

WRITTEN STATEMENT OF IRA BODENSTEIN

**TRUSTEE FOR THE CHAPTER 7 BANKRUPTCY ESTATE OF
PEREGRINE FINANCIAL GROUP, INC., IN CONJUNCTION WITH
TESTIMONY BEFORE THE SENATE COMMITTEE ON
AGRICULTURE, NUTRITION AND FORESTRY**

AUGUST 1, 2012

I. INTRODUCTION

Good morning Chairwoman Stabenow, Ranking Member Roberts, and members of the Committee. Thank you for inviting me to appear before you today. I am the newly appointed Chapter 7 Trustee of Peregrine Financial Group, Inc. (“Peregrine”), a future commissions merchant (“FCM”) who filed bankruptcy on July 10, 2012. I am here to present the Committee with a brief introduction of my background and employment experience, my role as the Chapter 7 Trustee for the Peregrine estate and events of note in the bankruptcy case in the three weeks since the date of its filing.

I am currently a member of the law firm of Shaw Gussis Fishman Glantz Wolfson & Towbin, LLC, a 25 lawyer boutique law firm specializing in corporate insolvency and commercial litigation. I am also currently a member of the private panel of trustees in Chicago under the supervision of the United States Trustee Program, a component of the Department of Justice. Prior to joining Shaw Gussis, I served as the United States Trustee for Region 11, which is comprised of the Northern District of Illinois and the State of Wisconsin from May 1998 through January 2006. I also served as United States Trustee of Region 9, which is comprised of the States of Michigan and Ohio from September 2001 through August 2002. In connection with my work as United States Trustee I was involved in the supervision of several large cases including United Airlines, Kmart, Consec and LTV Steel.

Prior to being appointed United States Trustee, I was a practicing attorney involved in various facets of bankruptcy law and commercial litigation. I am licensed to practice law in the States of Illinois (1980) and Florida (1982). I am a 1980 graduate of the University of Miami School of Law, in Coral Gables, Florida with a JD degree and a 1977 graduate of Franklin and Marshall College in Lancaster, Pennsylvania with a BA degree in Government.

Since joining Shaw Gussis in 2006, I have been appointed a Receiver in Efoora, Inc. (SEC Action) and Steven W. Salutric (SEC Action), and served as counsel for the Receiver in Lake Shore Asset Management Limited (CFTC Action). In connection with my work in Lake Shore, I have also served as a non-voting member of both the Creditors Committee and Liquidation Trust Committee in the chapter 11 bankruptcy of Sentinel Management Group, Inc., a registered investment advisor and future commissions merchant.

II. THE TRUSTEE'S ROLE IN THE PEREGRINE CASE

A. The Role of Chapter 7 Bankruptcy Trustees in General (11 U.S.C. § 704)

The primary role of any Chapter 7 trustee in bankruptcy is to maximize the net value of the estate created by the commencement of the bankruptcy case. When I refer to the net value, I mean that a cost benefit analysis must be employed to ensure that the cost of collecting and liquidating Peregrine's assets must not exceed their value with respect to any particular asset.

Another important duty is to provide information concerning the estate and its administration to parties in interest. That would include all creditors, customers and governmental units. It is my goal to make the process of the estate's administration as transparent as possible. As described below, I have already taken steps to that end.

One of my immediate concerns is the preservation and organization of financial and other information relating to Peregrine's assets, liabilities and financial affairs. This is important for several reasons, including my need to understand Peregrine's financial affairs in order to

properly administer the Peregrine estate, as well as fulfilling the needs of customers, creditors and governmental units for such information.

As Trustee, I am also charged with investigating the financial affairs of Peregrine. I am mindful of the pending investigations now being conducted by both law enforcement and regulatory agencies. I do not intend to duplicate that effort. It is my intention to fully cooperate with those authorities, including making available financial and other records of Peregrine under appropriate agreements and safeguards. To the extent I need to investigate Peregrine's financial affairs to administer the estate, object to claims or prosecute causes of action, I have retained competent and qualified professionals to assist me in those efforts.

In any case, whenever a trustee comes into possession of property that belongs to a third party, the trustee's goal is to return such property to its rightful owner and to pay allowed claims as expeditiously as possible. As discussed more fully below, those goals take on special significance with respect to customer property in a commodity broker liquidation.

However, it is important to note that as the Trustee for the Peregrine estate, my duties run to the estate and all of its constituents. In other words, it is not my role to advocate for or against any particular creditor constituency. My role is to maximize the estate for the benefit of all parties. If there is a dispute among competing claimants to particular assets or proceeds, the bankruptcy court will resolve those disputes in accordance with applicable law and rules of procedure after providing the parties with adequate notice and a full and fair opportunity to be heard.

In this case, I have been granted limited authority to operate Peregrine's business in order to wind it down in an orderly fashion and maximize the value of Peregrine's remaining assets. Consequently, I will also be filing with the bankruptcy court and appropriate governmental units

periodic reports and operational summaries. Most, if not all of this information will also be contemporaneously available on the website which I have established for this case.

At the conclusion of the case, after all assets of the estate have been collected and liquidated, and all disbursements have been approved, I will file a final report and account of the administration of the estate with the United States Trustee and the bankruptcy court. All of the reports and summaries of my administration of the Peregrine estate will be public documents, available to all interested parties.

B. Special Bankruptcy Code Provisions Applicable To Commodity Broker Liquidations (11 U.S.C. §§ 761-67)

When the Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.*, was enacted in 1979, the Commodity Futures Trading Commission (“CFTC”), which administers the Commodity Enforcement Act, 7 U.S.C. §§ 1 *et seq.* (“CEA”), advocated for a set of rules for the systematic and uniform treatment of commodity customer accounts in commodity futures merchants (“CFM”) bankruptcies. Subchapter IV of Chapter 7 of the Bankruptcy Code is largely the result of the CFTC’s efforts. The special commodities provisions of the Bankruptcy Code have been amended in material ways five times since 1979, most recently in 2005. Each time the Bankruptcy Code’s special commodities provisions have been amended, the rules have been clarified and strengthened to broaden their application to a variety of transactions.

The Bankruptcy Code’s special commodities provisions relate to three primary types of commodity contracts: (1) “commodity futures contracts,” (2) “commodity option contracts,” and (3) “leverage contracts.” Other provisions of the Bankruptcy Code relate to “forward contracts.” The commodities covered by most forward contracts, unlike those covered by commodity futures contracts, are generally delivered to the buyer. Buyers under commodity futures contracts normally cancel or “hedge” their contracts with offsetting trades.

Section 24 of the CEA authorizes the CFTC to adopt rules that: (1) specify what may be included in or excluded from the Bankruptcy Code’s definition of “customer property”; (2) specify what property shall be considered “specifically identifiable” to a particular customer; (3) prescribe the method by which the business of a bankrupt commodity broker is to be conducted or liquidated; (4) specify the types of commodity firms to which the contracts and property of an insolvent commodity firm may be transferred; and (5) prescribe how the “net equity” of a customer is to be determined.

Pursuant to its statutory authority, the CFTC has enacted detailed regulations (17 C.F.R. Part 190) relating to, among other things, definitions of relevant terms; operation of the bankruptcy estate; making and taking delivery of commodity contracts; transfers of property, accounts, and contracts; calculation of allowed net equity; and allocation of property and allowance of claims.

The CFTC’s other bankruptcy-related powers are contained in the Bankruptcy Code’s commodity broker liquidation subchapter. For example, the CFTC may intervene in any commodity broker bankruptcy case and can, in effect, immunize transfers of customer accounts from avoidance by bankruptcy trustees by approving the transfers, either by rule or order, either before or after the transfer occurs.

In commodity broker bankruptcy proceedings, the trustee’s tasks may include, in addition to the customary duties of all Chapter 7 trustees, the following:

1. provide notice to the CFTC;
2. attempt to estimate any short-fall in customer segregated funds;
3. attempt to effectuate a “bulk transfer” of customer positions and property to a solvent commodity broker,

4. determine which open commodity contracts and property are “specifically identifiable” to customers;
5. notify customers who have “specifically identifiable” property or commodity contracts, and request instructions from such customers;
6. liquidating or offsetting of property which is not “specifically identifiable” or which is “specifically identifiable” but for which no instructions are received;
7. make margin calls and meet timely delivery requirements;
8. compute estimated and then fully “funded balances” (net equity claims) for each customer; and
9. distribute customer property.

CFTC regulations set forth an approximate schedule during which trustees should perform their duties during the early stages of commodity broker bankruptcy proceedings.

C. Treatment of Customer Property (11 U.S.C. § 766)

The Bankruptcy Code gives commodity customers an important priority in the distribution of a bankrupt commodity broker's assets, subordinate only to: (a) certain domestic support obligations, if applicable; (b) certain administrative claims of the debtor's estate; and (c) certain expenses attributable to administering customer property and claims.

The Bankruptcy Code, in effect, divides the debtor's assets into two distinct estates: (1) the “customer property” estate and (2) the general estate. Customer property may not be used to pay the claims of the broker's general creditors until the commodity customers' claims have been fully satisfied. After the trustee's customer specific expenses have been satisfied, the assets remaining in the customer-property estate are distributed to customers on a pro rata basis, according to the net equity in accounts. If there are insufficient assets in the customer-property estate to satisfy customer claims, the customers become general creditors as to the unpaid portion

of their claims and share equally with the other general unsecured creditors in the distribution of any assets in the general estate.

The Bankruptcy Code's underlying policy is the equality of distribution among all customers within the same creditor class. Therefore, all customer property, whether or not separately maintained, is subject to pro rata distribution. "Specifically identifiable" property may be transferred or returned, but only upon the payment by the customer to the estate of cash equaling the difference between the value of the property and the customer's pro rata share of the estate.

Under prior law, the trustee of a bankrupt commodity customer might have been able to recover the margin payments that had been made by a debtor to an FCM within one year of bankruptcy. Similarly, the trustee of a bankrupt FCM might have been able to recover the margin payments that had been made by the FCM to another FCM or to the clearinghouse of a commodity exchange. The Bankruptcy Code, however, prohibits recovery of these payments unless the trustee can show that the bankrupt customer or FCM made the payments with "actual intent" to hinder, delay, or defraud creditors. Even if the trustee can meet its burden, recovery is prohibited from a payee that took the payment in "good faith."

The Bankruptcy Code also facilitates efforts of exchanges and regulators to transfer customer property from failing FCMs to solvent FCMs. If the failing firm declares bankruptcy, the Bankruptcy Code prohibits the firm's trustee from recovering the transferred funds if the transfers were approved by the CFTC.

The 2005 Amendments to the Bankruptcy Code introduced additional protections to participants of certain financial contracts by providing that their exercise of rights under

applicable provisions of the Bankruptcy Code does not affect the priority of any unsecured claim such participant might have after the exercise of those rights.

Customer property which is “specifically identifiable” receives special treatment under the Bankruptcy Code. While other customer property is within the sole control of the trustee to transfer or liquidate, Bankruptcy Code § 766 grants customers who own “specifically identifiable” property certain rights regarding the property.

Bankruptcy Code § 766(c) provides that the trustee shall return promptly to a customer any specifically identifiable security, property, or commodity contract to which such customer is entitled, or shall transfer such security, property, or commodity contract to a solvent commodity broker, to the extent that the value of such security, property, or commodity contract does not exceed the customer's pro rata share of the estate if such security, property, or commodity contract were not returned or transferred under this subsection. Bankruptcy Code § 766(d) provides that if the value of a specifically identifiable security, property, or commodity contract exceeds the customer's pro rata share of the estate, the customer may deposit cash with the trustee equal to the difference between the value of such security, property, or commodity contract and such amount; and the trustee shall return the property to the customer or transfer it to a solvent broker. Bankruptcy Code § 766(a) requires the trustee to answer all margin calls with respect to a customer's specifically identifiable commodity contract until such time as the trustee returns or transfers such commodity contract, but the trustee may not make a margin payment that has the effect of a distribution to such customer of more than the customer's pro rata share of the estate.

The Bankruptcy Code itself does not define the term “specifically identifiable” property. The CFTC has enacted regulations containing such definitions. Securities which margin,

guarantee, or secure an open commodity contract and which are held for the account of a customer, registered in the customer's name, not transferable by delivery, and not a short-term obligation are specifically identifiable property, as are documents of title which are identified as held for the account of a particular customer. As to open commodity contracts, only hedge positions' identified on the books of the debtor as held for the account of a particular customer in a designated hedge account are specifically identifiable property. Certain other property is also deemed to be "specifically identifiable." CFTC regulation 17 C.F.R. Part 190.02(b) requires the trustee to request customer instructions concerning the transfer or liquidation of specifically identifiable property or contracts within two days following entry of the order for relief. If instructions are not timely received, the trustee will liquidate the property or contract. Customers requesting the transfer or return of specifically identifiable property must deposit with the trustee cash equaling the difference between the value of the property and the customer's pro rata share of the estate, together with "adequate security" to protect against overpayment by the trustee.

Bankruptcy Code § 766(e) provides, inter alia, that the trustee shall liquidate any commodity contract that is not specifically identifiable to a particular customer. Therefore, if the trustee concludes that it will not be possible to transfer commodity contracts and property to a solvent broker, the trustee must begin liquidating nonspecifically identifiable contracts and property "promptly and in an orderly manner." The prompt liquidation of such contracts and property protects the estate against exposure to the risk of adverse market fluctuations in the value of those contracts and property.

III. EVENTS OF SIGNIFICANCE IN PEREGRINE CASE TO DATE

Upon my appointment as trustee and consistent with my fiduciary duties, I took steps to secure Peregrine's assets and to protect customer accounts and information. I immediately went to Peregrine's Chicago office to confer with Peregrine's management in connection with my

need to operate the business on a limited basis for a limited period of time. I also spoke to certain employees about remaining employed for a limited period of time as their services are imperative to an orderly liquidation of Peregrine's estate. Those employees are currently assisting in my endeavors.

A. Trustee's Professionals

To assist me in connection with my duties as trustee, and subject to the approval of the bankruptcy court, I have selected various professionals which I am seeking to retain. The professionals include: (i) Shaw Gussis Fishman Glantz Wolfson & Towbin, LLC ("Shaw Gussis") to represent me as general bankruptcy counsel, (ii) Rust Consulting, Inc. ("Rust Omni") to serve as a claims and noticing agent, (iii) PricewaterhouseCoopers ("PWC") to serve as financial advisor, and (iv) Foley & Lardner, LLP to serve as special counsel to assist me in liquidating Peregrine's estate on technical issues related to the Commodities Enforcement Act and customer property issues. I have also selected and will retain Canadian counsel to assist in addressing issues related to Peregrine Financial Group Canada, Inc., a wholly owned subsidiary of Peregrine. The Investment Industry Regulatory Organization of Canada ("IIROC") has commenced regulatory hearings on the status of Peregrine's case and with the assistance of Canadian counsel, I am working with IIROC to ensure that the matter is handled properly.

B. Significant Actions by the Trustee

Prior to Peregrine filing a petition for relief in bankruptcy, the United States Commodity Futures Trading Commission filed a lawsuit in the United States District Court for the Northern District of Illinois ("District Court") alleging that Peregrine and its founder, Russell Wasendorf Sr. ("Wasendorf"), committed fraud, customer-funds violations and made false statements (the "District Court Case"). In connection with the District Court Case, on July 10, 2012, an Order

was entered appointing Michael Eidelman (the “Receiver”) as a temporary receiver over the assets of Peregrine and Wasendorf (the “Receiver Order”).

On that same day, Peregrine filed a petition for relief in bankruptcy. Peregrine’s bankruptcy petition reflects that its assets total approximately \$500,000,001 to \$1 billion and that its liabilities total approximately \$100,000,001 to \$500 million.

Immediately following my appointment as Trustee, on July 12, 2012, I filed an emergency motion in the Bankruptcy Court for authority to operate Peregrine’s business on a limited basis to facilitate the liquidation of Peregrine’s assets, which included a request for authority to retain certain employees and pay their accrued but unpaid pre-petition wages. On July 13, 2012, the bankruptcy court granted the motion allowing me to operate the business through September 13, 2012, without prejudice to my ability to seek further extensions. To that end, I have been working on obtaining applicable customer account information and locating Peregrine’s assets with the assistance of Peregrine’s employees.

I am also working diligently to address employee issues, including those related to an investigation that has been initiated by the Department of Labor into Peregrine’s employee 401(k) plan.

To assist in the management of customer and creditor inquiries, Rust Omni is setting up a data room whereby the trustee’s professionals will be able to view Peregrine’s accounts and all related financial transactions. Rust Omni has also assisted in creating an informational website, which can be accessed at www.pfgchapter7.com and a call center in which customers can access automated information by dialing (877) 465-1849. Rust Omni will continue to assist in this case by managing creditor information and serving notices to Peregrine’s creditors.

I have also met with the Receiver and his counsel on several occasions and maintain a continuing dialogue with him and his staff in order to ensure the orderly liquidation of Peregrine's assets. Both the Receiver Order and a CFTC statutory restraining order have also been amended to provide that the Receiver is only the receiver over the assets of Wasendorf, and not Peregrine.

With the assistance of my counsel, I have also spent a significant amount of time at Peregrine's offices in Chicago, Illinois as well as Cedar Falls, Iowa. While at Peregrine's offices, I have been gathering information and facilitating the wind down of Peregrine's business.

Recently, pursuant to a court order entered on July 25, 2012, I have been given authority from the bankruptcy court to prepare schedules and statement of financial affairs ("Schedules") on behalf of Peregrine. Schedules list all of a debtor's assets and liabilities, as well as information regarding certain of a debtor's activities prior to filing for relief in bankruptcy. It is a debtor's duty to file Schedules with the bankruptcy court, but under the unique circumstances of this case, I have sought and obtained authority to file the Schedules as they will be imperative in this case. The deadline for me to do so is September 6, 2012.

Pursuant to the provisions of 11 U.S.C. § 341(a), a meeting of creditors has been scheduled to take place in Chicago on September 10, 2012. The meeting will be held in the Dirksen Federal Building, 219 S. Dearborn Street, beginning at 10:00 a.m. At that meeting, I will question a representative of the debtor concerning the information contained in the filed Schedules.

Among other items of note, the Trustee consulted with the CTFC regarding the appropriate and necessary notice to be sent to holders of specifically identifiable property and

prepared and presented a motion to authorize limited notice to those customers, rather than notice by publication to all of Peregrine's customers per CFTC regulations, and approve the form of that notice. The relief was granted, and notice was immediately sent to the customers. The Trustee is currently in the process of coordinating the return of specifically identifiable property consistent with the provisions of 17 C.F.R. Part 190.

After consultation with the CFTC and the National Futures Association, the Trustee has also filed a motion with the bankruptcy court seeking approval of procedures for fixing pricing and claim amounts in connection with the termination and liquidation of Peregrine's foreign currency ("forex") customer agreements and transactions. Section 766(f) of the Bankruptcy Code provides that "as soon as practicable after the commencement of the case," the trustee of a commodity broker liquidation "shall reduce to money, consistent with good market practice, all securities and other property, other than commodity contracts, held as property of the estate" 11 U.S.C. § 766(f). This motion is pending.

IV. CONCLUSION

Since the filing of the Peregrine bankruptcy and my appointment as trustee my priorities have been to investigate and secure the assets of Peregrine and its customers and to ensure that all current information be preserved. To that end I have retained the professionals necessary to assist me in securing the assets and taking control of, preserving and consolidating the databases and paper records of Peregrine.

This information is being preserved in order to ensure transparency in the liquidation of Peregrine. I have been and will continue to coordinate and work cooperatively with the CFTC, the NFA, the FBI and the US Attorneys Office in coordinating the liquidation of Peregrine and providing access to all information needed in their respective civil and criminal investigations. I

have also been contacted by counsel for the Commodity Customer Coalition and expect to have a continuing dialogue with that group as the bankruptcy case progresses.

I can assure you that the determination of accurate customer information for all Peregrine account holders is also one of my upmost priorities. With the assistance of the team I have put in place, I intend to confirm the validity of the information on the books and records at Peregrine so that such information can be disseminated to the account holders with all deliberate speed, ultimately allowing me to determine the appropriate distribution(s) to be made to customers and allowing for such distributions to be made as soon as practicable.

Thank you for the opportunity to appear before this Committee.