

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 NINTH STATUS REPORT

David S. Mandel, the Court-appointed Receiver of Commodities Online LLC and Commodities Online Management, LLC (together, "Commodities Online" or the Defendants), files this Ninth Status Report to inform the Court and the investors and creditors of the Receivership's activities to date.¹

I. PROCEDURAL BACKGROUND

On April 1, 2011, the United States Securities and Exchange Commission (the "SEC") filed a civil complaint in this matter, 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 the Order Appointing Receiver that appointed David S. Mandel as Receiver over the Defendants (the "Receivership Order"). [D.E. 3 & 5].

¹ The Receiver's previous status reports may be found at D.E. 11, 22, 116, 159, 197, 221, 232 and 246.

II. THE RECEIVER'S ROLE AND RESPONSIBILITIES

Upon his appointment, the Receiver took immediate possession and control over the offices and business locations of the Defendants, and promptly began to marshal 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 certain professionals to search, recover and protect the Defendants' corporate assets, and to otherwise untangle the Defendants' financial and operational affairs. During the period since the Receiver's last status report filed April 16, 2013 [D.E. 246], the following professionals have provided essential services to the Receiver (1) the law firm of Mandel & Mandel LLP; (2) the forensic accounting firm of Kapila & Company ("Kapila"); (3) the law firm of Barclay Cale, P.A., and (4) the law firm of Kozyak, Tropin & Throckmorton, P.A., specifically regarding bankruptcy matters as discussed further below.

The Receiver established and maintains an informational website www.commoditiesonline.com dedicated to Receivership business, which is regularly updated. The Receiver also created an email address: Commodities-Receiver@mandel-law.com to correspond with victim/investors, creditors, and others relating 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 Commodities Online victim/investors and creditors.

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 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.

The Receiver's forensic accountants' confirmed that during the period January 1, 2010, through April 1, 2011, Defendant Commodities Online, LLC ("Commodities Online") received and disbursed the following amounts:

FUNDS RECEIVED BY COMMODITIES ONLINE
FROM JANUARY 2010 THROUGH APRIL 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
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**FUNDS DISBURSED BY COMMODITIES ONLINE
FROM JANUARY 2010 THROUGH APRIL 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
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

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.

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 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. 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

As detailed in the Receiver’s previous status reports, after substantial investigation, including extensive interviews, depositions, and on-site investigation conducted both in the United States and Mexico, the Receiver concluded that the Defendants had no recoverable iron ore or related

⁴ The Receiver obtained additional banking documents through April 2011.

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 ascertained that the Defendants may have expended over \$8 million purportedly relating to the purchase of iron ore and related equipment. During March 2011 alone, after the Defendants were served with 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

Before the Receiver was appointed, Defendants transferred approximately \$77,000 to attorneys as retainers to represent employees of the Defendants at the time. The Receiver recovered more than \$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 continues to analyze and review this information for relevance to claims on behalf of the receivership estate. The Receiver also 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. Disgorgement from James Howard

On August 23, 2011, the Court granted the Receiver’s motion and ordered James C. Howard III, a former principal of Commodities Online, to disgorge \$1,450,000 that he had transferred from Commodities Online to a company he owned and controlled, Sutton Capital, for his personal benefit. [D.E. 39; hereinafter the “Disgorgement Order”]. As detailed in the Receiver’s previous status reports [D.E. 116, 159, 197], Howard resisted complying with the Disgorgement Order, including appealing to the Eleventh Circuit Court of Appeals, moving to vacate the Disgorgement Order, moving to modify the Disgorgement Order, and repeatedly failing to make payments as ordered by Court. [D.E. 64, 75, 139, 144, 195, 203, 206]. On July 20, 2012, the Court ordered Howard to make full payment in four parts beginning July 31, 2012, or face possible immediate incarceration [D.E. 206, at 8-9]. Howard again failed to comply with the Court’s Order. He did not make any payment on July 31, 2012. The next day, Howard filed a petition for Chapter 7 bankruptcy. Thereafter, the Court entered a stay of the instant case as against him [D.E. 207, 211].

2. *David S. Mandel, Receiver for Commodities Online LLC, et al., 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/Bandstra*

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 defendants were either principals of or 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.

On January 14, 2013, the Receiver filed an Amended Complaint against the defendants, adding fraudulent transfer claims against defendants Gallo, Saliba and Vegas [D.E. 78, 79]. Defendant Vegas filed an Answer to the Amended Complaint [D.E. 87]. On February 28, 2013, after the Receiver moved for default against defendants Gallo and Saliba, the Court issued an order directing defendants Gallo and Saliba to respond to the Amended Complaint [D.E. 88, 89]; however, Gallo and Saliba still have not filed any response. On March 29, 2013, following the Receiver's renewed application, the Clerk of the Court entered a default against Gallo and Saliba [D.E. 92, 93].

In addition, on February 1, 2013, the Receiver had filed a second motion for sanctions against defendant Saliba for failing to comply with several court orders, including the order granting the Receiver's previous motion for sanctions due to discovery violations [D.E. 80, 86]. On March 27, 2013, Magistrate Judge Otazo-Reyes issued an Order to Show Cause, directing Saliba to show cause why the Receiver's second motion for sanctions should not be granted, requiring a response by April 10, 2013 [D.E. 91]. Saliba never filed any response to the Order to Show Cause.

On April 29, Magistrate Judge Otazo-Reyes ordered Saliba to respond the Receiver's Second Motion for Sanctions [D.E. 86] for failing to comply with the Court's Orders [D.E. 94]. Again, Saliba failed to file any response. On May 20, Magistrate Judge Otazo-Reyes issued a Report and Recommendation, recommending as follows: that a default judgment be entered against Saliba, including awarding the Receiver the sum of \$2,089,368, plus prejudgment interest, and other related sanctions; and that Saliba pay \$3,690 to the Receiver in attorneys' fees and costs [D.E. 98]. Saliba failed to file any objections to the Report and Recommendation.

On August 29, 2013, Judge Cooke entered an Order affirming the Report and Recommendation [D.E. 105]; the same day, the judge entered a Default Judgment in favor of the Receiver and against Saliba in the amount of \$2,089,368.00, plus prejudgment and postjudgment interest, and attorneys fees [D.E. 106].

Due to the related criminal case pending against defendants Howard and Gallo (see below at ¶4.a.), the Court entered an order staying the trial of this case, setting deadlines for fact and expert discovery and substantive motions, and setting a status hearing for October 2, 2013 [D.E. 84].

3. *David S. Mandel, Receiver for Commodities Online LLC, et al. v. Francisco Javier Ortiz Gonzalez, case no. 12-civ-62471-Dimtrouleas/Snow*

On December 11, 2012, the Receiver filed a lawsuit asserting fraudulent transfer and civil theft claims against Francisco Javier Ortiz Gonzalez. The Court denied the defendant's motion to dismiss, which had been fully briefed [D.E. 12, 15, 16, 17]. On April 15, 2013, the defendant filed an Answer and Affirmative Defenses [D.E. 18]. Discovery is ongoing in this matter, and the case is set for trial during the two-week period beginning December 16, 2013 [D.E. 20].

4. *Related Actions Against Principals of Commodities Online*

Separate civil and criminal lawsuits have been filed relating to Commodities Online, against the principals and others who were involved in COL's activities. The Receiver will continue to monitor these matters in his efforts to recoup victim-investor losses.

a. *United States v. James C. Howard, III, et al.*; case no. 12-20630-Cr-Lenard

In September 2012, a federal grand jury in the Southern District of Florida returned a criminal indictment against James C. Howard III, Louis Gallo III, Patricia Saa, Michael Casey and Rita Balbirer, charging the defendants with conspiracy, mail fraud, wire fraud and money laundering in connection with Commodities Online. From approximately January 2010 through April 2011,

defendants Howard, Gallo, Saa, Casey and others allegedly conspired to defraud individuals who invested in Commodities Online, LLC, obtaining more than \$20 million from over 700 investors.

At a hearing on August 20, 2013, the judge entered an order postponing the trial of this case until March 10, 2014. Defendants Howard and Gallo remain in custody under pretrial detention orders. Defendants Casey and Balbirer remain on bond. Defendant Saa was apprehended in Chile and, according to the government, extradition proceedings are ongoing. [D.E. 116].

b. *Securities and Exchange Commission v. James C. Howard, III, et al.*;
Case no. 12-61731-Civ-Zloch

The Securities and Exchange Commission filed a civil securities fraud action against James C. Howard III, Louis Gallo III and Michael Casey, and several relief defendants, relating to their activities in connection with Commodities Online LLC. In that case, the SEC is seeking injunctive relief, disgorgement of funds, and monetary penalties. On June 12, 2013, the Court entered a Default Final Judgment against defendant Gallo.

c. *In re James Clark Howard*, case no. 12-28313-JKO, Bankr. S.D. Fla (Chap. 7)

In the James Howard bankruptcy matter, David Mandel, as Receiver, has been listed as a creditor in the amount of \$1,450,000 (based on the Disgorgement Order). *See In re Howard*, case no. 12-28313-JKO, Bankr. S.D. Fla (Chap. 7) [D.E. 13 at 16]. The Receiver has engaged the law firm of Kozyak, Tropin & Throckmorton, P.A. as his bankruptcy counsel.

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’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.

Kapila secured the computers of COL's primary employees for the purpose of extracting email correspondence and other documents that may provide evidence in pursuit of the recovery actions initiated by the Receiver.

Kapila is continuing 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 \$2,088,138.95 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 – adversary actions	100,000.00
Other recoveries – legal retainers, miscellaneous	25,713.06
Interest income	476.22
Total Receipts	<u>\$3,386,690.06</u>
Professional fees and expenses	\$1,213,292.14
Receiver's fees and expenses	71,063.85
Federal & state taxes	5,043.09
Other expenses – computer services	9,152.13
Total Disbursements	<u>\$1,298,551.21</u>
Cash Balance as of August 30, 2013	<u>\$2,088,138.95</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 pending adversary actions. During this interim period, Kapila prepared insolvency and ponzi reports in support of the Receiver's adversary actions as well as affidavits in support of final default judgments in various cases. Kapila performed additional forensic work on the main COL server, recovering documents and correspondence available to the Receiver for review in connection with litigation.

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.

E. Claims Process

The Receiver has taken steps to prepare for the claims process by organizing the contact information for investors and other claimants. In addition to 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 Receivership activities, 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;
- 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 funds transfer software;

- t. revising the Receivership website to provide notice regarding the status of the SEC's action against the Defendants; and
- u. monitoring related pending litigation against the principal owners and operators of Commodities Online and Commodities Online Management.

G. Supplemental Reports

The Receiver will file further reports 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 4th day of September, 2013.

/s/ Nina Stillman Mandel