

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

COMMODITIES ONLINE, LLC, and
COMMODITIES ONLINE MANAGEMENT,

Defendants.

RECEIVER'S FIFTH 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 this Fifth Status Report to inform the Court and the investors and creditors of the Receivership's 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 (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”), (6) the law firm of Sepúlveda de la Fuente y Asociados S.C., in Mexico.¹; and 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 prior to the Receiver taking control

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 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	<u>\$1,714,116</u>
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	<u>\$1,555,800</u>
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	\$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, 2011.⁵ Additionally, in order to

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.

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

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 more than 35 accounts maintained at various financial institutions and encompassed more than 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 contacts with individuals and entities in the United States and Mexico, the Receiver had indications that the Defendants may own iron ore located in Mexico. The Receiver’s ability to locate and verify

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.

any iron ore or equipment related to its processing owned by the Defendants was severely delayed and impeded due to the non-cooperation of most of the Defendants' former officers, as well as 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 were 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, if any, in Mexico. The investigation by the Receiver's representatives in Mexico established that the Defendants have no recoverable iron ore or related equipment in Mexico. The Receiver does not anticipate making any further efforts to recover physical iron ore or related equipment 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 and related equipment. During the month of March 2011 alone, after the Defendants received subpoenas from the SEC and just before the Receiver's appointment by the Court, Defendants disbursed more than \$6 million to various bank accounts titled in the names of individuals and entities purporting to relate to the purchase of iron ore and related equipment. The forensic accountants have reviewed and analyzed 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 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 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 has preserved this information. The Receiver is currently analyzing and reviewing this information for relevance to any potential targets of lawsuits. In addition, the Receiver has preserved 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. Motion for Disgorgement from James Howard

Based on the analysis performed by the Receiver’s forensic accountant, the Receiver filed a motion to compel James Howard, the principal of Commodities Online, to disgorge \$1,450,000.00 of investor funds that he had transferred to a company he owned and controlled, Sutton Capital, for his personal benefit. On August 23, 2011, the Honorable Patricia A. Seitz held a hearing on the Receiver’s motion and the motion was granted. Mr. Howard was ordered to disgorge \$1,450,000.00 to the Receiver [D.E. 39; hereinafter the “Disgorgement Order”]. Howard and Sutton Capital sought

to appeal from the Disgorgement Order, and the district court denied Howard's request for a stay pending the appeal. The denial of the stay was also appealed. Both appeals were dismissed by the 11th Circuit Court of Appeals.

Howard and Sutton Capital failed to comply with the Disgorgement Order and the Receiver filed a Motion for an Order to Show Cause why James Howard and Sutton Capital should not be held in contempt for failure to disgorge the \$1,450,000.00 as ordered by the Court [D.E. 75].⁷ On three separate days in January and February 2012, Magistrate Judge Turnoff held evidentiary hearings on the Receiver's Motion for an Order to Show Cause [D.E. 126, 146, 153]. Both the Receiver and the respondents filed post-hearing briefs [D.E. 155, 156]. On May 14, 2012, Magistrate Judge Turnoff issued his Report and Recommendation that Howard be found in contempt and incarcerated until he complied with the Disgorgement Order [D.E. 179]. Howard and Sutton Capital filed objections [D.E. 190], and the Receiver filed responses to the objections. [D.E. 192].

While the contempt proceedings were underway, on February 9, 2012, Howard and Sutton Capital filed a motion for the Court to vacate the Disgorgement Order [D.E. 144]. On February 27, 2012, the Receiver filed a memorandum in opposition to the motion to vacate [D.E. 154]. On June 14, 2012 the Honorable Marcia Cooke heard argument on Howard's Motion to Vacate the Order [D.E. 184]. After the hearing, Judge Cooke ordered Howard to deposit \$1,450,000.00 into the court registry until the Court ruled on the pending motion to vacate and Magistrate Judge's Report and Recommendation [D.E. 193].

Instead of complying with that Order, Howard filed a motion to alter the judgment and deposited \$1,000.00 in the court registry [D.E. 195, 196]. These matters remain pending.

⁷ The Receiver also moved to disqualify counsel for Howard and Sutton Capital, who had represented Commodities Online before the receiver was appointed. After briefing and a court hearing, the Court denied the motion. [D.E. 74, 91, 123, 124].

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 filed a complaint against James Howard, Louis Gallo, 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 converted to their personal use millions of dollars of investor funds.

Defendants Howard and Saliba filed answers to the Complaint, respectively [D.E. 7, 16]. Defendants Gallo and Vegas filed motions to dismiss the complaint, respectively [D.E. 10, 12], to which motions the Receiver filed responses [D.E.18, 19]. The parties filed a Joint Status Report on January 11, 2012 [D.E. 23]. On February 24, 2012 the Court issued the Scheduling Order in the matter [D.E. 23]. On March 29, 2012 the Court denied Gallo's Motion to Dismiss,; the Court denied in part and granted in part Vegas' motion to dismiss [D.E. 25]. On March 21, 2012 the Receiver served the defendants with his initial disclosures.

On April 9, 2012, Horecia Walker moved to withdraw from representing Defendant Saliba, which was granted [D.E. 26, 45]. On April 11, 2012, Defendant Vegas filed his Answer and Affirmative Defenses [D.E. 28], and on April 16, 2012 Defendant Gallo filed his Answer and Affirmative Defenses [D.E. 29]. On May 2, 2012, the Receiver served his First Set of Interrogatories on each Defendant. On May 14, 2012, Magistrate Judge Turnoff recused himself and he was replaced by Magistrate Judge Bandstra [D.E. 42]. Defendant Howard has served the Receiver with

answers to the Receiver's interrogatories; the Receiver anticipates filing motions to compel responses to pending discovery requests and then deposing the defendants.

3. Eclipse Impex Interpleader Action

During March 2011, several 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 was instituted by Frost Bank with the Receiver and Eclipse Impex as interpleader parties. Counsel in Houston was retained to represent the Receiver in an effort to recover the funds remaining in the Eclipse Impex bank account. Eclipse Impex filed a Motion for Summary Judgment after which, briefing and or oral argument, was denied by the court.

On April 4, 2012 the Receiver moved for court approval of a tentative settlement reached by the parties in the interpleader action, and that settlement was approved by the court on May 30, 2012. On June 13, 2012 the Receiver, Frost Bank and Eclipse Impex executed a final settlement agreement, with the Receiver to receive \$100,000.00 in return for a full mutual release with the other parties. On June 27, 2012 the Receiver received a copy of the fully executed settlement agreement accompanied by a check for \$100,000.00.

4. Discovery In Support Of Recovery Actions

The Receiver continues to move forward vigorously with 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. Recently, the testimony has been taken of Minerales Mexiron, LLC, Minerales Mexico Iron, SACV, Minjo Corporation, Louis Gallo, Jr.,

former attorney for Commodities Online Inger Garcia, in the Receivership action. In Mandel v. Howard, Gallo, Vegas and Saliba, Interrogatories have been propounded, and deposition of the defendants will be scheduled when the Interrogatory Answers have been received.

D. Forensic Accounting

Kapila & Company (“Kapila”) has substantially completed the analysis of the banking records, the results of which are outlined in the Receiver’s Second Status Report. Kapila’s role 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.

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 is in the process of preparing a schedule to assist the Receiver in compiling a complete database of investors in order to advance the claims process.

1. Cash management

_____Kapila & Co. 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 \$2,543,138.85 and consists of the following:

Turnover of funds from frozen accounts	\$2,434,315.63
Recoveries from March Iron Ore transfers	826,185.15
Settlement proceeds of Eclipse/Impex litigation	100,000.00
Other recoveries – legal retainers, miscellaneous	22,965.30
Interest income	<u>476.22</u>
Total Receipts	<u>\$3,383,942.30</u>
Professional fees and expenses	\$ 777,540.71
Receiver’s fees and expenses	54,903.85
Federal & state taxes	4,741.49
Other expenses – computer services	<u>3,617.40</u>
Total Disbursements	<u>\$ 840,803.45</u>
Cash Balance as of June 21, 2012	<u><u>\$2,543,138.85</u></u>

2. Litigation Support

Kapila’s role continues to focus on providing forensic analysis, support and documentation as requested by the Receiver and counsel in connection with on going adversary actions. In addition, the Receiver has been asked to provide data relating to the contents of Louis Gallo’s computer at the request of the IRS, for which Kapila has provided assistance.

3. Tax Services

Kapila assists the Receiver in all areas of tax compliance and addresses all tax notices and other requests from the IRS and Department of Revenue. Most recently Kapila filed the Form 1042 tax return, the annual withholding tax form for foreign persons and handled tax notices from the Florida Dept. of Revenue.

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
5th day of July, 2012.

/s/ Nina Stillman Mandel