

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 11-60702-CIV-SEITZ/SIMONTON

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

COMMODITIES ONLINE, LLC
COMMODITIES ONLINE MANAGEMENT,

Defendants.

RECEIVER'S SECOND STATUS REPORT

Pursuant to the Court's April 1, 2011, Order, [D.E. 5], David S. Mandel, the court-appointed Receiver of Commodities Online LLC, and Commodities Online Management, LLC (together, "Commodities Online" or the Defendants), files his Second Status Report to inform the Court and the investors and creditors of the Receivership activities to date.

I. PROCEDURAL BACKGROUND

On April 1, 2011, the United States Securities and Exchange Commission (the "SEC") filed a civil complaint in the United States District Court for the Southern District of Florida, charging the Commodities Online with violating federal securities laws by "duping investors into funding a fraudulent scheme and violating the antifraud and registration provisions of the federal securities laws." [D.E. 1]. On the same day, on the SEC's motion, the Court entered: an Order Appointing Receiver that appointed David S. Mandel as Receiver over the Defendants (the "Receivership Order"). [D.E. 3 & 5].

II. THE RECEIVER'S ROLE AND RESPONSIBILITIES

The Court directed that the Receiver engage in three categories of activities:

- take immediate possession of all property, assets and estates of every kind of the Defendants;
- investigate the manner in which the affairs of the Defendants were conducted, and institute such actions and legal proceedings, for the benefit and on behalf of the Defendants and their investors and other creditors, as the Receiver deems necessary against those individuals, corporations, partnerships, associations and/or unincorporated organizations, which the Receiver may claim have wrongfully, illegally or otherwise improperly misappropriated or transferred money or other proceeds directly or indirectly traceable from investors in the Defendants; and
- present to the Court periodic reports (no less than quarterly) reflecting the existence and value of the assets of the Defendants and of the extent of liabilities, both those claimed to exist by others and those the Receiver believes to be legal obligations of the Defendants.

[D.E. 5].

Upon his appointment, the Receiver took immediate possession and control over the offices and business locations of the Defendants, and promptly began the process of marshaling the Defendants' assets to protect investors' and creditors' interests. The Receiver also commenced an inquiry into the business affairs and the financial condition of the Defendants. Pursuant to the authority granted in the Receivership Order, the Receiver retained the following professionals to search, recover and protect the Defendants' corporate assets, and to otherwise untangle the

Defendants' financial and operational affairs: (1) the law firm of Mandel & Mandel LLP; (2) Kapila & Company ("Kapila"), forensic accountants, (3) the law firm of Barclay Cale, P.A., (4) the law firm of Frank Schwartz, P.A., (5) the international security firm of G-Global Protection Solutions, LLC ("GGPS"), and (6) the law firm of Sepúlveda de la Fuente y Asociados S.C., in Mexico.¹

The Receiver established an informational website www.commoditiesonline.com and created an email address: Commodities-Receiver@mandel-law.com dedicated to Receivership business. In addition, Mandel & Mandel LLP dedicated an extension on its telephone system for communications relating to the Receivership and continues to respond to inquiries from those who invested in the Defendants and creditors of Defendants.

The Receiver sets forth below the status of his activities, investigation and analysis of the assets of the Defendants to date.

A. Receivership Assets

1. Financial Assets

Pursuant to the Court's Order Appointing the Receiver, the Receivership Order was served on several financial institutions believed to have funds on deposit belonging to the Defendants and approximately \$2.4 million was frozen in the various bank accounts of the Defendants. Subsequently, the Receiver seized these funds and placed the funds in new cash accounts established in the name of David S. Mandel, as Receiver of the Defendants, on behalf of the receivership estate. Additionally, the Receiver and his forensic accountants (detailed below) have done an extensive analysis of the funds received and disbursed by the Defendants. Due to the continuous movement

¹ Alberto Sepúlveda de la Fuente, the Receiver's Mexican legal counsel, left White & Case, S.C., on June 30, 2011, and formed his own firm, Sepúlveda de la Fuente y Asociados S.C., on July 1, 2011.

of the money in these accounts to other entities and individuals prior to the Receiver taking control of the Defendants, and the detail necessary in order to establish claims regarding any improper transactions, the forensic accountants are still in the process of analyzing transactions and information.

In the Receiver's forensic accountants' initial analysis of the bank account information as set forth in the Receiver's Initial Status Report filed with the Court on April 29, 2011 [D.E.11 at 7], the Receiver reported the following with respect to funds received and disbursed to co-Defendant, Commodities Online, LLC ("Commodities Online") during the period January, 2010, through April 1, 2011:

FUNDS RECEIVED BY COMMODITIES ONLINE FROM JAN. 2010-APR. 2011²

| <u>Source of Funds</u> | <u>Amount</u> |
|-------------------------------|----------------------|
| Investors | \$18,834,778 |
| Insiders and related parties | \$5,360,867 |
| Equity interest holders | \$2,349,162 |
| Subscriptions | \$884,256 |
| Other | \$1,567,106 |
| TOTAL | \$28,996,169 |

² The Receiver titled these two same charts differently in the Initial Status Report [*see* D.E.11 at 7], but for ease of reference, the Receiver has revised the chart titles to be more specific.

FUNDS DISBURSED BY COMMODITIES ONLINE FROM JAN. 2010-APR. 2011

| <u>Recipient</u> | <u>Amount</u> |
|------------------------------|----------------------|
| Insiders and related parties | \$10,840,990 |
| Iron Ore Contracts | \$9,507,355 |
| Investors | \$3,090,509 |
| Salaries | \$885,731 |
| Legal and Professional | \$523,152 |
| Other | \$1,714,116 |
| Total | \$26,561,853 |

[See D.E. 11 at 7].

Upon review of additional banking records from other sources, and more detailed analysis of the various levels of the transactions, the forensic accountants revised the sources of funds received and disbursed by Commodities Online during the relevant time period as follows:

**REVISED FUNDS RECEIVED BY COMMODITIES ONLINE
FROM JAN. 2010-APR. 2011**

| <u>Source of Funds</u> | <u>Amount</u> |
|-------------------------------|----------------------|
| Investors | \$18,800,778 |
| Insiders and related parties | \$11,996,367 |
| Equity interest holders | \$2,374,162 |
| Subscriptions | \$920,097 |
| Other | \$1,555,800 |
| TOTAL | \$35,647,204 |

REVISED FUNDS DISBURSED BY COMMODITIES ONLINE
FROM JAN. 2010-APR. 2011

| <u>Recipient</u> | <u>Amount</u> |
|------------------------------|----------------------------|
| Insiders and related parties | \$20,262,172 |
| Iron Ore ³ | \$7,417,987 |
| Investors | \$3,093,569 |
| Salaries ⁴ | \$128,848 |
| Legal and Professional | \$523,152 |
| Other | <u>\$1,787,160</u> |
| Total | <u>\$33,212,888</u> |

Based on the foregoing, during the relevant time period over 37.4% of the total aggregate funds received and over 67.5% of the total aggregate funds disbursed by Commodities Online were received from and disbursed to insiders and related parties outside of Commodities Online.

For the purpose of determining the sources of funds received and disbursed to the insiders and related parties by Commodities Online, the Receiver's forensic accountants reviewed and analyzed banking records in the form of bank statements, cancelled checks, deposit tickets and wire

³ After appointment of the Receiver, the Receiver procured the return of \$826,185 in funds relating to iron ore, and has subtracted this amount from the total amount of "iron ore" disbursement. Note also that the Receiver has generally referred to this category as "iron ore" and not "iron ore contracts" as it is unclear whether all of these funds related to any specific iron ore contract.

⁴ The vast majority of funds disbursed that the Receiver originally classified as "salaries" in its Initial Status Report in the Funds Disbursed chart [See D.E. 11 at 7] were, in fact, not for employment services provided to the Defendants, and have been reclassified in other categories in this Revised Funds Disbursed chart. Thus, the Receiver's Revised Funds Disbursed chart for the category of "salaries" was substantially decreased from the Receiver's initial analysis.

transfer advices for the period of January, 2010, through February, 2011.⁵ Additionally, in order to determine the nature of the transactions of these potential targets of lawsuits, the forensic accountants prepared a reconstruction of the funds received and disbursed by insiders and related parties on a transactional level basis (the “Insiders and Related Parties Bank Reconstruction”). The Insiders and Related Parties Bank Reconstruction was the result of the financial analysis of over 35 accounts maintained at various financial institutions and encompassed over 9,500 transactions.

The Receiver’s forensic accountants combined the results of the Insiders and Related Parties Bank Reconstruction with the reconstruction of the banking activity of Commodities Online. After review and analysis of the combined activity, the forensic accountants have been working with the Receiver to better understand the fraudulent transactions conducted by the Defendants and the substantiation of the operations of Commodities Online. The forensic analysis is ongoing, and continues to be updated as the Receiver obtains additional information.

2. Defendants’ Offices - 6550 N.⁶ Federal Highway, Suite 220, Fort Lauderdale, Florida, and 1940 SE 2nd Street, Pompano Beach, Florida

The Receiver removed all files, records, documents, computers, servers, and all other identifiable assets of the Defendants in these offices, and terminated all lease obligations of the offices, including all utilities. The Receiver is preserving all of these assets.

3. Mexican Iron Ore

After substantial investigation, including extensive interviews, depositions, and numerous

⁵ The Receiver obtained additional banking documents through February, 2011.

⁶ Note that the Receiver’s Initial Status Report included a typo and incorrectly indicated that “corporate offices” of the Defendants was located at “6550 W. Federal Highway, Suite 220.” (italics added). [*See* D.E. 11 at 3]. Defendants’ correct former address of the “corporate offices” was located at 6550 N. Federal Highway, Suite 220, Fort Lauderdale, Florida.

contacts with individuals and entities in United States and Mexico, the Receiver has additional indications that the Defendants may own iron ore located in Mexico. The Receiver's ability to locate and verify any iron ore owned by the Defendants has been severely delayed and impeded by the noncooperation of the majority of the former officers of the Defendants, and due to the current nature of business in Mexico, and in particular, the iron ore business, which at times can be unsafe, unreliable and uncertain. In addition, the Receiver received information that others have been purporting to act on the Defendants' behalf in Mexico. As a result, in order to protect any of the Defendants' assets in Mexico, the Receiver retained the assistance of Frank Schwartz, Esq., a Mexican citizen, along with GGPS to further assist in the process of verifying the acquisition of iron ore, if any, in Mexico by the Defendants. Upon verification of the existence of iron ore in Mexico owned by that Defendants that is legally enforceable in Mexico, the Receiver, along with Schwartz, GGPS and Mexican counsel, will implement any and all security measures to safeguard the assets for later sale or liquidation in accordance with the laws of Mexico and the United States, for the benefit of the receivership estate.

With the assistance of the Receiver's forensic accountants, the Receiver ascertained that the Defendants may have spent over \$8 million relating to the purchase of iron ore. During the month of March, 2011, alone, which was after the Defendants received subpoenas from the SEC and just prior to the Receiver's appointment, Defendants disbursed over \$6 million to other individuals and entities relating to iron ore. The forensic accountants reviewed and analyzed a variety documents and numerous banking transactions to ascertain these amounts. To the extent that any of the funds relating to the purchase of iron ore that the Defendants disbursed to other individuals or entities do

not prove to be legitimate business transactions, the Receiver intends to seek and claim this money from these potential targets on behalf of the receivership estate.

4. Attorney Retainers for Former Employees of the Defendants

Prior to the appointment of the Receiver, Defendants transferred about \$77,000 of funds to attorneys as retainers to represent employees of the Defendants at the time. The Receiver recovered over \$9,000 in retainer fees from these attorneys so far, and anticipates the additional recovery of attorney retainer fee funds in the immediate future.

5. Securing Computer Data and Emails

The Receiver imaged all computers of the Defendants and is preserving this information. The Receiver is currently analyzing and reviewing this information for relevance to any potential targets of lawsuits. In addition, the Receiver is in the process of preserving all previous email accounts of the Defendants.

B. Identification of Investor-Victims

The Receiver seized various computer databases and files from the Defendants which provided information regarding the individuals and entities who “invested” in “contracts,” and/or “purchased equity shares” in Defendants, and/or purchased “subscriptions” to the Defendants’ database of “contracts.” Moreover, numerous individuals have contacted the Receiver by telephone and by email attempting to ascertain the status of their money. The Receiver compiled information from these various sources into a comprehensive spreadsheet.

C. Receiver’s Actions to Recoup Investors’ Funds

The Receiver anticipates the filing of a Motion for Disgorgement and Turnover Against James Howard, former President of Commodities Online, for \$1,450,000 of funds stolen from

investors shortly. Additionally, the Receiver is in the process of investigating and pursuing various claims against all potential targets who improperly received money from the Defendants. In this regard, the Receiver has reviewed numerous documents, contacted different individuals and entities whom Defendants may have conducted business with and transferred money to, interviewed former employees and other individuals who may have completed work on behalf of the Defendants prior to the Receiver's appointment, and continues to investigate the flow of investor money to potential targets. Furthermore, the Receiver subpoenaed several entities and individuals who received money from the Defendants' accounts for responsive documents, and subpoenaed various individuals for their appearance at depositions. Once the Receiver has received responsive documents and completed the depositions, the Receiver intends to file clawback lawsuits against potential targets to the extent that they received any stolen investor funds.

D. Claims Process

The Receiver has taken steps to prepare for the claims process by organizing the contact information for investors and other claimants. Besides contact with investors, the Receiver also communicated with and catalogued information from other potential claimants against the Defendants, including but not limited to landlords, vendors, former employees, and other creditors of Defendants.

E. Receiver's Additional Efforts

In addition to the efforts enumerated above regarding marshaling assets, the Receiver and his professionals have performed many services in connection with the Defendants, including, but not limited to:

- a. closing the related businesses and identifying customers, creditors, and investors;

- b. interviewing employees;
- c. reviewing numerous investor files and attempting to investors;
- d. obtaining and reviewing all financial records to trace fraudulent transfers and other asset diversions;
- e. investigating and attempting to reconstruct the Defendants' financial and operational affairs, despite disorganized and incomplete records;
- f. analyzing potential claims to be pursued on behalf of the Receivership estate;
- g. communicating via email and telephone with investors and creditors of the Defendants;
- h. communicating and coordinating efforts with the SEC;
- i. interviewing creditors and investors of the Defendants;
- j. locating and conducting an inventory of assets belonging to the Defendants;
- k. locating and consolidating Commodities Online's banking accounts into a single interest bearing account;
- l. analyzing account receivables;
- m. reviewing legal authorities on property issues, securities issues, debt collection and receivership issues;
- n. researching transfers of Receivership funds to various entities and individuals, and offshore accounts and activities;
- o. securing the Defendants' computer network from outside access, dismantling and relocating computer equipment;
- p. imaging and analysis of all computer workstations and laptops;

- q. securing and searching all incoming emails;
- r. gaining access to the Defendants' websites and domains;
- s. changing all security passwords for computers, websites and electronic funds transfer software; and
- t. revising the Defendants' website to provide notice to creditors about the status of the SEC's action against the Defendants.

F. Supplemental Reports

The Receiver will file further reports from time to time as his investigation proceeds.

Dated: August 4, 2011

Respectfully submitted,

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Counsel for the Receiver, David S. Mandel

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed by CM/ECF
this 4th day of August, 2011.

/s/ David S. Mandel