

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
(Palm Beach Division)

Case No. 9:19-CV-80633-ROSENBERG

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

NATURAL DIAMONDS INVESTMENT CO.,
et al.,

Defendants,

H.S. MANAGEMENT GROUP LLC, et al.,

Relief Defendants.

**RECEIVER'S UNOPPOSED MOTION TO APPROVE SETTLEMENT WITH
FROEHLICH & DE LA RUA CPA FIRM, LLC, BEATRIZ DE LA RUA, AND
JOHN F. FROEHLICH AND INCORPORATED MEMORANDUM OF LAW**

Jeffrey C. Schneider, not individually, but solely in his capacity as the Court-Appointed Receiver (the "Receiver") for Natural Diamonds Investment Co., Eagle Financial Diamond Group, Inc., and Argyle Coin, LLC (collectively, the "Receivership Entities") in the above-captioned civil enforcement action (the "SEC Action"), files this *Motion to Approve Settlement with Froehlich & de la Rua CPA Firm, LLC, Beatriz de la Rua and John F. Froehlich, and Incorporated Memorandum of Law* (the "Motion").

I.

Introduction

On May 16, 2019, this Court entered the Order Granting Plaintiff Securities and Exchange Commission's Motion for Appointment of Receiver (the "Receivership Order"). In that Receivership Order, the Court authorized the Receiver to bring legal actions and to pursue claims

and demands to both marshal the assets of the Receivership Estate and to maximize recovery for victims of the fraudulent scheme set forth in the SEC Action. (*See, e.g.*, Receivership Order at 3-4.) As part of his duties, the Receiver served a formal demand to Froehlich & de la Rúa CPA Firm, LLC, Beatriz de la Rúa and John F. Froehlich (the “Accountants”), the former accountants for the Receivership Entities, advising of his intent to pursue claims related to professional negligence and breach of fiduciary duty related to the accounting work done for the Receivership Entities prior to their resignation in 2018, and demanded a payment for policy limits. Upon receipt of the demand, the Accountants took the demand quite seriously and, although advising that they denied liability and would assert numerous defenses, agreed to participate in presuit settlement negotiations.

The Receiver is pleased to report that, after several months of negotiations and an exchange of information and documentation between the parties, the Receiver and the Accountants have settled their claims in exchange for a payment by the Accountants to the Receiver for Seven Hundred Fifty Thousand Dollars (\$750,000.00) (the “Settlement Amount”) in exchange for a release and subject to the approval of this Court.

The precise terms of the settlement are more fully set forth in the settlement agreement attached to this Motion as Exhibit A (the “Settlement Agreement”). Defined terms used but not defined in this Motion have the meaning ascribed to them in the Settlement Agreement.

II. **Background**

A. Commencement of the SEC Action and Appointment of the Receiver

On May 13, 2019, the Securities and Exchange Commission (“SEC”) filed a complaint [D.E. 1] in this Court against the Receivership Entities, their principals, and related parties alleging violations of the federal securities laws. Along with the Complaint, the SEC requested that the Court enter a temporary restraining order and a preliminary injunction preventing the

receivership defendants from, among other things, transferring or otherwise utilizing their assets. On May 14, 2019, the Court granted the SEC's Emergency *Ex Parte* Motion and Memorandum of Law for Temporary Restraining Order, Asset Freeze and Other Relief [D.E. 12]. On May 16, 2019, the Court entered the Receivership Order [DE 20].

B. General Terms and Conditions of the Settlement

The Receiver believes the terms of this settlement are in the best interest of the Receivership Estate. The Accountants will pay \$750,000.00 to the Receiver in full settlement of the claims the Receiver could and would have brought against the Accountants and in exchange for the execution of mutual releases. The Accountants had insurance coverage in the amount of \$1 million for the types of claims that the Receiver intended to bring. Thus, the Settlement Amount is a very good result, given the amount of coverage available for the Receiver's claims. The Settlement Amount will be added to the funds maintained by the Receiver to be used for general receivership administration, but importantly, for distribution to the victims of the Receivership Entities. As the Court is aware, the Receiver is currently administering a claims procedure wherein victims and creditors are submitting their claims for consideration. The Receiver has set a deadline of September 30, 2021 for those claims to be submitted, after which time the Receiver will evaluate those claims and file additional motions and objections as necessary in this Court regarding the use and proposed distribution to victims and creditors. The Settlement Amount will thus substantially benefit the Receivership Estate and provide significant value for victims.

C. Memorandum of Law

"A district court has broad powers and wide discretion to determine relief in an equity receivership." *SEC. v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992). In such an action, a district court has the power to approve a settlement that is fair, adequate and reasonable, and is the product of good faith after an adequate investigation by the receiver. *See Sterling v. Steward*, 158 F.3d

1199 (11th Cir. 1998). “Determining the fairness of the settlement is left to the sound discretion of the trial court and *we will not overturn the court’s decision absent a clear showing of abuse of that discretion.*” *Id.* at 1202 (quoting *Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984) (emphasis supplied)).

To approve a settlement in an equity receivership, a district court must find the settlement is fair, adequate and reasonable, and is not the product of collusion between the parties. *See Sterling*, 158 F.3d at 1203. To determine whether the settlement is fair, the court should examine the following factors: “(1) the likelihood of success; (2) the range of possible [recovery]; (3) the point on or below the range of [recovery] at which settlement is fair, adequate and reasonable; (4) the complexity, expense and duration of litigation; (5) the substance and amount of opposition to the settlement; and (6) the stage of proceedings at which the settlement was achieved.” *Id.* at 1203 n.6 (citing *Bennett*, 737 F.2d at 986).

Upon due consideration of these governing factors, the Settlement Agreement should be approved. Before entering into the Settlement Agreement, the Receiver and his counsel carefully considered and dutifully investigated, analyzed, and evaluated the likelihood of success of his claims against the Accountants, including anticipated defenses related to standing and statute of limitations, among others. The Receiver also considered the delay and expense of prosecution of such claims, given the limited resources of the Receivership Estate; the uncertainty of outcome in any such litigation; and the possibility of appeal of any adverse outcome.

The Settlement Agreement was executed after extensive, arm’s length negotiations conducted between the Parties and their experienced counsel in good faith. It was, of course, not the product of collusion. *See Hemphill v. San Diego Ass’n of Realtors, Inc.*, 225 F.R.D. 616, 621 (S.D. Cal. 2004) (“[T]he courts respect the integrity of counsel and presume the absence of fraud

or collusion in negotiating the settlement[.]”). The proposed settlement marks the culmination of extended informal negotiation efforts and is reflected in the Settlement Agreement and this Motion.

Such a recovery is undoubtedly well within the range of reasonableness and will benefit of *all* investors and other stakeholders and creditors. The Settlement Agreement, therefore, provides a substantial benefit to the Receivership Entities and all of their investors and other creditors. Accordingly, the Settlement Agreement is fair, adequate and reasonable, not the product of collusion, and should be approved, and the proposed disbursement authorized.

III.
Conclusion

WHEREFORE, the Receiver respectfully requests that the Court grant this Motion and enter the proposed Approval Order attached to this Motion as Exhibit B.

Local Rule 7.1 Certification of Counsel

Pursuant to Local Rule 7.1, undersigned counsel has conferred with counsel for the SEC and the SEC does not object to this Motion or the relief sought herein.

Dated: July 6, 2021

Respectfully submitted,

**LEVINE KELLOGG LEHMAN
SCHNEIDER + GROSSMAN LLP**
Counsel for the Receiver
201 South Biscayne Boulevard, 22nd Floor
Miami, Florida 33131
Telephone: (305) 403-8788
Facsimile: (305) 403-8789

By: */s/ Stephanie Reed Traband*
STEPHANIE REED TRABAND
Florida Bar No. 0158471
Primary: srt@klsg.com
Secondary: ar@klsg.com

CERTIFICATE OF SERVICE

I hereby certify that on July 6, 2021, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who do not receive such.

By: /s/ Stephanie Reed Traband
Stephanie Reed Traband

SERVICE LIST

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Jose Aman, pro se

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EXHIBIT A

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made and entered into by and among Jeffrey C. Schneider, the court-appointed Receiver (“Receiver”) for the Receivership Entities,¹ and Froehlich & De La Rua CPA Firm, LLC, Beatriz De La Rua, and John F. Froehlich (collectively, “Froehlich & De La Rua”). The Receiver and Froehlich & De La Rua may be referred to individually as “Party” and collectively as “Parties.”

RECITALS

WHEREAS, the Receiver was appointed by the United States District Court for the Southern District of Florida in *United States Securities and Exchange Commission v. Natural Diamonds Investment Co., Eagle Financial Diamond Group, Inc., and Argyle Coin, LLC*, Case No. 19-cv-80633-Rosenberg (the “SEC Action”) as Receiver for the Receivership Entities.

WHEREAS, Froehlich & De La Rua provided accounting services to the Receivership Entities prior to the commencement of the SEC Action which Froehlich & De La Rua chose to terminate.

WHEREAS, Twin City Fire Insurance Company (the “Insurer”) issued an Accountants Professional Liability Insurance Policy to Froehlich & De La Rua.

WHEREAS, after diligently investigating potential claims to be brought against Froehlich & De La Rua, the Receiver sent a pre-suit demand to Froehlich in which he asserted that he intended to bring claims for negligence and breach of fiduciary duty.

WHEREAS, Froehlich & De La Rua deny all liability, unlawful or wrongful conduct and all other negative inferences alleged by the Receiver, but the Parties nonetheless have concluded that it is their best interests to avoid further litigation by settling their disagreements and disputes on the terms set forth herein.

WHEREAS, pursuant to the terms of this Agreement, the Parties intend to fully and completely settle all claims, controversies, and liabilities that could have been brought in a lawsuit.

NOW, THEREFORE, the Parties hereby agree to the following terms and conditions:

1. **Recitals**. The foregoing recitals are confirmed by the Parties as true and correct, and they are incorporated herein by reference. The recitals are a substantive and contractual part of this Agreement.
2. **Obligations of the Receiver:**
 - a. **Release by the Receiver**. Effective upon receipt of the full Settlement Amount, the Receiver, on behalf of the Receivership Entities and their

¹ The Receivership Entities are Natural Diamonds Investment Co., Eagle Financial Diamond Group, Inc., and Argyle Coin, LLC.

respective predecessors, successors, assigns, agents, attorneys, and representatives, principals, managers, employees, shareholders, officers, directors, heirs, executors, administrators, personal representatives, beneficiaries jointly and severally, shall not assert or cause to be asserted, forever release and acquit, forever discharge and waive, and shall forever be deemed to have released, acquitted, discharged, and waived, any and all claims, counterclaims, avoidance actions, demands, debts, liabilities, damages, agreements, covenants, suits, contracts, obligations, accounts, costs (including attorneys' fees and costs), offsets, rights, actions, and causes of action, whether arising at law or in equity, whether presently accrued or to accrue hereafter, whether fixed or contingent, whether liquidated or unliquidated, whether direct, indirect, or derivative, including without limitation all claims against Froehlich & De La Rua and their predecessors, successors, agents, attorneys, representatives, shareholders, officers, directors, employees, principals, managers, heirs, executors, administrators, personal representatives, beneficiaries and insurers jointly and severally, from the beginning of time and heretofore or hereafter possessed relating to this Agreement.

- b. Non-disparagement. The Receiver, on behalf of the Receivership Entities, effective upon receipt of the full Settlement Amount, agrees that they shall not at any time engage in any form of conduct, or make any statements or representations, whether in writing or orally, that disparage, defame, or otherwise impair the reputation, goodwill, or commercial interests of Froehlich & De La Rua or their predecessors, successors, assigns, agents, attorneys, and representatives, principals, managers, shareholders, officers, directors, heirs, executors, administrators, personal representatives, beneficiaries and insurers. This provision shall not preclude the Receiver from filing reports with the Court that announce the settlement memorialized herein and note that it is a good settlement for the investors.

3. **Obligations of Froehlich & De La Rua:**

- a. Settlement Payment. In consideration for the Receiver's promises and covenants contained herein, Froehlich & De La Rua agree to pay "Jeffrey C. Schneider, Esq., Receiver" (the "Payee") seven hundred and fifty thousand dollars (\$750,000.00) (the "Settlement Amount"), which shall be paid solely by the insurance carrier.
- b. Release by Froehlich & De La Rua. Except as otherwise provided in this Agreement and effective immediately, Froehlich & De La Rua and their respective predecessors, successors, assigns, agents, attorneys, and representatives, principals, managers, shareholders, officers, directors, heirs, executors, administrators, personal representatives, beneficiaries and insurers jointly and severally, shall not assert or cause to be asserted, forever release and acquit, forever discharge and waive, and shall forever be

deemed to have released, acquitted, discharged, and waived, any and all claims, counterclaims, avoidance actions, demands, debts, liabilities, damages, agreements, covenants, suits, contracts, obligations, accounts, costs (including attorneys' fees and costs), offsets, rights, actions, and causes of action, whether arising at law or in equity, whether presently accrued or to accrue hereafter, whether fixed or contingent, whether liquidated or unliquidated, whether direct, indirect, or derivative, including without limitation all claims against the Receiver and his predecessors, successors, agents, attorneys, representatives, shareholders, officers, directors, and employees, jointly and severally, from the beginning of time and heretofore or hereafter possessed relating to this Agreement.

- c. Non-disparagement. Froehlich & De La Rua agree that they shall not at any time engage in any form of conduct, or make any statements or representations, whether in writing or orally, that disparage, defame, or otherwise impair the reputation, goodwill, or commercial interests of the Receiver or his agents, successors, and assigns, or the Receivership Entities.
4. Timing of Payment and Court Approval. The parties acknowledge that their settlement requires the approval of the court in the SEC Action. Within five (5) business days of the execution of this Settlement Agreement by the Parties, the Receiver shall submit to the Court in the SEC Action motion papers seeking approval of the parties' settlement. The Settlement Amount shall be paid no later than twenty-one (21) days after the order in the SEC Action approving this settlement becomes final.
5. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the Parties and supersedes any and all prior oral and written agreements and understandings. No representation, warranty, condition, understanding, or agreement of any kind with respect to the subject matter shall be relied upon by them except those contained herein.
6. Modification. No provision of this Agreement may be waived, amended, or modified in any respect whatsoever, except by written agreement signed by the Parties or through an order of the Court.
7. Severability. If any provision of this Agreement is held to be invalid, void, or unenforceable, all other provisions of this Agreement nevertheless will remain in full force and effect.
8. Full Authority. The Parties represent that they have full authority to enter into this Agreement, and that they are competent and over the age of majority.
9. Terms Read and Understood. Each Party represents that he/she/it has carefully read and fully understand the terms, conditions, legal effects, and intent of this Agreement, and that he/she/it has had the opportunity to consult with independent

legal counsel. Each Party acknowledges that he/she/it received a copy of this Agreement before signing it, and that he/she/it understands that every provision of this Agreement is contractual and legally binding.

10. **No Duress.** Each Party agrees to sign this Agreement at his/her/its own voluntary act and deed, and further represents that such execution was not the result of any duress, coercion, or undue influence.
11. **No Admissions.** The Parties acknowledge and agree that this Agreement is a compromise settlement of disputed claims, and that the sums and covenants given in consideration of this Agreement, as well as the execution of this Agreement and the actions taken pursuant to this Agreement, shall not be construed to be an admission of fault or liability whatsoever on the part of any Party of any violation of the rights of any other Party or person, or the violation of any law, statute, regulation, duty, or contract whatsoever. By entering into this Settlement Agreement, the Parties do so solely to avoid the inconvenience, expense, and uncertainty of further proceedings and expressly disclaim any liability to any other party or person.
12. **No Representations.** Each Party represents and warrants that no representations made by the other Party about the nature and extent of the claims, damages, losses, injuries, legal liability, or financial responsibility, if any, have induced he/she/it to enter into this Agreement. In agreeing to the terms and conditions of this Agreement, each Party represents and warrants that he/she/it has considered not only all known facts, damages, and losses, but also the fact that consequences not now known may result from occurrences or events that may have given rise to the claims released in this Agreement.
13. **Parties to Bear Own Costs and Attorneys' Fees.** Each Party will bear his/her/its own costs, expenses, and claims to interest and attorneys' fees, whether taxable or otherwise, incurred in or arising out of, or in any way connected with, the matters which are referenced or covered in the release referenced above or which are otherwise related to the subject of this Agreement.
14. **Attorneys' Fees.** In the event of any dispute between the Parties concerning the terms and provisions of this Agreement, or the relationship between them, the Party prevailing in such dispute shall be entitled to collect from the other Party all costs incurred in such dispute, including reasonable attorneys' fees and costs.
15. **Stay of Claims.** Any and all applicable periods of limitations are hereby tolled as to any claim, counterclaim, crossclaim, and/or defense that the Parties could assert against any other Party. The tolling period shall commence as of the Execution Date of this Agreement and shall continue until ninety (90) days after the District Court in the SEC Action refuses to approve the settlement (the "End Date"). This section is intended to preserve the status quo as to any and all statutes of limitations

regarding all of the Parties' claims and defenses from the Execution Date until the End Date.

16. **No Assignment.** The Receiver warrants and represents that the Receiver is the holder of all claims sought to be released herein, and that none of the claims of causes of action relating to this Agreement have been sold, or assigned, or otherwise disposed of, either voluntarily or involuntarily.
17. **Successors and Assigns.** The provisions of this Agreement shall be binding and inure to the benefit of each of the Parties and their respective heirs, executors, administrators, agents, representatives, successors, beneficiaries and assigns. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made by any Party to another with respect to the subject matter of this Settlement Agreement. All prior and contemporaneous conversations, negotiations, possible and alleged agreements and representations, covenants, and warranties with respect to the subject matter of this Settlement Agreement are waived and superseded by the execution of this Settlement Agreement. This Settlement Agreement is an integrated agreement.
18. **Governing Law.** This Agreement shall be interpreted, enforced, and governed in accordance with the laws of the State of Florida, regardless of any conflicts-of-laws principles.
19. **Ambiguities.** Each of the Parties have reviewed this Agreement and agree that the rule of interpretation stating that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.
20. **Counterparts and Electronic Signatures.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Electronic, pdf, or fax signatures shall be considered original signatures.
21. **Headings.** The headings of this Agreement are for convenience or reference only, and shall not limit, expand, modify, or otherwise affect the meaning of any provision of this Agreement.
22. **Confidentiality.** The Receiver will only report the terms of the settlement memorialized herein in the motion to approve the settlement and his reports to the Court. Other than those filings, the Parties agree to keep the terms and conditions of this Agreement confidential, and neither the Parties nor their attorneys shall publicize them to any other person, other than the Parties' legal and financial advisors. The Parties further agree not to speak with or communicate in any way with the press or media, Froehlich & De La Rua's employees, managers, contractors, workers, or clients of Froehlich & De La Rua or any entity that has a business relationship with Froehlich & De La Rua in order to disparage the

reputation or business practices of Froehlich & De La Rua or any of Froehlich & De La Rua current or former officers, directors or managers.

23. Notices. All notices or information to be provided under this Settlement Agreement shall be sent to the following:

a. Receiver Jeffrey C. Schneider:

Jeffrey C. Schneider, Esq.
Stephanie Reed Traband, Esq.
Levine Kellogg Lehman Schneider +
Grossman LL
201 South Biscayne Blvd., 22nd Floor
Miami, Florida 33131
Email: jcs@lklsg.com
Email: srt@lklsg.com

b. Froehlich & De La Rua CPA Firm, LLC,
Beatriz De La Rua, and John F. Froehlich:

Jonathan Vine, Esq.
Daryl Greenberg, Esq.
Cole, Scott & Kissane PA
9150 South Dadeland Blvd., Suite 1400
Miami, Florida 33156
Email: jonathan.vine@csklegal.com
Email: daryl.greenberg@csklegal.com

IN WITNESS WHEREOF, the undersigned have caused this Settlement Agreement and Release to be executed as follows:

Date Executed: 6.28.2021



JEFFREY C. SCHNEIDER, Appointed Receiver
by the United States District Court for the
Southern District of Florida in *United States
Securities and Exchange Commission v.
Natural Diamonds Investment Co., Eagle
Financial Diamond Group, Inc., and Argyle
Coin, LLC*, Case No. 19-cv-80633-
Rosenberg.

Date Executed: 6/29/21


FROELICH & DE LA RUA CPA FIRM, LLC
By: JOHN F. FROELICH
Its: MEMBER

Date Executed: 6/28/21


JOHN F. FROELICH

Date Executed: 6/28/2021


BEATRIZ DE LA RUA

EXHIBIT B

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

Case No. 9:19-CV-80633-ROSENBERG

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

NATURAL DIAMONDS INVESTMENT CO.,
et al.,

Defendants,

H.S. MANAGEMENT GROUP LLC, et al.,

Relief Defendants.

**ORDER APPROVING SETTLEMENT AGREEMENT WITH FROEHLICH & DE LA
RUA CPA FIRM, LLC, BEATRIZ DE LA RUA, AND JOHN F. FROEHLICH**

THIS MATTER came before the Court upon the Receiver's Motion to Approve Settlement with Froehlich & de la Rua CPA Firm, LLC, Beatriz de la Rua and John F. Froehlich, and Incorporated Memorandum of Law [D.E. ____] (the "Motion").

The Court, having reviewed the Motion and being otherwise fully advised, hereby **ORDERS** and **ADJUDGES** that:

- 1 The Settlement Agreement is in the best interest of the Receivership Estate.
- 2 The Motion is **GRANTED**.
- 3 The Settlement Agreement is **APPROVED**.

DONE and **ORDERED** in Chambers in Palm Beach County, this ____ day of _____, 2021.

ROBIN L. ROSENBERG
UNITED STATES DISTRICT JUDGE

Copies furnished to all counsel of record