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ATTORNEY FOR THE TEXAS STATE
SECURITIES BOARD

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	
	§	
RETIREMENT VALUE, LLC,	§	CASE NO. 11-35165
	§	INVOLUNTARY CHAPTER 7
ALLEGED DEBTOR.	§	

**JOINDER OF THE TEXAS STATE SECURITIES BOARD
IN THE MOTION TO ABSTAIN OR DISMISS
FILED BY THE STATE COURT-APPOINTED RECEIVER**

The Texas State Securities Board (“SSB”) joins in the Motion to Abstain or Dismiss (“305 Motion”) filed by Eduardo S. Espinosa (the “Receiver”), as follows:

1. The SSB concurs that abstention (or dismissal) is the best alternative for balancing the need to afford all parties-in-interest meaningful participation in the receivership distribution plan approval process with the need to preserve the assets of the estate and avoid unnecessary duplication of effort. As such, the SSB joins in the Receiver’s 305 Motion.

2. As this Court is aware, the SSB sought and obtained appointment of the Receiver in Travis County State District Court in May 2010. The Retirement Value LLC assets have been in his care, custody, and control since May 2010. The Receiver has also been subject to the ongoing and close supervision of a specially-assigned state district judge, until this involuntary case was filed the business day before a hearing at which the state district judge

would have considered the Receiver's proposed plan of distribution. The Receiver has, on information and belief, fully complied with this Court's order following the first hearing on the Receiver's Motion to Excuse Turnover and the Petitioning Creditors' Emergency Motion to appoint an interim chapter 11 trustee. As stated below, the SSB is optimistic that the Receiver's proposal for modifying the typical distribution plan process in the receivership will further satisfy this Court that the needs and interests of all defrauded investors and creditors are being protected, without the need for bankruptcy proceedings.

Background of State Securities Board Oversight

3. The Texas Securities Act authorizes the Securities Commissioner to request that the Attorney General's Office file a civil cause of action against parties that defraud the investing public, violate certain provisions of the Texas Securities Act, or engage in other culpable conduct. TEX. REV. CIV. STAT. ANN. art. 581-25-1 & 32 (West 2010). These civil actions are brought to seek injunctive relief to prohibit parties from continuing to operate illegal investment programs so that they are unable to lure new investors into their schemes as well as to seek restitution or other equitable relief for existing victims. As such, the State of Texas is authorized to seek appointment of a receiver on behalf of one or more of the defendants.

4. The Enforcement Division of the SSB is chiefly responsible for conducting investigations and recommending that the Securities Commissioner and the Attorney General's Office file these civil actions. The Director of the Enforcement Division is also responsible for evaluating the legal sufficiency of evidence gathered during the course of SSB investigations and determining the appropriateness of available relief. When determining whether it is appropriate to seek appointment of a receiver, for example, the Director of Enforcement often considers facts and circumstances including but not limited to the following:

1. Whether a party that has engaged in the conduct specified by the statute maintains any monies tendered by victims or assets derived from monies tendered by victims;
2. Whether a receiver is necessary to identify, conserve and protect monies tendered by victims or assets derived from monies tendered by victims;
3. Whether the evidence suggests that the failure to seek the appointment of a receiver will result in the dissipation or secretion of said monies or assets, and whether this dissipation and secretion will work an immediate and irreparable harm on the victims;
4. Whether the evidence suggests that the failure to seek the appointment of a receiver will contribute to or result in the failure of legitimate business operations, and whether this failure will work an immediate and irreparable harm on the victims; and
5. Whether the appointment of a receiver is necessary to protect existing investors and other members of the public.

The authority to pursue a receivership, coupled with the foregoing considerations, demonstrates that the fundamental purpose of receiverships is to benefit both existing and potential future victims.

5. The Securities Commissioner also typically continues to stay involved on behalf of actual and potential victims even after a receiver has been appointed by a court. For example, the Securities Commissioner, acting through a delegation of authority to the Director of Enforcement and the Enforcement Division, is authorized by statute and regulation to share confidential investigative information with the receiver. The confidential investigative information typically permits the receiver to carry out his or her duties more efficiently and effectively than if he or she might without that information and reduces costs and expenses that would otherwise be incurred by the receivership and would reduce the return to defrauded investors and other victims.

Abstention Offers the Best Balance of Remedies

6. The Receiver's proposal for abstention (i.e., his committing to seek a state court procedure giving all of the defrauded investors notice and an opportunity to express their

concerns to the state court about -- or support for -- the Receiver's proposed plan of distribution) recognizes and, hopefully, addresses this Court's concern on behalf of the petitioning creditors and defrauded investors. The SSB strongly supports abstention under these circumstances and urges the Court to grant the Receiver's motion.

7. Abstaining from exercising jurisdiction permits this Court to retain some oversight, given that the Court can elect not to abstain after a certain point. In the meantime, however, the estate and parties-in-interest can avoid the expense and unnecessary duplication of efforts in getting a chapter 11 case up and running. Because of issues with the company's management when the Receiver was appointed approximately 16 months ago, the SSB would not expect this Court would permit the company's management to regain control of the enterprise. The time, trouble, and expense of appointing a chapter 11 trustee (unless it is the Receiver) is also not justified, especially when viewed in light of the abstention alternative.

8. The SSB has been pleased with the Receiver's performance in this case and trusts that the Court got a sense of his competence and expertise during his testimony at the hearing in August on the motions to excuse turnover and to appoint interim trustee. Both the SSB and its counsel at the Attorney General's Office have been closely involved in the state court proceedings and have witnessed the Receiver's efforts to recover and preserve property of the estate.

9. Abstention or dismissal is perfectly appropriate where, as here, the interests of creditors and the debtor will be better served by such abstention or dismissal under section 305.

The State Securities Board, therefore, joins in the Receiver's 305 Motion to abstain or dismiss and prays that this Court will either (i) abstain from exercising jurisdiction over this

involuntary proceeding, under the conditions proposed by the Receiver in his 305 Motion or (ii) dismiss the involuntary petition altogether.

Respectfully submitted,

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ATTORNEYS FOR THE TEXAS STATE
SECURITIES BOARD

CERTIFICATE OF SERVICE

I hereby certify that on September 19, 2011, a true and correct copy of the foregoing pleading was served on parties through the court's electronic filing (ECF) system.

/s/ E. Stuart Phillips
E. STUART PHILLIPS