

**\OFFICE OF THE CLERK
UNITED STATES DISTRICT COURT
Northern District of California**

CIVIL MINUTES

Date: February 8, 2018 **Time:** 1 hour **Judge:** EDWARD M. CHEN

Case No.: 16-cv-01386-EMC **Case Name:** SEC v. Bivona, et al.

Attorney for Plaintiff: John Yun and Marc Katz and Patricia Schrage (phone)
Attorney for Defendant: John Cotton for Receiver
Jonathan Levine (SRA Funds)
Theodore Griffinger (Global and Benchmark)

Deputy Clerk: Betty Lee

Court Reporter: Belle Ball

PROCEEDINGS

- Final hearing on Receiver's Motion for Approval of Joint Distribution Plan/ Receiver's Administrative Motion for Approval of Fees #262 / Status conference

SUMMARY

SEC informed the Court that there are no objections to the outstanding consents to entry of final judgments. Court to approve entry of final judgments.

The claim review process is ongoing. The Receiver expects to complete its review, including validation of the claims, and to submit a report to the Court in approximately three weeks. The SEC and Receiver raised a question of how to determine which claims were valid. The SEC and Receiver proposed, to no objections, that claims concerning portfolio investments that became valueless before the beginning of the Receivership in October, 2016 because, e.g., the investment became worthless and would not be considered valid. However, a claim will be treated as valid if the investment did not lose its value until after the initiation of the Receivership. That such a claim is valid will mean only that it will be counted, but at this time does not imply that a claimant will be entitled to recovery based on the amount of their initial investment if the loss in value was not caused by the Defendants' alleged fraudulent conduct. How Receivership assets are ultimately allocated to valid claimants is still a disputed issue that cannot be resolved at this time. The Receiver shall file its report about the claims process with the Court upon completing the validation process, and the report shall include all information necessary for the Court to

understand how many valid investment and creditor claims exist and whether any shortfall exists with respect to those claims.

The SEC and Receiver confirmed that the information in the investor lists provided by Defendants is generally reliable insofar as it provides information about which investors purchased securities interests in which companies and for what amount. However, the SEC and Receiver noted that additional claims may exist for investors whose information does not appear in the lists. The notice and claims process is intended to determine the completeness of the lists and to identify the full universe of valid claims.

The SEC and Receiver indicated that, in addition to investor claims, there are creditor claims against the Receivership Entities in the amount of approximately \$4.5 million related to Global Generation Group LLC and Progressive Ventures LLC. The Receiver's report will include information about the total creditor claims against the Receivership.

The SEC and Receiver also explained that they have determined that the Solis Associates Fund, not currently managed by the Receivership, possesses approximately 85,000 shares in Bloom Energy owed to the Receivership entities. The SEC and Receiver indicate that transfer of those shares from Solis Associates to the appropriate Receivership Entity will not prejudice the other investors in Solis Associates Fund because there are sufficient assets to compensate all investors. The SEC and Receiver proposed that the Receiver manage Solis Associates Fund, to which no party objected and which the Court approved.

The parties shall meet and confer and submit a stipulation to the Court regarding retainer of an investment banker to solicit bids for partial sale of the investment portfolio on the secondary market. The investment banker shall also determine the feasibility of partial sales of the portfolio on the secondary market, including the potential value with respect to varying proportions of the overall portfolio (e.g., if only 10%, 20%, 30%, etc. is sold).

By March 8, 2018, the SEC shall submit its proposed amendments to its plan of distribution to the Court, including its argument in support on the basis of the completed notice and claim process and information gathered by retained investment bankers. The responses by the Investor Group and any other interested party are due on March 15, 2018. The Court will hold a hearing on **March 29, 2018 at 1:30 p.m.** The parties submissions shall address all outstanding issues, including: (i) how each claimant's interest in the recovery should be valued (i.e., based on the amount originally invested or based on the value of their investment caused by subsequent market events or some hybrid formula); (ii) how to handle rescissionary claims by investors who believed they were investing in a company that subsequently failed but whose investment money was actually used to purchase other securities interests that still retain value; (iii) the feasibility of partial portfolio sales in light of the information gathered concerning the number of investors who prefer to withdraw their interests rather than await an IPO event; (iv) how potential opt-outs will be compensated in light of the Receivership's limited liquid assets. The SEC and Investor Group shall meet and confer and attempt to agree on as many issues as possible prior to filing.