

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

In re: ) Chapter 11  
)  
LIFE FUND 5.1, LLC, et. al., ) Case No. 09-32672  
) (Jointly Administered)  
)  
Debtors. ) Hon. A. Benjamin Goldgar

**NOTICE OF MOTION**

**PLEASE TAKE NOTICE THAT on Wednesday, October 14, 2009, at 9:30 a.m.,** or as soon thereafter as counsel may be heard, we will appear before the Honorable A. Benjamin Goldgar, or any judge sitting in his stead, in Room 613 of the Everett McKinley Dirksen Building, 219 South Dearborn Street, Chicago, Illinois 60604, and present the *Motion of the Chapter 11 Trustee and the Texas Securities Board for Order Allowing the Use of Certain Section 28 Disclosures in Filings with the Court*, a copy of which is hereby served upon you.

Dated: October 6, 2009

PATRICK M. COLLINS, not individually, but solely in his capacity as chapter 11 Trustee of the Debtors' estates

By: /s/ Brian A. Audette  
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*Proposed Attorneys for the Trustee*

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Debtors. ) Hon. A. Benjamin Goldgar

**MOTION OF THE CHAPTER 11 TRUSTEE AND THE  
TEXAS STATE SECURITIES BOARD  
FOR ORDER ALLOWING THE USE OF  
CERTAIN SECTION 28 DISCLOSURES IN FILINGS WITH THE COURT**

Patrick M. Collins, not individually, but solely in his capacity as chapter 11 trustee of the above-captioned Debtors' estates ("Trustee"), and the Texas State Securities Board ("TSSB" and together with the Trustee, the "Parties") seek entry of an order allowing the Trustee to use and file certain information provided by the TSSB in filings with this Court. In support thereof, the Parties state as follows:

1. On September 25, 2009, this Court entered an order authorizing the TSSB to produce to the Trustee certain confidential materials (including bank records and spreadsheet summaries of transactions) obtained or generated in the course of its investigation of potential violations of the Texas Securities Act (the "Act") by the Debtors and affiliated individuals and entities (the "A&O Group"). The Order specifically provided that the records were to be stamped and maintained by the Trustee as Confidential.

2. In accordance with the Court's Order, the TSSB has provided to the Trustee certain information and documents. The Trustee, in turn, has marked such materials Confidential and maintained them accordingly.

3. The Trustee and TSSB believe, however, that disclosure of certain of the materials and information provided by the TSSB is in the public interest and, more specifically, the interest of investors in the bankrupt entities identified in these jointly administered proceedings. Section 28 of the Texas Securities Act provides that information collected in connection with an investigation, and notes or memoranda regarding same, are to be maintained as confidential and “shall not be disclosed to the public except under order of court for good cause shown.” As discussed below, the Trustee and TSSB believe that there is good cause to allow the Trustee to disclose materials and information provided by the TSSB in court filings in this matter.

4. By way of example, certain information provided by the TSSB provides corroboration and additional support for the Trustee's Motion for Rule 2004 Examination of John and Laura Spalding, filed contemporaneously herewith. Specifically, the Trustee and TSSB believe that there is good cause to disclose TSSB's information relating to Bayou City Escrow, the Spaldings, and the extent of their apparent relationship to the Debtors, in order to allow the Trustee to advise the Court and investors of appropriate and necessary facts as John Spalding's law firm, Johnson Spalding, solicits investors as clients.

5. In the alternative, the Trustee could file certain materials received from the TSSB under seal if the Court prefers, in order to advise the Court of matters related to these proceedings. In light of the established interest in public proceedings, however, the Trustee believes that an order allowing the public disclosure of certain TSSB materials in filings is the approach that is more consistent with our system of open courts and, ultimately, the interest of the investors. The TSSB also agrees that the Trustee should be allowed to disclose those TSSB materials and information that should, in the Trustee's discretion, be used in connection with filings and submissions to the Court in these cases generally, and that good cause exists to

publicly disclose such materials under the circumstances.

6. The Trustee and TSSB respectfully request an order allowing the Trustee to publicly disclose in filings with this Court those TSSB materials and information that are, in the Trustee's discretion, necessary and appropriate to be used in connection with filings and submissions to the Court in this matter. Under the unique circumstances of this case, taking into account the extent of work conducted and information collected by the TSSB as well as the investors' interest in efficient and open proceedings, the Trustee and TSSB believe that good cause exists for entry of such an order. The Trustee is willing, however, to comply with any procedure that the Court deems necessary and appropriate related to any under seal review of TSSB materials prior to a public filing and/or any other protections that the Court deems necessary.

7. In the alternative, and most immediately, the Trustee seeks authority, for good cause shown, to disclose information and materials from the TSSB regarding the relationships and interactions between and among the investors, Bayou City Escrow, Inc., John and Laura Spalding, Johnson Spalding, and the Debtors. As set forth in the Motion for Rule 2004 Examination of John and Laura Spalding filed contemporaneously herewith, the Trustee and TSSB believe that the Court and investors would benefit from the disclosure of information collected and analyzed by the TSSB in connection with these matters.

8. The Trustee has served notice of this motion upon: (a) the Office of the United States Trustee; (b) the Debtors' counsel; (c) all parties that have appeared and/or requested notice in the Debtors' cases; and (d) Johnson Spalding and John and Laura Spalding individually. The Trustee has not served this motion upon the Debtors' consolidated list of 30 largest unsecured creditors because the Trustee believes that such service would constitute an unnecessary expense. Therefore,

given the relief requested herein, and notice to the parties who have otherwise appeared and participated in these cases, the Trustee requests that the Court approve limited notice of this motion.

WHEREFORE, the Parties respectfully request the entry of an order (a) authorizing the Trustee to publicly file in these bankruptcy proceedings the information or materials from the TSSB that the Trustee, in his discretion, believes is necessary and appropriate to submit to the Court in connection with the administration of these proceedings; and (b) granting the Parties such other and further relief the Court deems just and proper.

Dated: October 6, 2009

Respectfully submitted:

**PATRICK M. COLLINS**, not individually,  
but solely in his capacity as chapter 11  
Trustee of the Debtors' estates

By: /s/ Brian A. Audette

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**CERTIFICATE OF SERVICE**

Brian A. Audette, an attorney, certifies that on October 6, 2009 he caused a copy of the *Notice of Motion and Motion of the Chapter 11 Trustee and the Texas Securities Board for Order Allowing the Use of Certain Section 28 Disclosures in Filings with the Court* to be served on the parties listed below via U.S. mail, postage prepaid, and by the Court's ECF System to those parties registered to receive electronic service.

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/s/ Brian A. Audette

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In re: ) Chapter 11  
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) (Jointly Administered)  
)  
Debtors. ) Hon. A. Benjamin Goldgar

**ORDER AUTHORIZING TRUSTEE TO DISCLOSE CONFIDENTIAL  
INFORMATION OBTAINED FROM THE TEXAS STATE SECURITIES BOARD**

THIS CAUSE COMING TO BE HEARD upon the Motion of the Chapter 11 Trustee and the Texas State Securities Board for Order Allowing the Use of Certain Section 28 Disclosures in Filings with the Court (the "Motion");<sup>1</sup> the Court having found that good cause has been shown under section 28 of the Texas Securities Act; the Court having found that notice of the Motion was sufficient under the circumstances; and the Court having been otherwise fully advised in the premises,

IT IS HEREBY ORDERED THAT:

The Trustee is authorized, in his discretion, to publicly disclose and otherwise use confidential information obtained by the Texas State Securities Board pursuant to section 28 of the Texas Securities Act in connection with the Trustee's duties and obligations under the Bankruptcy Code, including, without limitation, the right to cite to confidential information in pleadings and attach confidential documents to pleadings.

Dated: October \_\_, 2009

ENTER:

\_\_\_\_\_  
United States Bankruptcy Judge

<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.