

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PASCO COUNTY, FLORIDA  
CIVIL DIVISION

OFFICE OF THE ATTORNEY GENERAL,  
DEPARTMENT OF LEGAL AFFAIRS,  
STATE OF FLORIDA,

Plaintiff,

Case No.: 51-2010-CA-2912-WS/G

v.

BOTFLY, LLC, DAVID R. LEWALSKI,  
and JON J. HAMMILL,

Defendants.

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**RECEIVER'S MOTION TO (1) APPROVE PROCEDURE TO  
ADMINISTER CLAIMS AND PROOF OF CLAIM FORM, (2) ESTABLISH  
DEADLINE FOR FILING PROOFS OF CLAIM, AND (3) PERMIT NOTICE BY  
MAIL AND PUBLICATION AND INCORPORATED MEMORANDUM OF LAW**

Michael E. Moecker, as Receiver, respectfully moves this Court for an Order (1) approving the procedure to administer claims set forth herein and the Proof of Claim Form attached hereto as Exhibit A, (2) establishing a deadline for filing proofs of claim against the Botfly Receivership Estate, and (3) permitting notice of the deadline by mail and by publication in The Wall Street Journal, in the St. Petersburg Times, and on the Receiver's website in the form attached hereto as Exhibit B (the "Notice").

**Background**

On April 1, 2010, the Office of the Attorney General, Department of Legal Affairs initiated this action. That same day, the Court entered an order appointing Michael E. Moecker or his designee employed by Michael Moecker & Associates, Inc. as Receiver for Defendants Botfly LLC ("Botfly"), David R. Lewalski ("Lewalski"), and Jon J. Hammill ("Hammill")

(“**Order Appointing Receiver**”). Pursuant to the Order Appointing Receiver, the Receiver’s duties and powers include establishing a procedure for creditors of Botfly to file claims and examining the validity and priority of all claims against Botfly for final determination this Court.

In accordance with the terms and conditions of the Order Appointing Receiver, the Receiver, among other things, took possession of Botfly’s assets and is currently in the process of administering those assets, working to recover additional assets, and determining the extent of liabilities the Receiver believes to be Botfly’s legal obligations.

Lewalski and Hammill solicited investors to lend funds to Botfly for use in trading currency in the foreign exchange market. In return, investors were promised a monthly return on the money loaned, and in most instances, a guaranteed monthly return of 10% of the investor’s account balance. Through Botfly, Lewalski and Hammill perpetrated a fraudulent scheme in which money raised from new investors and additional money raised from existing investors was used to (1) pay fictitious returns and purported principal redemptions to existing investors; (2) pay management, advisory, incentive and/or referral fees; (3) purchase luxury motor vehicles; (4) pay for hundreds of thousands of dollars of luxury consumer purchases and other expenditures unrelated to foreign exchange trading; (5) support Lewalski’s family and associates; and (6) fund additional businesses. While some investors received funds from Botfly, others did not.

The Receiver is substantially underway in the process of determining the legal obligations of Botfly. However, for the Receiver to confirm the extent of Botfly’s legal obligations and to allow investors, creditors, and any other interested parties to advise the Receiver of any possible claims against Botfly, the Receiver proposes that the Court approve the Proof of Claim Form (Exhibit A) and the procedures to administer claims set forth below.

## Relief Requested

Pursuant to the Order Appointing Receiver, the Receiver is obligated to take possession of Botfly's assets for the benefit of their defrauded investors and to take whatever other steps are necessary for the investors' protection. The Receiver's goal is to ultimately marshal and distribute liquidated assets to investors with allowed claims (the "**Distributions**") in a fair and equitable manner.

### A. **Claim Bar Date.**

The Receiver seeks entry of an order establishing a filing deadline for all claimants holding claims against the Receivership Entities (including investors), arising in any way out of the activities of Botfly (the "**Claimants**"), to assert a claim (the "**Claim Bar Date**").<sup>1</sup> The Receiver proposes that the Claim Bar Date be set as the later of either 120 days from the entry of the Order requested herein or 90 days from the mailing of the Proof of Claim Form to known possible Claimants. This date will allow the Receiver sufficient time to arrange for and publish the proposed Notice and give investors and other potential Claimants sufficient time to file a claim with the Receiver. Claimants must file claims in order to participate in any distribution of Receivership assets. The Receiver proposes that any claim received by the Receiver after the Claim Bar Date should be disallowed.

The Receiver submits that it is appropriate to establish a Claim Bar Date to permit the Receiver to allow as many Claimants as possible to participate in these proceedings. Furthermore, a Claim Bar Date will allow the Receiver to obtain certainty in a reasonably prompt

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<sup>1</sup> The Receiver will calculate and insert the specific date for the Claim Bar Date in the Notice and Proof of Claim Form. The proposed Notice and Proof of Claim Form currently contain blanks where the Receiver intends to insert this date.

fashion as to the total amount of potential claims against the Botfly Estate. Such certainty will facilitate a timely claims resolution and Distribution process.

**B. Notice by Mail and Publication.**

The Receiver and his professionals have spent considerable time, effort, and resources examining documents and other data relating to Botfly. Based on the review of these voluminous documents, the Receiver believes he has identified substantially all of Botfly's investors. As to most of these known potential Claimants, the Receiver possesses addresses imprinted on checks deposited into Botfly's accounts. Some investors, however, made deposits by wire transfer, by cashier's checks, or by checks that do not have addresses imprinted on them. Much of the correspondence with investors was conducted through email and a website. The Receiver has not been able to extract data from the computers that were taken into his possession pursuant to the Order Appointing Receiver because the data on the computers had either been removed, is password protected, or is encrypted. The Receiver has not been able to obtain access to Botfly's website which was hosted by a Panamanian company and is no longer operational. As a result, the Receiver may not be able to identify accurate mailing addresses of all potential Claimants. In addition, some known Claimants may have moved or otherwise changed addresses. To date, Lewalski and Hammill have refused to turn over Botfly records to the Receiver despite the Receiver's repeated demands and the Court's mandate that they do so. Accordingly, it is possible that some potential Claimants may be currently unknown. The identity of these possible Claimants is not reasonably ascertainable given the invocation by Lewalski and Hammill of the fifth amendment's privilege against self incrimination in response to questions by the Receiver regarding Botfly's affairs. As such, providing notice of the Claim Bar Date to all potential Claimants by direct mail alone is not possible.

Based upon the documents reviewed and information gathered to date, investors and other potential creditors are located throughout at the United States with a concentration of investors in the Pinellas, Pasco, and Hillsborough County. Given the geographically broad area in which investors are located and significant expense associated with publication of the Notice in each of the states where claimants may reside and the relatively few (if any) interested parties who might benefit from such publication, the Receiver proposes publishing the Notice in The Wall Street Journal for *global* publication and in The St. Petersburg Times on one day at least 45 days prior to the Claim Bar Date.<sup>2</sup>

The St. Petersburg Times has provided coverage of the Botfly scheme and the Receivership. Considering the concentration of investors in the Pinellas, Pasco, and Hillsborough County area and the St. Petersburg Times' coverage of the Botfly scheme and the Receivership, the Receiver believes that potential Claimants located in these counties and those located outside the area may be following the St. Petersburg Times' coverage and would benefit from such publication. The Receiver further proposes to publish the Proof of Claim Form and Notice on his website at [www.botflyreceivership.com](http://www.botflyreceivership.com).

Therefore, the Receiver seeks permission to provide notice of the Claim Bar Date to known potential Claimants by mail to their last known address and to unknown Claimants by publication in The Wall Street Journal and the St. Petersburg Times, and on the Receiver's website. The Notice of the Claim Bar Date will be in the form attached hereto as Exhibit B. The Receiver believes that such Notice is reasonably calculated to inform all known and unknown Claimants of the Claim Bar Date.

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<sup>2</sup> The cost of global publication for one day in The Wall Street Journal for an advertisement the size of the Receiver's proposed Notice is approximately \$30,000 and the cost of a one-day advertisement for the same size Notice in The St. Petersburg Times is approximately \$1000.

**B. Procedures to Be Applied to the Administration of Claims against Botfly Receivership Estate.**

The Receiver has developed a proposed procedure and Proof of Claim Form to efficiently, equitably, and promptly identify potential Claimants and the amount and validity of any claim. The Receiver's proposed procedure will ensure certainty as to the total number and amount of claims against the Botfly Receivership Estate and thus allow for an equitable distribution among Claimants. The Receiver's proposed procedure also will serve to lessen the burden on many known Claimants.

The Receiver and his professionals have spent considerable time and resources examining voluminous documents relating to the Receivership Entities, including their financial information. With respect to the Botfly, based on this examination, the Receiver can determine a Net Investment Amount for investor "accounts."<sup>3</sup>

The Net Investment Amount for an account is calculated by adding all amounts contributed by the pertinent investor(s) to an account and subtracting all payments made to that accountholder(s) and/or in connection with that account, regardless of how the funds in the account were characterized (ie. interest, principal, incentive or referral fees, management fees, etc.). For example, an account that had a total investment of \$100,000 and in connection with which \$50,000 was distributed to the related investor(s) would have a Net Investment Amount of \$50,000.

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<sup>3</sup> Although there is no indication in the records provided by financial institutions to date that Botfly maintained separate investor accounts, the investors were given statements which made it appear that their funds were segregated into separate accounts. For ease of reference, the Receiver will use the term "account" in this motion and the attached exhibits although as noted these accounts do not exist.

To make the process of submitting a claim less burdensome for investors, the Receiver proposes that he mail a Proof of Claim Form for each account to each investor who, according to the information developed by the Receiver from the records of the financial institutions with accounts in the name of Botfly, LLC, is associated with each pertinent account. Further, to the extent possible, the Receiver proposes to include with such Proof of Claim Form the Net Investment Amount the Receiver has calculated for the pertinent account. If the investor agrees with the provided Net Investment Amount, then the investor does not need to provide any further documentation supporting his or her claim. However, the investor must still complete and sign the Proof of Claim Form under penalty of perjury, and return it to the Receiver before the Claim Bar Date as specified below.

If the investor disagrees with the Net Investment Amount or if there is not sufficient information to include a Net Investment Amount, then the investor must provide the amount he or she contends is correct and legible copies of all documents on which this claim is based or, if any such documents are not available, an explanation as to why the documents are not available.

If the Receiver discovers additional information which would require amendment to the Net Investment Amount provided, the Receiver will provide notice of such amendment to the investor. The investor will then have the later of either the Claim Bar Date or thirty (30) days from the date the amendment was sent to return an amended Proof of Claim Form to preserve his or her claims. Similarly, subject to the Receiver's discretion to be exercised in an equitable manner and in the best interests of the Receivership, the Receiver may send notice of a deficiency in a submitted Proof of Claim Form to the submitting Claimant. The Claimant will then have the later of either the Claim Bar Date or thirty (30) days from the date the notice of deficiency was sent to return an amended Proof of Claim Form to preserve his or her claims.

To the extent the Receivership Entities do not have sufficient funds to pay all valid claims, the Net Investment Amount will serve as the basis for determining the recipients and amounts of Distributions with respect to investors.<sup>4</sup> The identification of a Net Investment Amount does not mean that the investor account has a valid claim; the Receiver reserves the right to object to the validity of any claim notwithstanding the identification of any such amount. Each filed Proof of Claim must conform substantially to and must contain all of the information sought in the Proof of Claim Form approved by the Court. The Receiver reserves the right to reject any altered Proof of Claim Form. Such rejection will be treated as a deficiency and the Claimant will have the time indicated above within which to submit an acceptable Proof of Claim Form. Each Proof of Claim must be signed by the Claimant or, if the Claimant is not an individual, by an authorized agent of the Claimant. The Claimant must attest under penalty of perjury that the information, including the information provided by the Receiver, is true and correct. Each Proof of Claim must be legible, written in English, and denominated in United States currency. The submission of a Proof of Claim will subject the Claimant to the jurisdiction of the Circuit Court of the Sixth Judicial Circuit in and for Pasco County, Florida.

All Proofs of Claim must be sent so as to be received on or before the Claim Bar Date at the following address:

Michael E. Moecker, Receiver  
c/o Karen Cox, Esq.  
BUSH ROSS, P.A.  
PO Box 3913  
Tampa, FL 33601-3913

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<sup>4</sup> To the extent any non-investor claims are submitted, the Receiver will recommend and seek the Court's approval of a method for addressing and resolving such claims consistent with the goals of the Receivership.



Any properly completed and timely filed Proof of Claim will be considered allowed if it is established that: (1) the Claim arises out of Botfly's activities; (2) losses recognized by law resulted from such activities; (3) any alleged claim and losses are consistent with the books and records available to the Receiver; and (4) no ground exists for denying the Claim.

After the Claim Bar Date and the Receiver has evaluated all submitted claims, he will seek approval from this Court regarding: (1) allowed claim amounts; (2) priority of claims; (3) a process for the determination of objections to claim determinations and priorities reached by the Receiver; (4) the timing and amount of Distributions; and (5) if needed, the establishment of reserves for administration of the Receivership, for litigation, and for disputed claims and priorities (until such time as such disputes are resolved).

After all claims and priority objections are resolved, the Receiver will prepare a motion for a proposed Distribution. The motion will identify the total assets in the Receivership Estate at the pertinent time and the total allowed claims amount. After Court approval, any Distribution to the Claimants will be made in an equitable manner and in accordance with the appropriate priority, and no Claimant shall receive more than the allowed amounts. Any Distributions of amounts less than the Claimants' total allowed amounts will be made on a pro rata basis based on the Claimants' allowed claim amounts. The Receiver may seek court approval to make interim distributions.

All administrative expenses, including attorneys' fees and costs, litigation expenses, experts, and other administrative costs, will be paid from the Receivership Estate. These administrative expenses will be paid or reserved before any Distribution is made. Administrative expenses may also include, but are not limited to (1) expenses for publishing notice and (2) the

retention of one or more consultants to assist in analyzing the validity of filed claims. No previous request for the relief sought herein has been made to this or any other Court.

The Receiver requests that this Court (1) approve the Claims Administration Procedure as set forth herein and the Proof of Claim Form as attached hereto as Exhibit A; (2) establish a deadline for receipt of Proofs of Claim that is the later of either 120 days from the date of entry of the Order requested herein or 90 days from the mailing of the Proof of Claim Form to known possible claimants (the “**Claim Bar Date**”); and (3) permit notice of such deadline in the form attached hereto as Exhibit B by (a) first class U.S. mail to the last known addresses of all known potential claimants, (b) publication in The Wall Street Journal global edition and in The St. Petersburg Times, and (c) on the Receiver’s website as described above.

#### **MEMORANDUM IN SUPPORT**

The Court’s power to supervise an equity receivership and to determine the appropriate actions to be taken in the administration of the receivership is extremely broad. *Securities Exch. Comm’n v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992); *Securities Exch. Comm’n v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986). The Court’s wide discretion derives from the inherent powers of an equity court to fashion relief. *Elliott*, 953 F.2d at 1566.

Claimants in receivership proceedings submit themselves to the jurisdiction of the court and must take notice of and are bound by subsequent proceedings. *Estate of Studstill v. American Package Co.*, 218 So.2d 769 (Fla. 4<sup>th</sup> DCA 1969). In receivership proceedings such as this, “[e]very person who has any claim or demand against the estate or property in the custody of the court through the receiver, . . . must assert such claim or demand in the court in which such receiver was appointed.” Ralph E. Clark, *Clark on Receivers* § 646, at 1132 (3rd ed. 1992). Those who have claims against receivership property must present their claims in accordance

with the Court's discretions. The Court must require positive proof of a claim, and then determine which claims are entitled to share in the distribution. *Columbia Bank for Cooperatives v. Okeelante Sugar Cooperative*, 52 So.2d 670 (Fla. 1951). "The claims should be definite enough to enable the receiver to pass on their validity, fairness and legality and to place them in their proper and legal category of claims for preference, if any." Clark on Receivers at § 651, at 1142.

In addition to approving the proof of claim form, it is not unusual for a court overseeing a receivership to enter an order limiting the time within which claims must be presented. *Id.* § 652, at 1142 (citing *Chicago Title & Trust Co. v. Fox Theatres Corp.*, 91 F.2d 907 (2d Cir. 1937); *People of New York v. Hopkins*, 18 F.2d 731 (2d Cir. 1927)). Such an order limiting the time within which claims must be presented has been deemed to be necessary to "lay the foundation for the court to order payments to creditors and distribution to those entitled to receive." *Id.* § 651, at 1142. Furthermore, a court with jurisdiction over a receivership, by advertisement and by proper notices by mail, by publication and otherwise should take measures to notify interested parties affected by the receivership. *Id.* § 652, at 1143.

Under the terms and conditions of the Order Appointing Receiver, the Receiver, among other things, is authorized, empowered, and directed to (a) administer the assets of the Receivership Entities and (b) determine the extent of liabilities the Receiver believes to be the legal obligations of the Receivership Entities. *See* Order Appointing Receiver. In exercising his duties, the Receiver has determined that it is reasonable, necessary, advisable, and in the best interest of the Botfly Receivership Estate that the Claims Administration Procedures, Notice, Claim Bar Date, and Proof of Claim Form as set forth herein and in the attached exhibits be approved by this Court.

WHEREFORE, Michael E. Moecker as Receiver, respectfully requests that this Court enter an Order (1) approving the Claims Administration Procedure as set forth herein for the Botfly Receivership Estate and the proof of Claim Form attached as Exhibit A, (2) establishing the Claim Bar Date requested herein, (3) permitting notice of such deadline in the form attached as Exhibit B and as described above, and (4) allowing all such further relief as this Court deems just and proper.

Dated: Tampa, Florida  
October 4, 2010

BUSH ROSS, P.A.  
Post Office Box 3913  
Tampa, Florida 33601-3913  
(813) 224-9255 (telephone)  
(813) 223-9620 (facsimile)  
Attorneys for the Receiver

By: Karen Cox  
Jeffrey W. Warren  
Florida Bar No. 150024  
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Karen Cox  
Florida Bar No. 456667  
*kcox@bushross.com*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 4<sup>th</sup> day of October, 2010 a true and correct copy of the foregoing has been furnished via regular U.S. Mail and electronic transmission to the following:

R. Scott Palmer, Esq.  
Gregory S. Slemp, Esq.  
Nicholas J. Weilhammer, Esq.  
PL-01: The Capitol  
Tallahassee, Florida 32399-1050

Kristine McAlister Brown, Esq.  
Michael Brown, Esq.  
Alston & Bird, LLP  
1201 W. Peachtree St.  
Atlanta, GA 30309

Jon J. Hammill  
P.O. Box 530181  
St. Petersburg, FL 33747

Craig Carpenito, Esq.  
Alston & Bird, LLP  
90 Park Ave.  
New York, NY 10016-1387

Erik R. Matheney, Esq.  
Hill, Ward & Henderson, P.A.  
P.O. Box 2231  
Tampa, FL 33601-2231

*Karen Col*

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Attorney

EXHIBIT "A"

# PROOF OF CLAIM FORM

**OFFICE OF THE ATTORNEY GENERAL,  
DEPARTMENT OF LEGAL AFFAIRS,  
STATE OF FLORIDA,  
Plaintiff,**

v.

**BOTFLY, LLC, DAVID R. LEWALSKI,  
and JON J. HAMMILL,  
Defendants.**

Name and address of Claimant  
(Please print or type):

Case Number: 51-2010-CA-2912-WS/G  
Circuit Court of the Sixth Judicial Circuit in and for Pasco  
County Florida

## ATTENTION:

The Honorable Stanley R. Mills of the Circuit Court of the Sixth Judicial Circuit in and for Pasco County Florida appointed Michael E. Moecker as Receiver of BOTFLY, LLC ("Botfly"). On \_\_\_\_\_, the Court issued an order establishing a Claim Bar Date for all claims and approving this Proof of Claim Form and the basic procedures to administer any claims against Botfly. In order to be eligible to receive a distribution from Botfly's assets, you must complete and return this Proof of Claim Form and, if applicable, provide the requested documentation, so that it is received on or before \_\_\_\_\_, to Michael E. Moecker, Receiver, c/o Karen Cox, Esq., Bush Ross, P.A., 1801 N. Highland Ave., Tampa, FL 33602. *The proper filing of this completed claim form may entitle you to receive a distribution from the Receivership. Altered forms will not be accepted.*

The information provided in this Proof of Claim Form will be used to calculate your distribution, if any, from the Botfly Receivership Estate. The Receiver has the right to dispute and/or verify any information you have provided in order to determine the proper distribution amount, if any, to which you may be entitled. The Receiver further has the right to amend any information he may have provided as to your Net Investment Amount. **By identifying and providing a Net Investment Amount for an account the Receiver does not waive any right to (1) deny, contest the validity of, or otherwise object to a claim or (2), if warranted, amend the provided Net Investment Amount.**

## IMPORTANT INFORMATION TO READ PRIOR TO SUBMITTING THIS FORM

ANY PERSON OR ENTITY SUBMITTING THIS PROOF OF CLAIM FORM SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT IN AND FOR PASCO COUNTY FLORIDA FOR ALL PURPOSES, INCLUDING, WITHOUT LIMITATION, AS TO ANY CLAIMS, OBJECTIONS, DEFENSES, OR COUNTERCLAIMS THAT COULD BE OR HAVE BEEN ASSERTED BY THE RECEIVER AGAINST SUCH CLAIMANT OR THE HOLDER OF SUCH CLAIM IN CONNECTION WITH THIS RECEIVERSHIP, INCLUDING THOSE ARISING OUT OF (1) ANY DEALING OR BUSINESS TRANSACTED BY OR BOTFLY OR (2) ANY DEALING OR BUSINESS TRANSACTED THAT RELATES IN ANY WAY TO ANY BOTFLY RECEIVERSHIP PROPERTY. FURTHER, CLAIMANTS WAIVE ANY RIGHT TO A JURY TRIAL WITH RESPECT TO SUCH CLAIMS, OBJECTIONS, DEFENSES, AND COUNTERCLAIMS. IF THIS COMPLETED, SIGNED UNDER PENALTY OF PERJURY IS NOT RECEIVED BY THE RECEIVER AT THE ABOVE-REFERENCED ADDRESS BY \_\_\_\_\_, YOU WILL BE FOREVER BARRED FROM ASSERTING ANY CLAIM AGAINST BOTFLY'S ASSETS AND YOU WILL NOT BE ELIGIBLE TO RECEIVE ANY DISTRIBUTIONS FROM THE RECEIVER FROM THE BOTFLY ESTATE.

**General Instructions:**

**You must answer each and every question. Please answer each question as fully as possible. If you need additional space to complete an answer, please attach a separate sheet of paper and indicate the number of the question for which you are providing the additional information. If the question does not apply to you, please write "not applicable." Do not write "NA," "N/A" or the like. If the answer to the question is "no" or "none," please answer as such.**

1. Full name of person completing this form. \_\_\_\_\_
  
2. If this form is being completed on behalf of a person or entity other than the person listed in question 1, please provide the name of the person or entity with an interest in Botfly's assets.  
\_\_\_\_\_
  
3. If this form is being completed on behalf of an entity, please provide the full name of the entity and all of its trustees, officers, directors, managing agents, shareholders, partners, beneficiaries, and any other party with an interest in the entity.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  
4. Current address, telephone number(s) and email address of person completing this form.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  
5. Current address and telephone number of person or entity with an interest in Botfly's assets (if different from answer to question 4).  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  
6. Provide one mailing address where you (or the person/entity on whose behalf you are acting) authorize the receipt of all future communications relating to this claim, including any possible distribution payment you may receive. It is your responsibility to advise the Receiver of any change to this address after the submission of this form.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  
6. Please refer to Exhibit A attached to this document. If sufficient information is available, this Exhibit provides the following information for the identified "account:" (1) the total amount invested; (2) the total amount received; and (3) the Net Investment Amount. If you received funds unrelated to your investment in an "account" (for example, incentive fees), those amounts will also appear in the attached Exhibit. Do the amounts listed in the Exhibit accurately represent the amount of your investment into and all amounts received from that account and any other funds you received from the Receivership Entities? Failure to respond to this question will mean that you agree with the amounts listed in the Exhibit.  
\_\_\_\_\_ Yes                      \_\_\_\_\_ No.

**If you answered yes, you do not have to respond to questions 7 and 8.**



7. Please provide the following information regarding your investment in or with, or interest in, Botfly, and attach copies of all checks, bank or other financial account statements, invoices, wire transfer confirmations, and other documents relating to your answer:

1<sup>st</sup> investment in or with Botfly:

totaled \$ \_\_\_\_\_  
was made on \_\_\_\_\_ (date);  
through a check (or wire transfer) made payable to \_\_\_\_\_ and drawn on account number \_\_\_\_\_ with \_\_\_\_\_ (identify financial institution); for \_\_\_\_\_ (identify the purported fund or other entity through which your investment in or with Botfly was made).

If applicable, 2<sup>nd</sup> investment in or with Botfly:

totaled \$ \_\_\_\_\_  
was made on \_\_\_\_\_ (date);  
through a check (or wire transfer) made payable to \_\_\_\_\_ and drawn on account number \_\_\_\_\_ with \_\_\_\_\_ (identify financial institution); for \_\_\_\_\_ (identify the purported fund or other entity through which your investment in or with Botfly was made).

If additional investments were made, please attach a separate sheet identifying (1) those amounts, (2) the dates on which they were made, (3) the payee (or recipient) of the check (or wire transfer), (4) the account number and financial institution holding the account, and (5) the purported fund or other entity through which your investment in or with Botfly was made.

**Total amount you are claiming you invested in Botfly: \$ \_\_\_\_\_**

8. Have you ever received any amount from either Botfly, David Lewalski, or Jon Hammill, either as a distribution on your investment or for any other reason?  Yes  No. If yes, please provide the following information for each amount received, and attach copies of all checks, bank or other financial account statements, wire transfer confirmations, and other documents relating to your answers.

	<u>Date</u>	<u>Amount</u>	<u>Payor/Payee of check/wire</u>
A.	_____	_____	_____
B.	_____	_____	_____
C.	_____	_____	_____

If any additional amounts were received from any Receivership Entity, please attach a separate sheet identifying those amounts, the dates on which they were received, and the payor and payee of the check(s) or wire transfers.

**Total amount you are claiming you received from the Receivership Entities: \$ \_\_\_\_\_**

9. Have you filed or otherwise commenced any lawsuits, arbitrations, actions, or other proceedings; or made any demands against any person or entity, relating in any way to your investment in or with Botfly, including against (i) financial institutions; (ii) employees, officers, directors, representatives, other investors, or shareholders of any Receivership Entity; (iii) brokers or agents; or (iv) any other person or entity?

Yes  No.

If you answered yes, please identify with specificity the nature and status of any lawsuits, arbitrations, actions, other proceedings or demands that you have filed, made or otherwise commenced. Please include the name of the attorney and/or firm who commenced any such proceeding or made any such demand on your behalf.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

10. If you were not an investor in Botfly, state how you claim an interest in any distribution by Botfly (for example, if you are the beneficiary of a deceased investor, the investment was assigned or sold to you, or you provided services or goods to Botfly for which you have not been paid).

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11. Did you receive anything of value other than money from Botfly, David Lewalski, or Jon Hammill at any point in time (for example, fax machines, shares of stock)? \_\_\_\_\_ Yes \_\_\_\_\_ No. If yes, please identify what you received, from whom, and the date on which you received it.

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12. Identify your primary contact person(s) at Botfly.

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13. List any other employees or other representatives of Botfly or anyone else associated with Botfly, or investment or trading representative (such as anyone associated with Treadstone, LLC) with whom you communicated or dealt.

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14. Please identify with specificity the way in which you came to learn about Botfly and thereafter invest in or with it, including the person who introduced you to Botfly, the statements made by that person, any documents provided by that person, meetings you had with the representative(s) of Botfly, information that you relied on, and any other information.

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Please submit this completed and signed, under penalty of perjury, Proof of Claim Form and legible copies of any documentation requested in this form to **Michael Moecker, c/o Karen Cox, Esq., Bush Ross, P.A., P.O. Box 3913, Tampa, FL 33601-3913 SO THAT IT IS RECEIVED NO LATER THAN \_\_\_\_\_.**

IF YOU DO NOT AGREE WITH ANY AMOUNTS PROVIDED ON EXHIBIT A OR NO AMOUNTS WERE PROVIDED ON EXHIBIT A, YOU MUST PROVIDE ALL DOCUMENTS OR OTHER MATERIAL THAT IS RELATED IN ANY WAY TO YOUR INVESTMENT IN BOTFLY, OR, IF YOU ARE NOT AN INVESTOR, TO YOUR CLAIM AGAINST BOTFLY, INCLUDING COPIES OF YOUR CANCELLED CHECKS, BANK OR OTHER FINANCIAL ACCOUNT STATEMENTS SHOWING THE TRANSFER OF FUNDS INVESTED AND RECEIVED, STATEMENTS FROM BOTFLY, WIRE TRANSFER CONFIRMATIONS, AND ANY OTHER DOCUMENTS REGARDING YOUR CLAIM(S).

Sign, date, print your name and title, if any.

By signing below, I certify under penalty of perjury pursuant to Florida Statute that the information provided In this form is true and correct.

Sign: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A**

<p><b>Amount Invested:</b></p> <p><b>Total Payments:</b></p> <p><b>Net Investment Amount:</b></p>
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THE RECEIVER HAS PROVIDED THE ABOVE INFORMATION BASED UPON DOCUMENTS AVAILABLE TO HIM, THESE FIGURES ARE BELIEVED TO BE ACCURATE AND REASONABLE CONCLUSIONS, PLEASE CAREFULLY REVIEW THE ABOVE AMOUNTS, IF THE NUMBERS PROVIDED ARE NOT CONSISTENT WITH YOUR RECORDS, IT IS YOUR OBLIGATION TO PROVIDE TRUE AND CORRECT INFORMATION TO THE RECEIVER, IF YOU CONFIRM THAT THE ABOVE AMOUNTS ACCURATELY REPRESENT THE AMOUNT INVESTED INTO AND ALL AMOUNTS RECEIVED FROM BOTFLY AND ANY OTHER FUNDS YOU RECEIVED FROM BOTFLY, DAVID LEWALSKI, OR JON HAMMILL, YOU ARE DOING SO UNDER PENALTY OF PERJURY.

BY IDENTIFYING AND PROVIDING THE ABOVE FIGURES, THE RECEIVER DOES NOT WAIVE ANY RIGHT TO (1) DENY, CONTEST THE VALIDITY OF, OR OTHERWISE OBJECT TO A CLAIM OR, (2) IF WARRANTED, AMEND ANY OF THE PROVIDED FIGURES.

**EXHIBIT “B”**

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PASCO COUNTY, FLORIDA  
CIVIL DIVISION

OFFICE OF THE ATTORNEY  
GENERAL, DEPARTMENT OF LEGAL  
AFFAIRS, STATE OF FLORIDA,

Plaintiff,

CASE NO.: 51-2010-CA-2912-WS/G

v.

BOTFLY L.L.C., DAVID R. LEWALSKI,  
and JON J. HAMMILL,

Defendants.

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**NOTICE OF DEADLINE REQUIRING  
FILING OF PROOFS OF CLAIM ON OR BEFORE**

TO ALL PERSONS AND ENTITIES WITH CLAIMS AGAINST BOTFLY, LLC:

On April 21, 2010, the Office of the Attorney General, Department of Legal Affairs initiated this action. That same day, the Court entered an order appointing Michael E. Moecker or his designee employed by Michael Moecker & Associates, Inc. as Receiver for Botfly LLC (“**Botfly**”). Mr. Moecker has the full and exclusive power, duty, and authority to administer and manage the business affairs, funds, investments, property, assets, causes in action, and any other property of Botfly; to marshal and safeguard all of Botfly’s assets; and to take whatever actions are necessary for the protection of Botfly’s investors.

The Receiver and his professionals have spent considerable time and resources examining voluminous documents relating to Botfly, including its financial information. Based on this examination and to the extent possible, the Receiver has determined a Net Investment Amount for many investor "accounts."<sup>1</sup> The Net Investment Amount for an account is calculated by adding all amounts contributed by the pertinent investor(s) to an account and subtracting all payments made to that accountholder(s) and/or in connection with that account, regardless of whether those payments were characterized as interest, earnings, profits, returns or redemptions of principal, incentive fees, management fees or by any other terminology. For example, an account that had a total investment of \$100,000 and in connection with which \$50,000 was distributed to the related investor(s) would have a Net Investment Amount of \$50,000.

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<sup>1</sup> Although Botfly did not maintain separate investor accounts, the purported statements it created and distributed related to fictitious accounts.

To the extent the Receivership Entities do not have sufficient funds to pay all valid claims, the recipients and amounts of the Receiver's distributions will be based on the Net Investment Amounts for investors. By identifying and providing a Net Investment Amount for an account (as provided as an attachment to the Proof of Claim Forms mailed to investors where possible) the Receiver does not waive any right to (1) deny, contest the validity of, or otherwise object to a claim or (2), if warranted, amend the provided Net Investment Amount. If amendment of a Net Investment Amount is warranted, the Receiver will mail notice of the amendment to the investor(s) who, according to the Receiver's records, is (are) associated with the affected account and give such investor(s) an opportunity to respond.

On \_\_\_\_\_, the Court entered an order (the "**Claim Bar Date Order**") establishing \_\_\_\_\_ (the "**Claim Bar Date**") as the last date for each person or entity (including individuals, partnerships, corporations, joint ventures, estates, trusts, and governmental units) to file a Proof of Claim against Botfly.

Any person or entity that submits a Proof of Claim submits to the exclusive jurisdiction of the Sixth Judicial Circuit, in and for Pasco County, Florida for all purposes, including, without limitation, as to any claims, objections, defenses, or counterclaims that could be or have been asserted by the Receiver against such claimant or the holder of such claim in connection with the Botfly Receivership, including those arising out of (1) any dealing or business transacted by or with Botfly or (2) any dealing or business transacted that relates in any way to any property in the possession of Botfly. Further, claimants waive any right to a jury trial with respect to such claims, objections, defenses, and counterclaims.

The Claim Bar Date and the procedures set forth below for filing a Proof of Claim apply to all claims against any of the Receivership Entities.

## **1. WHO MUST FILE A PROOF OF CLAIM**

If you think that you may have a claim, you **MUST** file a Proof of Claim to share in distributions from the Botfly Receivership Estate. A claim based on acts or omissions of Botfly must be filed on or before the Claim Bar Date, even if such claim is not now mature, fixed, liquidated, or certain, or does not become mature, fixed, liquidated, or certain before the Claim Bar Date.

## **2. WHAT TO FILE**

To make the process less burdensome for investors, the Court authorized the Receiver to provide a Net Investment Amount on an attachment to the Proof of Claim Form for each account for which it was possible for the Receiver to do so. **By identifying and providing a Net Investment Amount for an account (as provided with the Proof of Claim Forms mailed to investors) the Receiver does not waive any right to (1) deny, contest the validity of, or**

**otherwise object to a claim or (2), if warranted, amend the provided Net Investment Amount.**

If you were provided a Net Investment Amount on the attachment to the Proof of Claim Form you received and you agree with the specified amount, then you do not need to provide to the Receiver any documentation supporting your claim. However, you **must** still complete and sign the Proof of Claim Form, under penalty of perjury, and return it to the Receiver so that it is **received** on or before the Claim Bar Date, as specified in section 3 below.

If you disagree with the Net Investment Amount provided on the attachment to the Proof of Claim Form that you have received or no Net Investment Amount was identified on the attachment to your Proof of Claim Form, you must provide to the Receiver by the Claim Bar Date (1) the amount you contend is the correct amount you invested in and received from any Receivership Entity and (2) legible copies of all documents on which you base your claim or, if any such documents are not available, a detailed explanation as to why any such documents are not available.

If you were not an investor, but believe you are or may be a creditor of Botfly, you must provide to the Receiver by the Claim Bar Date (1) the amount you contend you are owed from Botfly; (2) any amounts received from Botfly, David Lewalski or Jon Hammill; and (3) legible copies of all documents on which you base your claim (i.e., all invoices for services or goods provided, loan documents, etc.) or, if any such documents are not available, a detailed explanation as to why any such documents are not available.

Investors who, according to the Receiver's records, have multiple accounts will receive a Proof of Claim Form for each account. You **must** return completed and signed Proof of Claim Forms for each account to preserve all your claim(s). Failure to timely return a completed and signed Proof of Claim for an account will forever bar any claim related to that account.

If the Receiver discovers that the Net Investment Amount provided on an attachment to the Proof of Claim Form is not accurate, the Receiver will amend the Net Investment Amount and mail notice of such amendment along with an amended Proof of Claim Form to you. You then will have the later of either (1) the Claim Bar Date or (2) thirty (30) days from the date such notice was mailed to return the amended Proof of Claim Form to the Receiver. Failure to timely return a completed and signed amended Proof of Claim Form for an account will forever bar any claim related to that account.

Each Proof of Claim you file **must** conform substantially to the Proof of Claim Form and provide responses to all of the questions in the Proof of Claim Form that either (1) was mailed to you along with this Notice or (2), if you have not received one by mail, was posted on the Receiver's website at [www.botflyreceivership.com](http://www.botflyreceivership.com). Altered forms will not be accepted. A copy of a Proof of Claim Form also may be obtained from Karen Cox, Esq., Bush Ross, P.A., P.O. Box 3913, Tampa, FL 33601-3913 (813) 224-9620.



Each Proof of Claim you file must be signed under penalty of perjury by the Claimant or, if the Claimant is not an individual, by an authorized agent of the Claimant. Each Proof of Claim must be legible, written in English, and denominated in United States currency.

**3. WHEN AND WHERE TO FILE**

Except as provided for in this Notice, all Proofs of Claim must be delivered by mail or otherwise so as to be **received on or before** \_\_\_\_\_ at the following address:

Michael E. Moecker, Receiver  
c/o Karen Cox, Esq.  
BUSH ROSS, PA  
P.O. Box 3913  
Tampa, FL 33601-3913

DO NOT SEND YOUR PROOF OF CLAIM FORM TO THE COURT OR JUDGE  
PRESIDING OVER THIS CASE.

**4. CONSEQUENCES OF FAILURE TO FILE A PROOF OF CLAIM BY  
THE BAR DATE**

ANY HOLDER OF A CLAIM OR POTENTIAL CLAIM THAT FAILS TO FILE A PROOF OF CLAIM (1) THAT FULLY COMPLIES WITH ALL REQUIREMENTS SET FORTH IN THIS NOTICE AND (2) BY THE CLAIM BAR DATE WILL BE FOREVER BARRED, ESTOPPED, AND ENJOINED FROM ASSERTING SUCH CLAIM AGAINST BOTFLY, ITS SUCCESSORS, ITS RESPECTIVE PROPERTY, THE RECEIVER, OR THE BOTFLY RECEIVERSHIP ESTATE, AND FROM PARTICIPATING IN ANY DISTRIBUTION FROM THE BOTFLY RECEIVERSHIP.

**A holder of a claim or potential claim against Botfly may wish to consult an attorney regarding matters in connection with this Notice.**

Dated \_\_\_\_\_, Tampa, Florida.

Karen Cox, Esq.  
BUSH ROSS, PA  
P.O. Box 3913  
Tampa, FL 33601-3913  
[kc Cox@bushross.com](mailto:kc Cox@bushross.com)