

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

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

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

COMMODITIES ONLINE, LLC, and  
COMMODITIES ONLINE MANAGEMENT,

Defendants.

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**RECEIVER'S OMNIBUS OBJECTIONS TO CERTAIN CLAIMS  
RECEIVED IN THE CLAIMS PROCESS**

David S. Mandel, the Court-appointed Receiver of Commodities Online LLC and Commodities Online Management, LLC (together, “Commodities Online,” “COL,” or the Defendants), hereby gives notice that the Receiver has served objections to certain of the Claim Forms received in the Claims Process and hereby files the attached Omnibus Claims Objection, composed of the attached Exhibits A and B.

**I. BACKGROUND**

The Receiver has provided detailed reports of his activities in this matter in the periodic status reports filed over the course of this Receivership at Docket Entries 11, 22, 116, 159, 197, 221, 232, 246, 260, 274, 290, 300, and 302.

As an overview of the claims process, on October 19, 2015, the Court entered its *Order Authorizing Claims Process*. D.E. 308. The Receiver subsequently sent Claim Forms to investors and creditors. The identity of these investors and creditors were ascertained from the numerous files and computer databases seized from the Defendants that revealed information regarding individuals who “invested” in Commodities Online or conducted business with

Commodities Online. In addition, the Receiver published information regarding the Receivership in select newspapers and posted the information and a downloadable copy of the Claim Form on the Receiver's website (<http://www.commoditiesonline.com>). As a result, numerous individuals downloaded the Claim Form or contacted the Receiver by telephone and/or email seeking to file a claim. The deadline for returning the Claim Forms was February 8, 2016 for investors, and March 4, 2016, for creditors. To date, the Receiver has had communications with more than 700 investors and other creditors concerning complex investment transactions, and more than 440 Claim Forms have been returned to the Receiver.

## **II. THE CLAIM FORM**

On each Claim Form sent directly to known investors, the Receiver pre-printed the amount of the investor's investment with Commodities Online to the extent it could be determined based on available information. The Claim Form indicated that the Receiver intended to recommend that amount to the Court as the amount that should be recognized as the investor's claim, but gave the investor an opportunity to disagree with that amount and seek additional or different damages as his or her claim amount. The Claim Form also explained that the Receiver or other parties may object to any claim and the Court had not yet decided what types of claims would be allowed. In the instances where investors downloaded a copy of the Claim Form from the website, those investors filled in the amount they are claiming as their investment.

Similarly, the Receiver sent a Claim Form to all known creditors (non-investors) and informed them that if they wanted to submit a claim in the Receivership, they needed to fill out the Claim Form and provide any supporting documentation for their claim by March 4, 2016. Additionally, creditors could download a copy of the Claim Form from the Receivership website and provide the value of their claim.

In all instances, the Receiver has reviewed each Claim Form and any available documentation and information.

### III. THE RECEIVER'S OBJECTIONS TO CERTAIN CLAIMS

During the past 120 days, the Receiver's staff and Kapila & Co. have spent a great deal of time reviewing, categorizing, and communicating with investor-victims and creditors concerning the returned Claim Forms. As a result, this information has been compiled into detailed files and a comprehensive spreadsheet that continues to be updated with new information.

Many of the Claim Forms have been returned without any objection to the Receiver's recommended claim amount. The Receiver and his staff also worked diligently during this period of time to resolve issues with a large amount of problematic, disputed, or deficient Claim Forms, so that the Claim Forms could be accepted and treated as undisputed.

Of the remaining Claim Forms, the Receiver is filing this Omnibus Claims Objection as to 252 investor Claim Forms (*see* Exhibit A) sorted by reasons for the Receiver's objections and 14 creditors, generally (*see* Exhibit B). The categories of disagreement are indicated with the following shorthand on the attached Omnibus Claims Objection:

- **“No Response”**: These are claims where the Receiver made an attempt to contact the investor, the Receiver received no indication that it was an improper mailing or email address, and has not received a response stating whether the investor agrees or disagrees with the claim amount supported by the Receiver's records.
- **“Invalid address / Contact Information”**: These are claims where the Receiver's claim form was “Returned to Sender” by the Postmaster, the email address was “Undeliverable”, or there was no address or email address available for the identified claimant.
- **“Insufficient Documentation”**: These are claims where the investor is making a claim that is different from what is supported by the Receiver's records. Furthermore, the investor has not produced sufficient documentation to support his or her claim.

- **“Net Investment Amount Different”**: These are claims where the investor is making a claim that is different from what is supported by the Receiver’s records. The claimant was either a net winner<sup>1</sup> and, therefore, no claim was allowed, or the claimant did not account for funds received offsetting their investment amount.
- **“SSH2”**: These are claims where the investor invested in SSH2, a non-COL entity and separate investment scheme (“SSH2”), operated by many of the same principals of COL. These claims are disallowed because SSH2 was not part of the Receivership Estate and thus, is not entitled to a distribution.
- **“SSH2 – including COL Claim”**: These are claims where the investor invested in both Commodities Online and SSH2, a non-COL entity and separate investment scheme operated by many of the same principals. The SSH2 portion of the claim was disallowed because SSH2 was not part of the Receivership Estate and is not entitled to a distribution.<sup>2</sup>
- **“Creditor”**: The Receiver believes that the total amount of investor losses will exceed the amount of recoverable assets that are available for redistribution to investor-victims. As a result, the Receiver is placing trade creditors on notice that the Receiver may seek to subordinate and/or reject creditor claims in favor of the investor-victims.

The Receiver is sending letters to the investors included in Exhibit A stating that the Receiver is objecting to their claim in whole or in part, enclosing and referring them to this Omnibus Claims Objection, and providing instructions that, in accordance with the Court’s *Order Authorizing Claims Process* (D.E. 308), they have until April 8, 2016, in which to respond to the Receiver’s objections. If not, they will be deemed to have waived their challenge to the objection and consented to the claim amount proposed by the Receiver.

For those investors in the “Invalid address / Contact Information” category included in Exhibit A, the Receiver will make a good-faith attempt to find new, valid contact information for

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<sup>1</sup> “Net winner” means an investor who received a positive return on his or her investment during the course of the fraud before the Court entered the TRO and appointed the Receiver.

<sup>2</sup> Regarding investors in this category, the allowed claim amount for the portion of the claimant’s request is specifically related to their investment in Commodities Online and not SSH2.

these claimants if available, and serve letters and this Omnibus Claims Objection. Regarding the creditors included in Exhibit B, the Receiver did not receive Claim Forms from any of these creditors at the time of this filing. Thus, this publicly-filed Omnibus Objection Notice will serve as notice to all creditors, and the Receiver will not be contacting these creditors any further. In addition, the Receiver will post this filing on the Receiver's website, (<http://www.commoditiesonline.com>), so that all claimants can look up whether the Receiver has objected to their Claim Form.

Pursuant to the *Order Authorizing Claims Process*, those claimants to whose claims the Receiver has objected have until April 8, 2016, to respond to the Receiver's objection by stating their position and providing supporting documentation; they must respond by the deadline if they wish to maintain their position. During this period of time, the total number of disputed claims may decrease from the present figure. After the April 8 deadline, the Receiver will assemble all of the responses into categories of objections and submit an omnibus filing with the Court.

The Receiver will also file an additional Omnibus Report identifying the disputed claims that still need to be resolved by the Court and a brief setting forth the grounds and legal bases for the Receiver's objections. According to the Court's *Order Authorizing Claims Process*, the Court has reserved ruling on what type of claims from investors and other creditors will or will not be recognized until a hearing has taken place after the conclusion of the claims process; the Court will schedule such a hearing in a separate order, which the Receiver will post on the Receivership website. D.E. 308 at 2-3.

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Dated: March 9, 2016

Respectfully submitted,

MANDEL & MANDEL LLP  
Counsel for the Receiver, David S. Mandel  
1200 Alfred I. duPont Building  
169 East Flagler Street  
Miami, Florida 33131  
Telephone: 305.374.7771  
Facsimile: 305.374.7776  
[nsm@mandel.law](mailto:nsm@mandel.law)

By: *Nina Stillman Mandel*  
NINA STILLMAN MANDEL  
Florida Bar No.: 843016

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed via CM/ECF  
filed this March 9, 2016.

*/s/ Nina Stillman Mandel*