statement identifying the trust, the trustee furnishing the accounting, and the time period covered by the accounting.
- (b) The accounting must show all cash and property transactions and all significant transactions affecting administration during the accounting period, including compensation paid to the trustee and the trustee’s agents. Gains and losses realized during the accounting period and all receipts and disbursements must be shown.
- (c) To the extent feasible, the accounting must identify and value trust assets on hand at the close of the accounting period. For each asset or class of assets reasonably capable of valuation, the accounting shall contain two values, the asset acquisition value or carrying value and the estimated current value. The accounting must identify each known noncontingent liability with an estimated current amount of the liability if known.
- (d) To the extent feasible, the accounting must show significant transactions that do not affect the amount for which the trustee is accountable, including name changes in investment holdings, adjustments to carrying value, a change of custodial institutions, and stock splits.
- (e) The accounting must reflect the allocation of receipts, disbursements, accruals, or allowances between income and principal when the allocation affects the interest of any beneficiary of the trust.
- (f) The trustee shall include in the final accounting a plan of distribution for any undistributed assets shown on the final accounting.

Fla. Stat. § 736.08135(2). Consistent with the Court’s earlier ruling, the Trustee has provided annual reports to KPIs which were made available to KPIs via the Trust website, including (a) balance sheets for the Trust; (b) cash and investment account balances for the Trust; (c) reports of Trust operations (excluding policy-specific activity and investor-paid servicing fees); and (d) reports of investor-paid servicing fees for the years ended December 31, 2009 through 2019. (DE#2847).<sup>10</sup>

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<sup>10</sup> These prior reports were prepared on a modified accrual basis, which may not necessarily

Those reports also reflect, on an annual basis, the compensation paid to the Trustee and Trustee's agents and to each of the professional firms engaged by the Trust. Consistent with the Court's earlier ruling, these reports were limited to the activities of "Overpayment Account" and the Trust as a whole and not an "individual accounting" of a particular investor's interest.<sup>11</sup>

In light of the sale of the remaining Keep Policies, the allocations and distributions contemplated by the Court-approved Allocation and Distribution Procedures, and the anticipated termination of the Trust upon the completion of all such distributions, the Trustee determined – notwithstanding the limitations previously clarified by this Court with regard to the Trust's accounting obligations – that it was appropriate and prudent to provide KPIs with a complete accounting of both (i) the calculation of the net proceeds, if any, and premium refunds, if any, payable to them from the sale proceeds and unused premiums, respectively; and (ii) a complete accounting of all activity in both the accounts controlled directly by the Trust, and those managed by the Servicer on behalf of the Trust. Accordingly, the Trustee has prepared the Trust Accounting in order to provide a complete accounting for the benefit of the KPIs.

The Trustee respectfully submits that the Trust Accounting fulfills the applicable accounting obligations under the Florida Statutes for the period from September 25, 2009 through March 31, 2024. The Settlement Statement and Accounting Schedules collectively:

- (a) Identify the Trust (the Mutual Benefits Keep Policy Trust), the Trustee furnishing the accounting (Barry Mukamal, as Trustee), and the time period covered by the accounting (September 25, 2009 through March 31, 2024) (§ 736.08135(2)(a));
- (b) Show all cash and property transactions and all significant transactions affecting administration during the accounting period (Schedules A-B), including compensation paid to the Trustee and Trustee's agents (Schedules E - F), and show

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reconcile with the current Trust Accounting which is presented on a cash basis of accounting.

<sup>11</sup> The Trustee subsequently made reports including the years ended December 31, 2020 and 2021 available to KPIs via the Trust website as well.

gains and losses realized during the accounting period (Schedule D) and all receipts and disbursements (Schedule A-B) (§ 736.08135(2)(b));

- (c) Value all trust assets on hand at the close of the accounting period, to the extent feasible, and known noncontingent liabilities with estimated current amounts of the liability if known (Schedule C (§ 736.08135(2)(c)); and
- (d) Include a plan of distribution for any undistributed assets shown on the final accounting (Schedule C-6, C-8) (§ 736.08135(2)(f)) (as noted in this Motion, any unclaimed death benefits held by the Trustee, to the extent the Trustee is unable to complete distributions, will be deposited with applicable governing authorities as unclaimed funds; and any undistributable sale proceeds will be applied toward Liquidation Costs in accordance with the Allocation and Distribution Procedures, all of which will be reflected in the supplemental final accounting).

The Trustee submits that subsection (d) of Fla. Stat. § 736.08135(2) (significant transactions that do not affect the amount for which the trustee is accountable) and subsection (e) allocation of receipts, disbursements, accruals or allowances between income and principal when the allocation affects the interest of a beneficiary) are inapplicable here.<sup>12</sup>

Accordingly, the Trustee requests that the Court rule that the Settlement Statement and Accounting Schedules, together with the Glossaries of Terms, constitute an accounting that adequately discloses the information required by and substantially complies with the standards set forth in Florida Statutes § 736.08135.

### **C. Compliance with Limitation Notice Provisions**

Under the Florida Trust Code, a trust may limit the time that claims may be asserted against the trust and trustee by providing beneficiaries with a “trust disclosure document” and/or “limitation notice”. The Trust Code provides:

Unless sooner barred by adjudication, consent, or limitations, a beneficiary is barred from bringing an action against a trustee for breach of trust with respect to a matter

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<sup>12</sup> The Trustee also submits that the portion of subsection (c) of Fla. Stat. § 736.08135(2) regarding “asset acquisition value or carrying value” is inapplicable or not feasible here: the Trust itself did not pay any acquisition price in connection with the Trust assets, and all of the information regarding MBC’s or KPI’s acquisition cost is not available to the Trustee.

that was adequately disclosed in a trust disclosure document unless a proceeding to assert the claim is commenced within 6 months after receipt from the trustee or a trust director of the trust disclosure document or a limitation notice that applies to that disclosure document, whichever is received later.

Fla. Stat. §736.1008(2). A “trust disclosure document” is defined to mean “a trust accounting or any other written report of the trustee.” Fla. Stat. § 736.1008(4)(c). Such a document “adequately discloses a matter if the document provides sufficient information so that a beneficiary knows of a claim or reasonably should have inquired into the existence of a claim with respect to that matter.” *Id.* A “limitation notice” means “a written statement of the trustee or a trust director that an action by a beneficiary for breach of trust based on any matter adequately disclosed in a trust disclosure document may be barred unless the action is commenced within 6 months after receipt of the trust disclosure document or receipt of a limitation notice that applies to that trust disclosure document, whichever is later.” Fla. Stat. § 736.1008(4)(a). *See, e.g., Woodward v. Woodward*, 192 So. 3d 528 (Fla. 4th DCA 2016) (when a matter is adequately disclosed in a trust disclosure document, a beneficiary must bring an action within six months after receipt); *Taplin v. Taplin*, 88 So. 3d 344 (Fla. 3d DCA 2012) (six-month limitation period applied under predecessor version of statute if beneficiary has received an accounting “fully disclosing the matter.”).

Here, the Accounting Schedules provide a robust, comprehensive accounting of both the distributions of net sale proceeds and premium refunds, if any, to each KPI through the Settlement Statements, and a complete accounting of all activities of the Trust from inception through March 31, 2024. In addition, the Trustee has already provided the annual financial reporting posted to the Trust website, as well as several Notices to Investors detailing the Trustee’s actions and the Court’s approval thereof throughout the wind-down process. The Notice to Investors which accompanies the Settlement Statement and Accounting Schedules accordingly contains the “limitation notice” language authorized by the Florida Trust Code advising trust beneficiaries:

An action for breach of trust based on matters disclosed in a trust accounting or other written report of the trustee or a trust director may be subject to a 6-month statute of limitations from the receipt of the trust accounting or other written report. If you have questions, please consult your attorney.

Fla. Stat. § 736.1008(4)(a).

Consistent with the Florida Trust Code, the Trustee respectfully requests the Court rule that any claim by a KPI relating to any matter disclosed in the Trust Accounting, or previously disclosed in the Trustee's annual financial reporting and various notices to investors, is barred if not brought within six months of the Trustee's delivery of the Trust Accounting and Notice to Investors, including without limitation: (a) the sale of the Trust's Policies, (b) the allocation of the sale proceeds, (c) the application of the Liquidation Costs to the proceeds, (d) the calculation of the amounts, if any, distributable to KPIs from the net proceeds, (e) the calculation and distribution of premium refunds, if any, to KPIs; and (f) all transactions and activities of the Trust reflected in the Trust Accounting, including without limitation the fees and expenses paid to the Trustee and the Trustee's professionals and other Liquidation Costs incurred and paid by the Trust.

The Trustee seeks this relief so that any claim which might be asserted as to any matters relating to the Trust's administration, including but not limited to those relating to the distribution of the sale proceeds, be timely asserted so that it may be addressed prior to the Trust's termination, or otherwise be barred. The Trustee will deliver the Trust Accounting simultaneously with the interim distribution and/or premium refund, if any, payable the KPIs, and to then make the final distribution after the six-month limitation period has passed, so that the Trustee may reassess, if necessary, the reserves that have been incorporated into the Trust Accounting and the timing and amount of final distributions.

**D. Anticipated Final Distributions and Final Accounting**

The Trust Accounting includes a schedule reflecting the anticipated final distributions to be made by the Trust, consisting of the remaining 50% of the net sale proceeds allocated to each investor's interest in a policy, if any. (Schedule H). Prior to final distributions, the Trustee, consistent with the Allocation and Distribution Procedures, will use any remaining Holdback (less any amounts required to be reserved for final Trust wind down and termination) to reimburse the Sale Proceeds Account for Liquidation Costs previously paid from the sale proceeds. As a result, the final distribution amount may be higher than the initial distribution amount. If there are no adjustments (upward or downward) to the estimated liquidation costs through final distribution, then each KPI receiving an interim distribution will receive a final distribution at least equal to their interim distribution.

The estimated remaining costs include, without limitation, costs of distribution of sale proceeds, professional fees for interim and final accountings, tax reporting and preparation of tax returns, Trustee insurance coverage, responses to investor inquiries, records disposal, completion of death benefit processing not previously performed by the Servicer, and other expenses anticipated through Trust termination. This is only an estimate, and the amount of such expenses may vary considerably. For instance, if any claims are asserted against the Trust or Trustee, or any other objections are raised to the Trust Accounting or otherwise, the expenses may increase considerably, and the final distribution amount may decrease. Final distributions may also have to be delayed if there are claims pending.

It is also possible that the amount of funds available for final distribution may increase, which will result in a higher distribution. As noted above, the Sale & Allocation Motion which was approved by the Sale & Allocation Order provided that if there are Unclaimed Distributions, the

Trustee may treat such Unclaimed Distributions as Trust Assets to be used to pay Trust expenses prior to the application of such expenses as Liquidation Costs in any final distribution. In that event, the amount of the Liquidation Costs offset from the sale proceeds may decrease, resulting in a higher distribution of net sale proceeds to investors.

After the six-month limitation period has passed, and assuming no claims are pending, the Trustee intends to provide a supplemental, and final, Trust Accounting for the period from March 31, 2024 through the date of final distribution, and to make final distributions consistent with the amounts reflected in Schedule H, adjusted upward or downward as appropriate as described above. The Trust Agreement provides that “This Trust Agreement shall terminate upon the final disposition of all Keep Policies, whether by maturity, sale, surrender, or lapse, and the distribution of all other Trust Assets in accordance with the terms of the Servicing Agreement.” Trust Agreement Section 8. Consistent with that provision, the Trustee requests that upon providing a final accounting and making final distributions, that the Trust be terminated and that the Trustee be discharged as Trustee and relieved of any further responsibility to the Trust or KPIs.

**E. Adequacy of Notice**

Under the Florida Trust Code, notice to a person or the sending of a document to a person “... must be accomplished in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice of document. Permissible methods of notice or for sending a document include first-class mail, personal delivery, delivery to the person’s last known place of residence or place of business, a properly directed facsimile or other electronic message, including e-mail, or posting on a secure electronic account or website in accordance with subsection (3).” Fla. Stat. § 736.0109. In order to comply with these provisions, the Trustee has engaged Stretto as noticing and distribution agent, and as detailed above, Stretto is delivering to KPIs by first-class mail or reputable



third-party carrier for foreign addresses to the address of record for each KPI as maintained by the Servicer and provided to the Trust:<sup>13</sup> (a) a printed copy of the Notice to Investors; (b) a printed copy of the KPI's Settlement Statement; (c) printed copies of Schedules A-1 and B-1 of the Accounting Schedules and Glossaries; and (d) a "flash drive" containing complete copies, in PDF format, of (i) this Motion; and (ii) a complete set of the Accounting Schedules.<sup>14</sup> The Notice to Investors contains instructions for accessing the materials on the flash drive. The Notice to Investors and Motion will also be posted to the Trust website, and the complete Accounting Schedules will be available through the investor login on the Trust website as well.<sup>15</sup> Stretto's engagement also provides for it to provide "skip tracing" services for KPIs for whom mail is returned without forwarding address in order to attempt to locate a current address.

The Trustee respectfully requests that the Court rule that such delivery constitutes "notice" for purposes of the Florida Trust Code, in that it constitutes the sending of a document in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document. *See Fla. Stat. § 736.0109(1)*. To the extent that a KPI has not maintained a current address with the Trustee and mail directed to them at their last known address is returned as undeliverable, and the Trustee despite reasonable efforts is unable to identify a valid current address, the Trustee requests

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<sup>13</sup> The Trust Agreement provides that notices to KPIs shall be made "to their respective addresses as on file with the Servicer." Trust Agreement, Section 9. To the extent that KPIs have advised the Trust or Stretto of a change in address, notices and distribution checks, if any, will be delivered to the updated address.

<sup>14</sup> The Trustee has found nothing in § 736.0109 which requires that paper, rather than electronic, copies of the documents be provided in order to constitute "notice," and indeed the statute expressly contemplates delivery by electronic message including e-mail, impliedly authorizing delivery in electronic format.

<sup>15</sup> Subsection (3) of § 736.0109, with regard to posting to an electronic account or website, has certain requirements of separate written authorization before posting on a website alone may be considered notice. The Trustee has email addresses for some but not all KPIs and is concerned that attempted delivery by email may not be effective given the size of the Trust Accounting files.

the Court determine that the KPI's location is unknown to and not reasonably ascertainable by the Trustee, and that accordingly notice is not required. *See* Fla. Stat. § 736.0109(2). For KPIs whose location is unknown to the Trustee, the Trustee requests the Court find that making the Notice to Investors and Trust Accounting available through the investor login on the Trust website constitutes adequate and sufficient notice.

**F. Unclaimed Fund and Unadministered Assets**

The Trust Accounting reflects that the Trust currently holds \$260,474.65 in funds which represent unclaimed distributions. This amount represents (i) distributions that the Servicer was responsible for making in relation to unused premiums from matured policies or investors who forfeited their fractional interest, and (ii) death benefit proceeds received for policies that matured prior to the sale of the remaining Keep Policies by the Trust, but for which the distribution checks were not negotiated and the Servicer presumably could not obtain updated contact information for the KPIs. The Trustee will attempt to obtain updated contact information for these KPIs and consummate distributions to them, and if unable to effectuate distributions, the funds will be disposed of in accordance with applicable laws regarding disposition of unclaimed property.

The Trustee anticipates that there will be additional unclaimed distributions from the interim distribution of net sale proceeds as well. In light of this expectation, the Trustee's engagement with Stretto provides for Stretto to attempt to take commercially reasonable efforts to locate current addresses for KPIs who have not processed their distribution checks. In the Sale & Allocation Motion the Trustee requested, and the Court in entering the Sale & Allocation authorized, that in the event any distribution checks remain uncashed by a KPI for a period of 90 days after issuance, or to the extent a KPI failed to complete tax or other documentation required by the Trustee before making a distribution to such KPI within 90 days after the Trust's initial distribution, and after

reasonable efforts to communicate with the KPI, obtain alternate contact information, or obtain required documentation, as applicable, have been reasonably exhausted (“Unclaimed Distributions”), the Trustee may treat such Unclaimed Distributions as Trust Assets to be used to pay Trust expenses prior to the application of such expenses as Liquidation Costs in any final distribution.

There are also certain specific Trust Assets that have not yet been fully administered by the Trust. Specifically, there are four policies for which the carriers have disputed payment of some or all of the death benefit, and six policies as of March 31, 2024 were subject to pending collection of amounts distributable from a class action lawsuit in the approximate amount of \$130,000, as detailed further in Schedule C, fn. 1 (“Unadministered Assets”). The Trustee hopes to resolve these outstanding matters during the anticipated six-month period before final distributions are to be made, and distribute any recovery on those policies to the holders of interests in those policies in their respective pro rata shares. In the event any such matters remain unresolved at the time that final distributions otherwise may be made, the Trustee intends to make final distributions to all other KPIs and provide the KPIs with a final accounting from March 31, 2024 forward. With respect to any remaining Unadministered Assets, the Trustee intends to retain sufficient reserves to complete their resolution, and to suspend termination of the Trust, solely for the purposes of preserving those particular assets and making distributions, if there is any recovery, to the investors with interests in those policies, until those matters are concluded, or alternatively may determine to abandon the Unadministered Assets if the cost of administering such assets and the likely recovery so warrant, in his exercise of business judgment.

The Florida Trust Code specifically contemplates that a trustee may include in a final accounting a plan for the distribution of any undistributed assets, and also may, upon termination of a trust, retain a reasonable reserve for the payment of debts, expenses and taxes. *See Fla. Stat. §*

736.08135(1)(f), (“The trustee shall include in the final accounting a plan of distribution for any undistributed assets shown on the final accounting.”); Fla. Stat. § 736.0817 (“Upon the occurrence of an event terminating or partially terminating a trust, the trustee shall proceed expeditiously to distribute the trust property to the persons entitled to the property, subject to the right of the trustee to retain a reasonable reserve for the payment of debts, expenses, and taxes.”). The Trustee respectfully submits that no further accounting – except with respect to those particular investors with interests in the Unadministered Assets – should be required. Upon completion of the final distributions, completion of the supplemental accounting after March 31, 2024, and resolution of these outstanding matters or abandonment of the Unadministered Assets, the Trustee will seek approval of termination of the Trust and his discharge as Trustee.

### **CONCLUSION**

For the foregoing reasons, the Trustee respectfully requests that the Court enter an Order in the form of the attached Exhibit “C”:

(a) Approving the Trust Accounting, and ruling that the Settlement Statement and Accounting Schedules, together with the Glossaries of Terms, constitute an accounting that adequately discloses the information required by and substantially complies with the standards set forth in Florida Statutes § 736.08135;

(b) Ruling that any claim by a KPI relating to any matter disclosed in the Trust Accounting, or previously disclosed in the Trustee’s annual financial reporting and various notices to investors, is barred if not brought within six months of the Trustee’s delivery of the Trust Accounting and Notice to Investors, including without limitation: (a) the sale of the Trust’s Policies, the allocation of the sale proceeds, the application of the Liquidation Costs to the proceeds, the calculation of the amounts, if any, distributable to KPIs from the net proceeds, and the calculation

and distribution of premium refunds, if any, to KPIs; and (ii) all transactions and activities of the Trust reflected in the Trust Accounting;

(c) Ruling that notice of the Trust Accounting and Limitation Notice is adequate and sufficient;

(d) Approving the Trustee's proposed disposition of Unclaimed Funds and Unclaimed Distributions as set forth in this Motion; and

(d) Providing that upon the completion of final distributions, providing a final accounting for the period after March 31, 2024, completion of the administration of any Unadministered Assets, and certification of same to the Court, the Trust shall be terminated and the Trustee shall be discharged.

**CERTIFICATION OF CONFERENCE WITH COUNSEL**

Undersigned counsel certifies that Trustee's counsel has conferred extensively with counsel for Acheron Portfolio Trust prior to the filing of this motion; because of the number of parties or non-parties who may be affected by the relief sought in the motion, it is unfeasible for the Trustee to confer with them prior to its filing.

**KOZYAK TROPIN & THROCKMORTON, LLP**

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Tel: (305) 372-1800

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By: /s/ David L. Rosendorf

David L. Rosendorf

FL Bar No. 996823

dlr@kttlaw.com

*Attorneys for Trustee*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on August 21, 2024 on counsel for all the parties by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

s/ David L. Rosendorf

David L. Rosendorf

# **EXHIBIT A**

**MUTUAL BENEFITS KEEP POLICY TRUST  
ALLOCATION AND DISTRIBUTION PROCEDURES**

The following represent the procedures to be followed by the Mutual Benefits Keep Policy Trustee in connection with (a) allocating the Purchase Price to be received by the Trustee in connection with the sale of the Keep Policies held by the Trust; (b) allocating the Liquidation Costs to be deducted from the sale proceeds after allocation; and (c) distributing the net sale proceeds, after deduction of Liquidation Costs, to the holders of investment interests in the Keep Policies.

Capitalized terms not defined herein shall have the meanings ascribed to them in the Trustee's Motion to Approve (1) Sale of Policies to Acheron Portfolio Trust; (2) Proposed Allocation and Distribution Procedures; and (3) Settlement with Acheron Capital, Ltd. ("Sale Approval Motion") and the documents attached thereto, as applicable.

**1. Initial Allocation of Sale Proceeds Among Tranche A, A-1 and B:**

In accordance with the terms of the APT APAs and the Settlement Agreement, the Purchase Price for the Acquired Assets shall be allocated among Tranche A, Tranche A-1 and Tranche B as follows:

(a) the allocation to Tranche B shall be equal to the aggregate of the last reported cash surrender value for the Tranche B Policies as of the Closing Date;

(b) the allocation between Tranche A and Tranche A-1, following the allocation to Tranche B, shall be in the same ratio as the ratio of the ratio of the Qualifying Bids submitted by Acheron Capital for Tranche A and Tranche A-1 on December 2, 2022.

As of the date of the December 8, 2022 Settlement Term Sheet, the portion of APT's \$24 million Purchase Price allocated to Tranche A is **\$15,898,123.48**, the portion allocated to Tranche A-1 is **\$5,914,190.93**, and the portion allocated Tranche B is **\$2,187,685.59**.

Proceeds from the sale of the Acquired Assets (the "Sale Proceeds") shall be allocated to a tranche of Policies based upon the respective Final Purchase Price for the Acquired Assets in such tranche pursuant to the APT APAs.

**2. Allocation of Sale Proceeds to Policies Within Each Tranche:**

Following the allocation among Tranche A, A-1 and B as set forth above, the Sale Proceeds allocable to the Policies in Tranche A, A-1 and B shall be allocated to each Policy pursuant to the allocation process set forth below (the "Allocation Process"), which will be the value allocable to each Policy (the "Policy Sale Value").

The Trustee will engage an independent, nationally recognized actuary to perform and deliver a post-sale actuarial allocation of the sale price of the policies based upon the relative value of the Policies in each Tranche, based upon the data and information available to the Trustee, including primarily the data provided to the Trustee by the Trustee's servicer, Litai Assets, LLC ("Litai")



with respect to the Policies, and such information and considerations, such as experience of mortality or attributes of parties, as are typically considered by actuaries in performing valuations of viaticated insurance policies and/or life settlement investments.

*With respect to Tranche A and A-1:*

1. Acheron will provide the Trustee with data used by its actuaries (subject to any confidentiality restrictions applicable thereto) relating to the policies in Tranche A and A-1, such as experience of mortality and attributes of parties, subject to any necessary confidentiality or non-disclosure agreements.

2. The parties agree that the Trustee can provide that data to his actuary (subject to any confidentiality restrictions applicable thereto) to assist in performing an allocation of the sale price of the policies. The Trustee and Acheron's actuaries will be directed to cooperate on the analysis of the data.

3. Within 90 days of receiving the data used by Acheron's actuary, the Trustee shall provide Acheron with the Trustee's actuary's own allocation of the sale price of the policies.

4. Within 14 days of receiving the Trustee's allocation, Acheron shall provide its comments to the Trustee's allocation.

5. The Parties shall have 21 days to discuss and attempt to agree on the allocations.

6. If at the expiration of the 21 day period, the Parties cannot agree on the allocations of all the policies, those policies on which the Parties cannot agree shall be submitted to an Umpire for resolution.

7. The Umpire shall be selected from a pool of at least three actuaries that are nationally recognized to deliver a post-sale actuarial allocation, whom the parties have identified within 90 days of the Trustee receiving the data used by Acheron's actuary.

8. The Parties shall promptly agree on the Umpire. If the Parties cannot agree, the Parties' actuaries shall select the Umpire.

9. The Umpire shall make a binding decision as to the allocation of the sale price of the policies in dispute, that are submitted to him or her, that shall be complete and fully resolve the dispute.

10. The Umpire shall render a decision within the range of allocations submitted by the Trustee and Acheron's actuaries.

11. The Parties shall split the cost of the Umpire.

### 3. Allocation of Sale Proceeds to Investment Interests.

The portion of the Policy Sale Value allocated to an investment interest in a Policy (prior to determination of the Net Investment Value pursuant to Section 4 below), whether held by a Keep Policy Investor or by an Acheron Party (“Investment Interest”) shall be based upon the percentage of the Investment Interest in such Policy relative to the face value of such Policy. For purposes of illustration only, if (a) the Policy Sale Value of Policy No. 001 in Tranche A as determined by the Allocation Process is \$150,000 and (b) the Investment Interest in Policy No. 001 is 60% of its face value, then \$90,000 (60% x \$150,000 = \$90,000) shall be allocated as the value of the Investment Interest in such Policy (the “Interest Value”).

### 4. Determination of Net Interest Value.

Subject to Acheron’s rights as set forth in Section 9 of the Settlement Agreement, the Trustee shall charge costs of liquidating the Trust against the Policy Sale Value allocable to the Policies in the manner described in this Section 4. Liquidation costs include, without limitation, broker’s fees, Stalking Horse Break Fees, accrued and unpaid professional fees, Seller’s Security Intermediary fees, repayment of the Trust’s line of credit, actuary fees, costs of distribution of Sale Proceeds, fees for calculation of premium refunds, fees for interim and final accounting, tax reporting and tax returns, back-up servicer termination fees, litigation expenses and reserves, and other miscellaneous operating expenses (collectively, “Liquidation Costs”), provided, however, that Liquidation Costs shall not include any life insurance premium or cost of insurance, fee or other charge paid or payable by the Trust, whether from the assets of the Trust or by draw on the Trust’s line of credit, for the direct benefit of a Keep Policy Investor (“Investor Advance”) that is repaid or reimbursed from amounts otherwise distributable by the Trust to such Keep Policy Investor. Prior to making a distribution of funds to a Keep Policy Investor who has received an unpaid Investor Advance, the Trustee shall or, if applicable, shall instruct the Person or Persons making such distribution to set off and recoup the unpaid amount of the Investor Advance against the amount of the distribution, provided, however, that in no event may the amount of the set off exceed the amount of the distribution.

- a. Liquidation Costs shall be paid to the extent practicable from the assets of the Trust (other than Sale Proceeds) (the “Non-Sale Assets”).
- b. Fees of Seller’s Securities Intermediary that are charged on a per Policy basis and are not paid by Non-Sale Assets, to the extent reasonably calculable and allocable on a per-policy basis (“S.I. Per Policy Costs”) shall be charged as a Liquidation Cost to the Policy that generated the cost or fee.
- c. The Stalking Horse Break Fees for Tranche A and Tranche A-1 shall be allocated to each such tranche based on the amount of the Stalking Horse Break Fees set forth in the respective Stalking Horse APA for each such tranche.
- d. Except for S.I. Per Policy Costs and Stalking Horse Break Fees, Liquidation Costs shall be allocated on a tranche by tranche basis relative to the Final Purchase Price for the Policies in such tranche. For purposes of illustration only, if the respective Final Purchase Price for Tranches A, A-1 and B is \$15 million (75% of total Sale

Proceeds), \$3 million (15% of total Sale Proceeds) and \$2 million (10% of total Sale Proceeds), and (after exhaustion of Non-Sale Assets) total unpaid Liquidation Costs, except for unpaid S.I. Per Policy Costs, equals \$4.5 million, then (i) \$3.375 million of such Liquidation Costs shall be allocated to Tranche A (75% x \$4.5 million = \$3.375 million), (ii) \$675,000 of such Liquidation Costs shall be allocated to Tranche A-1 (15% x \$4.5 million = \$675,000) and (iii) \$450,000 of such Liquidation Costs shall be allocated to Tranche B (10% x \$4.5 million = \$450,000);

- e. The Liquidation Costs, except for S.I. Per Policy Costs and Stalking Horse Break Fees, shall then be allocated among the Policies in each tranche proportionately based upon the value allocated to a Policy as determined by the Allocation Process relative to the total Sale Proceeds allocated to such tranche, and thereafter S.I. Per Policy Costs shall be added on a Policy by Policy basis. For purposes of illustration only, if Policy No. 001 in Tranche A has a value of \$150,000 pursuant to the Allocation Process and represents 1% of the total value of all Policies in Tranche A (i.e., \$15 million), total Liquidation Costs, except for S.I. Per Policy Costs, allocable to the Policies in Tranche A are \$3.75 million, and the S.I. Per Policy Cost for Seller's Securities Intermediary with respect to Policy No. 001 is \$250, then a total of \$37,750 of Liquidation Costs (1% x \$3.75 million = \$37,500 + \$250 = \$37,750), shall be charged against Policy No. 001. The intention of the parties is that all S.I. Per Policy Costs that are not paid out of Non-Sale Assets, whether the Policy is in Tranche A-1, Tranche A or Tranche B shall be a Liquidation Cost charged to the specific Policy that generated such fee. However, no Policy shall be allocated a negative value as a result of the foregoing allocation process. To the extent a Policy would be allocated a negative value as a result of the foregoing allocation process, such Policy shall be allocated a value of \$0, and the remaining Liquidation Costs that would otherwise be allocated to such Policy shall be reallocated to the other Policies in the same tranche on a *pro rata* basis based on the values allocated to such Policies.
- f. Liquidation Costs allocated to a Policy shall then be allocated to the Acheron Interest in such Policy based upon the percentage of the Investment Interest relative to the face value of such Policy (the "Interest Liquidation Cost"). For purposes of illustration only, if (a) an Investment Interest in Policy No. 001 is 60% of its face value and (b) the total Liquidation Costs allocated to the Policy No. 001 are \$37,750, then the Interest Liquidation Cost for Policy No. 001 is \$22,650 (60% x \$37,500 = \$22,650).
- g. The Interest Liquidation Cost allocable to each Policy shall then be deducted from the Interest Value allocated to such Policy to determine the net Interest Value for such Policy (the "Net Interest Value"). For purposes of illustration only, if (a) the Interest Value allocated to Policy No. 001 is \$90,000 (60% of \$150,000) and the Interest Liquidation Cost allocated to the Acheron Interest in Policy No. 001 is \$22,650, then the Net Interest Value for Policy No. 001 is \$67,350 (\$90,000 - \$22,650 = \$67,350).

**5. Distribution of Net Interest Value.**

The Trustee shall use reasonable efforts consistent with his fiduciary duties to complete the liquidation of the Trust and distribute all net proceeds from the Sale Proceeds, as expeditiously as reasonably possible. Distributions of the Net Interest Value to the Acheron Parties shall be made at the same time as the distributions to Keep Policy Investors of the Net Interest Value allocable to their interests.

The Trustee may make one or more interim distributions of the Net Interest Value to the holders of Investment Interests. Distributions will be made to the name of and at the address indicated in the records maintained by the Trust's servicer, Litai, based on the information provided to the Trust by Litai. Distributions, whether interim or final, shall be made to the Keep Policy Investors at substantially the same time that distributions are made to the Acheron Parties.

Under applicable IRS regulations, disbursements to foreign investors may require submission of certain tax forms and may be subject to required withholding. The Trustee will obtain quotations from third party service providers and use reasonable discretion in retention of a service provider for this purpose.

The Trustee, upon making the initial distribution of the net sale proceeds, will return any unused premium paid by Keep Policy Investors (or the Acheron Parties), and which is held by the Trustee or the Trustee's servicer, Litai, based on an accounting of such premium payments to be provided by Litai, which has agreed to provide the final calculations of premiums not remitted to carriers for the final calculation of unused premiums by policy and by investor.

To the extent any distribution checks remain uncashed by a Keep Policy Investor for a period of 90 days after issuance, or to the extent a Keep Policy Investor fails to complete tax or other documentation required by the Trustee before making a distribution to such Keep Policy Investor within 90 days after the Trust's initial distribution of Net Interest Value, and after reasonable efforts to communicate with the Keep Policy Investor, obtain alternate contact information, or obtain required documentation, as applicable, have been exhausted ("Unclaimed Distributions"), the Trustee may treat such Unclaimed Distributions as Trust Assets to be used to pay Trust expenses prior to the application of such expenses as Liquidation Costs in any final distribution.

# **EXHIBIT B**

EXHIBIT "B"

**MUTUAL BENEFITS KEEP POLICY TRUST  
NOTICE TO KEEP POLICY INVESTORS REGARDING  
INITIAL DISTRIBUTION OF NET SALE PROCEEDS  
AUGUST 2024**

The Trustee provides this notice as an update and supplement to all prior notices and disclosures previously provided to investors. Many, but not all, investors will receive a disbursement check along with this notice of net sale proceeds from the sale of the Trust's remaining Keep Policies and/or refunds of certain premium payments, as discussed further below. With this notice, you are also being provided with a Trust Accounting for the **Mutual Benefits Keep Policy Trust**, prepared by **Barry Mukamal, as Trustee**, for the period from the inception of the Trust on **September 25, 2009 through March 31, 2024**, and a copy of the Trustee's Motion to Approve Trust Accounting filed with the Court. **Please be advised that this notice contains a "Limitation Notice" explained further below.**

**BRIEF OVERVIEW OF EVENTS**

- The Mutual Benefits Keep Policy Trust ("Trust") was formed to maintain and administer the policies originally owned by Mutual Benefits Corporation and designated by investors to be retained as "Keep Policies" until the Trust was no longer feasible to operate. The Trustee was not empowered to actively manage the Keep Policies or make decisions as to which policies should be retained or surrendered.
- In March 2023, the District Court approved (a) the sale of the remaining Keep Policies; and (b) a process for allocating the sale proceeds among the Keep Policies, applying the expenses of the Trust, and distributing the net proceeds to Keep Policy Investors. The sale closed on March 29, 2023 for \$24 million in gross proceeds.
- The Court-approved processes for allocating the sale proceeds and the expenses were completed. Distributions to Keep Policy Investors are based on the actuarial allocation of sale proceeds, not on the face value of the policy or the amount invested – as discussed further in the Policy Valuation section below.
- The Trustee is now making an initial 50% distribution of net proceeds to those Keep Policy Investors receiving distributions together with any applicable premium refunds. Unfortunately, not all Keep Policy Investors will receive distributions as some policies were allocated little or no value by the third-party actuarial firm engaged to estimate policy values. This is discussed further in the Policy Valuation section below.
- The Trustee plans to make a final distribution approximately six months after the initial distribution.

**INFORMATION PROVIDED WITH THIS NOTICE**

- Policy-Level Investor Settlement Statement – This statement, which was prepared for all policy interests in policies that were sold in the auction, reflects each investor's distributable share, if

NOTICE TO KEEP POLICY INVESTORS REGARDING DISTRIBUTION OF NET SALE PROCEEDS  
AUGUST 2024

Page 2 of 5

any, of policy level net sale proceeds<sup>1</sup> and premium refunds<sup>2</sup> payable to each investor and the historical policy-level activity from the Trust's inception in 2009 through the December 23, 2023 policy sale date.

- Frequently Asked Questions – these questions are the same as appears on the [www.mbckeeptrust.com](http://www.mbckeeptrust.com) website. The website FAQ's may be updated from time to time after the release of this Notice.
  
- Schedule A (Summary of Net Cash Flows in Accounts Administered by the Servicer) and Schedule B (Summary of Net Cash Flows in Accounts Administered by the Trust) of the Trust Accounting, which summarize the accounting information for all Trust accounts from the inception of the Trust through March 31, 2024.
  
- USB (flash) Drive<sup>3</sup> with the complete Trust Accounting for all Trust accounts as summarized in Schedule A and B from the September 25, 2009 inception of the Trust through March 31, 2024:
  - o Servicer Accounts Schedules A-1 through A-8 –these schedules report the activities of all Trust accounts which were maintained by Litai Assets, LLC (“Litai” or “Servicer”) and includes all premium accounts and all death benefit accounts in addition to the other accounts maintained by Litai.
  - o Trust Accounts Schedules B-1 through B-6–these schedules report the activities of all Trust accounts maintained by the Trustee which did not include any investor funds (e.g. – premium accounts or death benefit accounts) and which were used primarily to fund the Trust's operating expenses.
  - o Schedules C and C-1 through C-8 – these schedules reconcile the amounts available in the Trust's Accounts to the amounts being distributed in the Trustee's initial distribution and anticipated to be distributed in the final distribution.
  - o Schedules D through I – these schedules report the Gains & Losses on Trust investment activity (D); the Trustee Fees paid by the Trust (E); the Professional Fees of the Trustee's professionals paid by the Trust (F); and the Estimated Final Distribution (I).
  - o Trustee's Motion to Approve Trust Accounting, Limitation Notice, and Discharge of Trustee Upon Completion of Final Distributions and Final Accounting

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<sup>1</sup> Some policies were found to have had little or no value by the third party actuarial firm engaged by Trust pursuant to the Court-Approved Trust Wind-Down process. Policy valuation is discussed further below.

<sup>2</sup> Premium refunds are policy and investor specific funds paid to the Trust by investors that had not been remitted to carriers as of the policy sale date, hence those amounts are refunded to applicable investors.

<sup>3</sup> These documents, which are in PDF format, may be accessed by inserting the USB Drive into the USB port on any computer. The free Adobe Acrobat Reader program may be downloaded at [get.adobe.com/reader](http://get.adobe.com/reader). The documents are also available through the investor login section of the Trust's website at <https://investors.mbkpt.com/login>. You may obtain instructions for printing copies from Stretto at the contact information provided below.



NOTICE TO KEEP POLICY INVESTORS REGARDING DISTRIBUTION OF NET SALE PROCEEDS  
AUGUST 2024

Page 3 of 5

### **POLICY VALUATION**

Upon reviewing the accompanying Policy-Level Investor Settlement Statement and applicable disbursement amounts, many investors may want to know how the policy valuations were determined. The Trustee is aware that a number of policies in the portfolio were determined to have little or no value. The Court-approved allocation process consisted of the following:

- The Trustee engaged an independent, nationally recognized actuary (“Actuarial Firm”) which performed and delivered a post-sale actuarial allocation of the sale price of the policies based upon the relative value of the policies in each Tranche.<sup>4</sup>
- The policy portfolio purchaser, Acheron Portfolio Trust (“APT”), which also holds in excess of 60% of the investment interests in the Keep Policies, engaged a separate independent, nationally recognized actuary which also performed and delivered its own actuarial allocation of the sale price of the policies based upon the relative value of the policies in each Tranche.
- If there was a disagreement with APT regarding the policy allocations, there was a procedure to address any such disagreements within a specified timeframe. Upon reviewing the report issued by the Actuarial Firm, APT did not express any disagreement with the findings in that report.
- Some policies have minimal, or no, net value based on the actuarial allocation and the application of liquidation and administrative costs.
- Investors should bear in mind that not all life insurance policies have investment value to a buyer of a viatical or life settlement – the future value of the expected premium payments over the expected remaining lifespan of the insured, at an appropriate discount rate, must not exceed the future value of the policy’s death benefit, discounted at the same rate. In these cases where the present value of the policy premium payment outflows was equal to or greater than the future value of the policy death benefits benefit inflow, no sale proceeds were allocated to such policies.

The process used by the Actuarial Firm to arrive at the policy valuations involved an assessment of all the factors that impact the market value of policies. Note that there is no situation in which a policy’s *market* value would ever be equal to a policy’s *face* value. Factors impacting the market value of policies include: the policy face value, the policy type (e.g. – universal life, whole life, term life), the insured’s

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<sup>4</sup> The actuarial allocation was based upon the data and information available to the Trustee, primarily including the data previously provided to the Trustee by Litai with respect to the policies, and such information and considerations, such as experience of mortality or attributes of parties, as are typically considered by actuaries in performing valuations of viaticated insurance policies and/or life settlement investments.



NOTICE TO KEEP POLICY INVESTORS REGARDING DISTRIBUTION OF NET SALE PROCEEDS  
AUGUST 2024

Page 4 of 5

age, the insured's gender, the insured's health status (if known), the policy final expiration date, the anticipated premiums to be paid on the policy through its expiration,<sup>5</sup> and the insured's life expectancy as determined by a qualified life expectancy firm (if available).

The Trust Agreement, which was primarily drafted by the Receiver's team and approved by the Court in 2009, did not grant the Trustee any authority to actively manage the policies owned by the Trust.<sup>6</sup> Rather, the Court-approved Trust Agreement mandated that the Trustee maintain and preserve the policies only without any consideration of asset management, until the continued operation of the Trust became unfeasible. As a result, the Trustee did not have the discretion to seek to sell or surrender policies rather than maintain and preserve them.

Further, it is the Trustee's understanding that the Mutual Benefits Corporation did not employ a particular process when assigning investors to particular policies. Instead, MBC's policy selection process was largely random resulting in investors being placed into higher or lower value policies without any criteria for which policy or policies investor funds were allocated.

The combination of the Trustee's limited management capacity along with the randomness with which MBC assigned investors to policies resulted in a number of investors recovering very little, and in some cases none, of their invested funds. However disappointing and upsetting this may be for such investors, the Trustee also must remind investors that all steps in the formation, operation and wind-down of the Trust have been approved by the Court.

**LIMITATION NOTICE** Under the Florida Trust Code, a trustee may provide a "Trust Disclosure Document," which means a Trust Accounting or any other written report of the Trustee, and may provide a "Limitation Notice," which means a written statement of the Trustee that an action by a beneficiary for breach of trust based on any matter adequately disclosed in a Trust Disclosure Document may be barred unless the action is commenced within 6 months after receipt of the Trust Disclosure Document or receipt of a Limitation Notice that applies to the Trust Disclosure Document. This Notice and the enclosed documents, including the Trust Accounting and the Motion to Approve Trust Accounting, are Trust Disclosure Documents and are subject to this Limitation Notice:

**Please be advised that an action for breach of trust based on matters disclosed in a trust accounting or other written report of the trustee or a trust director may be subject to a 6-month statute of limitations from the receipt of the trust accounting or other written report. If you have questions, please consult your attorney.**

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<sup>5</sup> The future value of the expected premium payments over the expected remaining lifespan of the insured, at an appropriate discount rate, must not exceed the future value of the policy's death benefit, discounted at the same rate. In such cases, the policy was found to have no value.

<sup>6</sup> The Trust was anticipated to operate for only 3 to 5 years when it was formed. However, the Trust operated for just over 14 years.

NOTICE TO KEEP POLICY INVESTORS REGARDING DISTRIBUTION OF NET SALE PROCEEDS  
AUGUST 2024

Page 5 of 5

If you wish to contact the Trustee regarding this notice, please use the following contact information, which has been updated from prior communications with you.

Email: [mbkpt@longevityaa.com](mailto:mbkpt@longevityaa.com)

Mailing Address:

Stretto

Attn: Mutual Benefits Processing Dept

410 Exchange

Ste 100

Irvine, CA 92602

You may also call **305-728-2985**. Calls will be received and answered between 9am-5pm Eastern Standard Time Monday through Friday.

# **EXHIBIT C**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
Miami Division**

CASE NO. 04-60573-CIV-MORENO/STRAUSS

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

MUTUAL BENEFITS CORP., *et al*,

Defendants.

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**ORDER GRANTING TRUSTEE'S MOTION TO  
APPROVE INTERIM TRUST ACCOUNTING, LIMITATION NOTICE,  
AND DISCHARGE OF TRUSTEE UPON COMPLETION  
OF FINAL ACCOUNTING AND FINAL DISTRIBUTIONS**

On August \_\_\_, 2024, the Trustee filed his *Trustee's Motion to Approve Interim Trust Accounting, Limitation Notice, and Discharge of Trustee Upon Completion of Final Accounting and Final Distributions* (DE# \_\_). The Court, having considered the Motion, the filings in support thereof, relevant authorities, and the record in this case, and being otherwise fully advised in the premises, it is –

**ORDERED and ADJUDGED** as follows:

1. The Settlement Statement and Accounting Schedules, together with the Glossaries of Terms,<sup>1</sup> constitute an accounting with respect to the period from the September 25, 2009 inception of the Trust through March 31, 2024 that adequately discloses the information required by and substantially complies with the standards set forth in Florida Statutes § 736.08135.

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<sup>1</sup> Capitalized terms not otherwise defined shall the meanings given to them in the Motion.

2. Any claim by a Keep Policy Investor (“KPI”) relating to any matter disclosed in the Trust Accounting, or previously disclosed in the Trustee’s annual financial reporting and various notices to investors, is barred if not brought within six months of the Trustee’s delivery of the Trust Accounting and Notice to Investors, including without limitation: (a) the sale of the Trust’s Policies, (b) the allocation of the sale proceeds, (c) the application of the Liquidation Costs to the proceeds, (d) the calculation of the amounts, if any, distributable to KPIs from the net proceeds, (e) the calculation and distribution of premium refunds, if any, to KPIs; and (f) all transactions and activities of the Trust reflected in the Trust Accounting, including without limitation the fees and expenses paid to the Trustee and the Trustee’s professionals and other Liquidation Costs incurred and paid by the Trust.

3. The manner of delivery of the Trust Accounting and related documents described in the Motion constitutes “notice” for purposes of the Florida Trust Code, in that it constitutes the sending of a document in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document. *See* Fla. Stat. § 736.0109(1). To the extent that a KPI has not maintained a current address with the Trustee and mail directed to them at their last known address is returned as undeliverable, and the Trustee despite reasonable efforts is unable to identify a valid current address, the Court determines that the KPI’s location is unknown to and not reasonably ascertainable by the Trustee, and that accordingly notice is not required. *See* Fla. Stat. § 736.0109(2). For KPIs whose location is unknown to the Trustee, the Court finds that the Trustee making the Notice to Investors and Trust Accounting available through the investor login on the Trust website constitutes adequate and sufficient notice.

4. The Court approves of the Trustee’s proposed disposition of Unclaimed Funds and Unclaimed Distributions as set forth in this Motion.

5. Upon the Trustee's completion of final distributions, provision of a final accounting for the period after March 31, 2024, completion of the administration or abandonment of any Unadministered Assets, and certification of same to the Court, the Trust may be terminated and the Trustee shall be discharged.

**DONE AND ORDERED** in Chambers at Miami, Florida this \_\_\_\_ day of August, 2024.

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FEDERICO A. MORENO  
UNITED STATES DISTRICT JUDGE