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**Appeal No. 20-3155**

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**UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT**

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**UNITED STATES SECURITIES AND EXCHANGE COMMISSION,****Plaintiff-Appellee****And****KEVIN B. DUFF, RECEIVER,****Appellee****v.****VENTUS HOLDINGS, LLC,****Defendant-Appellant**

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**APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF  
ILLINOIS IN CASE NO. 18-cv-5587, JUDGE JOHN Z. LEE**

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**SEVENTH CIRCUIT RULE 3(c) DOKETING STATEMENT OF APPELLANTS**

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Appellant Ventus Holdings, LLC, through its attorney, Michael B. Elman & Associates, Ltd., respectfully submits this Docketing Statement pursuant to Circuit Rule 3 (c)(1) of the United States Court of Appeals for the Seventh Circuit.

**I. DISTRICT COURT JURISDICTION**

The United States District Court for the Northern District of Illinois has subject matter jurisdiction in this proceeding pursuant to 15 U.S.C. Section 77t(b), 15 U.S.C. Section 78u(d) and 15 U.S.C. Section 78u(e).

**II. APPELLATE COURT JURISDICTION**

The United States Court of Appeals for the Seventh Circuit has jurisdiction to review the interlocutory orders identified in Appellant's Notice of Appeal pursuant to (i) 28 U.S.C.

Section 1292(a)(2) and (ii) the collateral order doctrine. The orders concern the Receiver's efforts to direct the sale or dispose of real estate that is part of the Receivership Estate.

On August 18, 2018 the Plaintiff initiated this proceeding by filing a complaint against four defendants, alleging fraud through a Ponzi Scheme involving over 900 investors (Docket No. 1). On August 17, 2018 Kevin B. Duff was appointed as the Receiver in this proceeding (Docket No. 16). On May 2, 2019 the District Court entered an order which required the Receiver to "act with due regard to the realization of the true and proper value of such real property" (Docket No. 352).

In December, 2019 the Receiver accepted Appellant's bids to purchase four parcels of real property (the "Properties") (Docket No. 739). In or about March, 2020 the world was essentially shut down due to the Covid-19 pandemic (Docket No. 746). As a result, the credit market seized-up and Appellant was unable to secure financing to purchase the Properties (Docket No. 746). On April 20, 2020 Appellant notified the Receiver that due to its inability to secure financing, Appellant would be unable to proceed with the transactions (Docket No. 746).

On May 8, 2020 the Receiver accepted alternate bids for three of the four properties at a combined sale price of \$945,200.00 less than Appellant's bids (Docket No. 746). On June 11, 2020 the Receiver filed a motion to confirm the sales to the third-party bidders (Docket No. 712). On June 23, 2020 Appellant filed a motion to Intervene (Docket No. 721). Attached to Appellant's motion as an exhibit is Appellant's objection to the Receiver's motion to confirm. In the objection Appellant states that it had secured financing.

On July 10, 2020 the District Court entered an order granting Appellant's motion to intervene as well as the motions to intervene filed by the third-party purchasers (Docket No. 742). On July 17, 2020 Appellant filed its reply to the Receiver's motion to confirm (Docket No. 746). In its reply, Appellant reiterated that it temporarily could not secure financing due to the Covid-19 pandemic but had now procured the necessary financing allowing the sales to proceed. The Receiver agreed to sell one of the four properties to Appellant but not the other three.

On October 26, 2020 the District Court entered an order granting the Receiver's motion to confirm sale and on October 30, 2020 entered an order authorizing the sales (Docket Nos. 825 & 841). Appellant seeks review of these two orders.

This Court has jurisdiction pursuant to 28 U.S.C. Section 1292(a)(2) because it concerns the wind up of the Receivership Estate. The proceeds of sale will be deposited with the estate and the Receiver will disburse pursuant to a plan of distribution. Deciding who should purchase the Properties will determine the amount of funds available as part of the estate's wind up. If the orders confirming the sales are affirmed, the estate will receive \$945,200.00 less than if the orders are reversed and the properties sold to the Appellant. As part of the wind up, if the Appellant's bids are accepted, the secured creditor for one of the properties would be paid in full leaving a surplus for the victims of the Ponzi scheme and the creditor for the other property would be paid nearly in full. If the alternate bids are accepted, the wind up will be prolonged because the secured creditors will dispute how much money will be allocated to each of them and the victims.

This Court also has jurisdiction pursuant to the collateral order doctrine. To fall within the scope of this doctrine, the order must conclusively determine the disputed question, resolve an important issue completely separate from the merits of the underlying action, and be effectively unreviewable on appeal from a final judgment. *SEC v. Wealth Management, LLC*, 628 F.3d 323 (7<sup>th</sup> Cir. 2010). All three criteria enunciated in *Wealth Management* apply to the issues implicated in the orders dated October 26 and 30, 2020. On November 20, 2020, Appellant filed a motion with the District Court to stay enforcement of these two orders. (Docket No. 848).

### **III. PRIOR OR RELATED APPELLATE PROCEEDINGS**

On October 27, 2020 the Federal National Mortgage Association and CitiBank, N.A., as Trustee for the Registered Holders of Wells Fargo Commercial Mortgage Securities, Inc., Multifamily Mortgage Pass-Through Certificates, Series 2018-SB48, filed a Notice of Appeal captioned *United States Securities and Exchange Commission, Plaintiff-Appellant v. EquityBuild, et al., Defendants v. Kevin B. Duff, Receiver, Court Appointed Receiver, Appellee v. Federal National Mortgage Association, et al.*, Appellants and was assigned case no. 20-3114. The

appeal seeks review of the order granting the Receiver's ninth motion to confirm the sale of certain real estate.

**IV. ADDITIONAL REQUIREMENTS OF CIRCUIT RULE 3 (C)(1)**

This case does not (i) involve a criminal matter; (ii) has not been designated by the District Court as satisfying the criteria of 28 U.S.C. Section 1915(g); (iii) concern any parties appearing in their official capacities; and (iv) involve a collateral attack on a criminal conviction.

Dated this 25<sup>th</sup> day of November, 2020.

/s/Michael B. Elman

Michael B. Elman

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**CERTIFICATE OF SERVICE**

I, Michael B. Elman, hereby certify that on November 25, 2020, I caused to be electronically filed the Seventh Circuit Rule 3 ( c) Docketing Statement of Appellant, with the United States Court of Appeals for the Seventh Circuit, which is being served electronically via the Court's ECF system to all counsel of record.

/s/Michael B. Elman

Michael B. Elman