

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 11-60702-CIV-COOKE/TURNOFF

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

COMMODITIES ONLINE, LLC
COMMODITIES ONLINE MANAGEMENT,

Defendants.

RECEIVER'S FOURTH 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 Fourth Status Report to inform the Court and the investors and creditors of the Receivership of 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 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 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”), (6) the law firm of Sepúlveda de la Fuente y Asociados S.C., in Mexico.¹; and (7) the law firm of Ogden, Gibson, Broocks, Longoria & Hall, LLP, in Houston, Texas.

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 of the money in these accounts to other entities and individuals before the Receiver took control, and the detail necessary in order to establish claims regarding any improper transactions, the forensic

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.

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. 2011

<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

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 ²	\$7,417,987
Investors	\$3,093,569
Salaries ³	\$128,848

² 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.

³ 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.

Legal and Professional	\$523,152
Other	\$1,787,160
Total	\$33,212,888

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, canceled checks, deposit tickets and wire transfer advices for the period of January, 2010, through February, 2011.⁴ 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.

⁴ The Receiver obtained additional banking documents through February 2011.

2. Defendants' Offices - 6550 N. 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 contacts with individuals and entities in the United States and Mexico, the Receiver had indications that the Defendants may own iron ore and related equipment located in Mexico. The Receiver's ability to locate and verify any iron ore or related equipment owned by the Defendants was 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 presence of iron ore, or related equipment if any, in Mexico. The investigation by the Receiver's representatives in Mexico established that the Defendants have no recoverable iron ore in Mexico. The Receiver does not anticipate making any further efforts to recover physical iron ore in Mexico.

With the assistance of the Receiver's forensic accountants, the Receiver has ascertained that the Defendants may have expended over \$8 million purportedly relating to the purchase of iron ore or related equipment. During the month of March 2011 and just before the Receiver's appointment, Defendants disbursed over \$6 million to various bank accounts titled in the names of individuals and

entities purporting to relate to the purchase of iron ore. The forensic accountants have 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 purported purchasers of iron ore or related equipment that the Defendants disbursed to these bank accounts do not prove to be legitimate business transactions, the Receiver intends to seek and claim this money 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 has recovered over \$22,000 in retainer fees from these attorneys.

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 has compiled the information from these various sources into a comprehensive spreadsheet.

C. Receiver's Actions to Recoup Investors' Funds

1. Order of Disgorgement from James Howard

On August 23, 2011, the Court entered an Order Granting the Receiver's Motion Requiring Turnover and Disgorgement of Investor Funds from James Howard and Sutton Capital LLC [D.E. 39]. The Disgorgement Order directed Howard, the controlling principal of Commodities Online, to disgorge \$1,450,000.00 of investor funds that he had transferred to his company Sutton Capital for his personal benefit. Mr. Howard's motion for a stay of the Disgorgement Order was denied. Based on the fact that Mr. Howard did not comply with the Order by the deadline of September 2, 2011 (nor has he done so since then), the Receiver moved for an Order to Show Cause Why Howard and Sutton Capital should not be held in Contempt [D.E. 75]. Magistrate Judge Turnoff held an evidentiary hearing over three days on the Receiver's motion (Jan. 10, Feb. 10, and Feb. 24, 2012). On February 27, 2012, both sides filed briefs on the matter, which remains pending.

In addition, on January 27, 2012, Mr. Howard's appeal to the Eleventh Circuit Court of Appeals of the Disgorgement Order and the denial of a stay were dismissed by the Eleventh Circuit Court of Appeals for lack of jurisdiction.

2. *David S. Mandel, as Receiver of Commodities Online, LLC and Commodities Online Management, LLC v. James C. Howard, III, Louis N. Gallo, III, George Saliba, a/k/a George Saliva, and Martin Vegas - Case No. 11-23620-CIV-COOKE/TURNOFF*

Based on the analysis performed by the Receiver's forensic accountant and additional deposition and document discovery conducted by the Receiver, the Receiver has filed a complaint against James Howard, Louis N. Gallo, III, Martin Vegas, and George Saliba seeking in excess of \$5,000,000.00. All four of the Defendants were principals involved in the Commodities Online scheme and the Receiver's complaint alleges that all of the Defendants contributed to millions of dollars of loss of investor funds. The Court entered a scheduling order and the litigation is

proceeding. Two defendants have moved to dismiss the Complaint and the Receiver has responded to their motions. The Receiver intends to prosecute the case vigorously and recover judgments against all four Defendants.

3. Eclipse Impex Interpleader Action

During March 2011, over six million dollars were transferred from Commodities Online to companies and individuals purportedly involved in the iron-ore business. One of the companies, Eclipse Impex located in Texas, received \$760,000, which was wired to Frost Bank in Houston, Texas. The Receiver put Frost Bank on notice of the Receiver's claim to recover these funds and \$560,000.00 was frozen by the bank in the Eclipse Impex bank account. An interpleader action has been instituted by Frost Bank with the Receiver and Eclipse Impex as interpleader parties. The Receiver retained counsel in Houston in an effort to recover the funds remaining in the Eclipse Impex bank account. Eclipse Impex moved for summary judgment; both sides submitted legal memoranda, the court heard oral argument and continued the hearing until April 2012.

Based on the analysis by the Receivers' forensic accountants that Commodities Online LLC was insolvent in March 2011, the Receiver has alleged that the Eclipse transfer was a voidable fraudulent transfer.

4. Discovery In Support Of Recovery Actions

The Receiver continues to vigorously pursue discovery by way of depositions and document production from third parties to develop appropriate evidence for the commencement of further recovery actions on behalf of the receivership.

D. Forensic Accounting

Kapila & Company ("Kapila") has substantially completed the analysis of the banking records, the results of which were outlined in the Receiver's Second Status Report. Kapila continues

to reconcile the Receivership accounts and make necessary deposits and disbursements from the same as directed by the Receiver. The balance in the Receivership account currently totals \$2,554,888.35 and consists of the following:

Turnover of funds from frozen accounts	\$2,434,315.63
Recoveries from March Iron Ore transfers	826,185.15
Other recoveries – legal retainers, miscellaneous	22,965.30
Interest income	476.22
<u>Total Receipts</u>	<u>\$3,283,942.30</u>

Receivership's Expenditures, April 1, 2011 through November 30, 2011:

Total Professional fees and expenses (all firms)	\$ 666,978.14
Receiver's fees and expenses	54,093.85
Federal & state taxes	4,364.56
Other expenses – computer services	3,617.40
Total Disbursements	<u>\$ 729,053.95</u>
Cash Balance as of February 29, 2012	<u>\$2,554,888.35</u>

Kapila's role as forensic accountant to the Receiver has evolved from the preparation of a detailed reconstruction and analysis at the transactional level to providing documentation, support and testimony in connection with various court hearings and recovery actions being pursued by the Receiver. Specifically, Kapila has assisted with the following:

- Preparation of various analyses in advance of court hearings, relating to the Disgorgement Order for James Howard and the Receiver's Motion to Show Cause
- Preparation for and providing testimony at court hearings and deposition
- Providing an affidavit of insolvency relating to the Eclipse Impex recovery action

- Assisting counsel in preparation for depositions of James Howard and James O'Hearn
- Review and analysis of documents produced through depositions and hearings in connection with the Disgorgement Order

In addition, Kapila staged the computers of those individuals considered to be primary employees of COL for the purpose of extracting email correspondence and other documents that may provide evidence in pursuit of the recovery actions initiated by the Receiver. The majority of emails are believed to be in the control of outside services and the Receiver continues to pursue various avenues of recovery of these documents for potential evidence supporting the recovery actions.

Kapila also has assisted the Receiver in compiling a complete database of investors in order to advance the claims process.

In addition, Kapila has monitored IRS compliance requirements with respect to the Receivership and filed the required tax returns. In connection with tax matters, Kapila also has analyzed payroll accounting records, and prepared payroll tax returns Form 940, Form 941 and UCT-6, not previously filed by Commodities Online; reconciling payroll returns with W-2s and 1099s previously issued; researched company records and compiled required information for employees, contractors and others and prepared appropriate W-2's, 1099 and 1096 forms; and researched and documented foreign employees with appropriate withholding forms. Kapila continues to investigate and respond to tax notices received from the Florida Department of Revenue and the IRS.

E. 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.

F. 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.

G. Supplemental Reports

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

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed by CM/ECF this
16th day of March, 2012.