

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 REPORT REGARDING  
STATUS OF CLAIMS AFTER 30-DAY PERIOD AND MOTION FOR  
DETERMINATION OF CERTAIN CLAIMS**

David S. Mandel, the Court-appointed Receiver of Commodities Online LLC and Commodities Online Management, LLC (together, "Commodities Online," "COL," or the Defendants), hereby files this Omnibus Report to advise the Court regarding the status of responses received in the last 30 days, and to request the Court's determination regarding certain disputed claims should be allowed against the Receivership Estate.

**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 communicated 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 dollar 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 figure 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. The Claim Form also explained that the Receiver or other parties might 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 dollar 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 complete 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**

The Receiver's counsel and KapilaMukamal LLP, the Receiver's forensic accountants, have continued their extensive efforts of 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, his counsel and his accounting professionals 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.

With respect to the remaining Claim Forms, on March 9, 2016, the Receiver filed *Receiver's Omnibus Objections to Certain Claims Received in the Claims Process* ("Omnibus Objections") [D.E. 311] that set forth the basis for the Receiver's objections to 252 investor Claim forms and generally 14 creditor claims. As indicated in the Court's *Order Authorizing Claims Process*, any investor or claimant who did not respond to the Omnibus Objections within the 30-day deadline shall have been deemed to have waived his/her challenge to the objection and consented to the amount of the claim proposed by the Receiver. D.E. 308 at 2.

In compliance with the *Order Authorizing Claims*, the Receiver mailed a copy of its *Omnibus Objections* to the last known address of the investor to whose claim the Receiver

objected, or a new valid address that the Receiver was able find after a good-faith search for investors' contact information. See D.E. 311 at 4-5. The Receiver also included a cover letter to each of these investors setting forth their right to challenge the Receiver's objection and the procedures for doing so. (see Exhibit 1). In addition, the Receiver posted a copy of the Omnibus Objections on the Receiver's website (<http://www.commoditiesonline.com>). As indicated in the *Omnibus Objections*, the Receiver received no Claims Forms from any creditor and the Receiver's filing of the Omnibus Objections on the website served as notice to these creditors. See *id.* at 5.

#### **IV. THE APPLICABLE LEGAL STANDARD FOR EQUITY RECEIVERSHIPS**

In equity receiverships resulting from SEC enforcement actions, the courts have consistently indicated that the district court has very broad powers and wide discretion to fashion remedies and determine to whom and how the assets of the Receivership Estate will be distributed. See *SEC v. Pension Fund of Am. L.C.*, 377 Fed. Appx. 957, 962, 963 (11th Cir. Fla. 2010) (quoting *SEC v. Elliot*, 953 F.2d 1560, 1566 (11th Cir. 1992) ("The district court has broad powers and wide discretion to determine relief in an equity receivership. This discretion derives from the inherent powers of an equity court to fashion relief") (citing cases)); see also *SEC v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005) (same and citing cases). "When it comes to fashioning a claims process and related distribution plan, no specific distribution scheme is mandated so long as the distribution is 'fair and equitable.'" *SEC v. Homeland Communs. Corp.*, 2010 U.S. Dist. LEXIS 57961, at \*4 (S.D. Fla. May 24, 2010) (quoting *SEC v. P.B. Ventures*, Civ. A. No. 90-5322, 1991 U.S. Dist. LEXIS 17901, at \*6 (E.D. Pa. Dec. 11, 1991)). Similarly, in deciding what claims should be recognized and in what amounts, "the fundamental principle which emerges from case law is that any distribution should be done equitably and fairly, with similarly situated investors or customers treated alike." *Id.* at 5 (quoting *SEC v. Credit Bancorp.*

*Ltd.*, No. 99 Civ. 11395RWS, 2000 U.S. LEXIS 17171, at \*93 (S.D.N.Y. Nov. 29, 2000)). Since any one group of investors in a Ponzi-type scheme generally occupies the same legal position as other investors, equity should not permit one group a preference over another, because “equality is equity.” *Id.* (quoting *Elliot*, 953 F.2d at 1570).

**V. THE RECEIVER’S GENERAL POSITION OF PERMITTED VERSUS NON-PERMITTED CLAIMS**

The Receiver recommends that the allowed amount for each investor’s claim be limited to the total dollar amount of his or her monetary investment(s) into COL consistent with the specific COL fraud set forth in the SEC’s Complaint. This “dollars invested” or “dollars in” approach is the most equitable and practical basis for determining investors’ claims in this Receivership. It is also the most common and most generally recognized approach to treatment of investor claims in an equitable receivership or bankruptcy proceeding involving a fraudulent investment scheme. *See, e.g., CFTC v. Equity Financial Group, LLC*, 2005 U.S. Dist. LEXIS 20001, at \*76-77 (D. N.J. Sept. 2, 2005) (adopting receiver’s recommendation that “claims be recognized only for actual dollar amounts invested,” and agreeing that “recognizing profits or other earnings in claims for distributions would be to the detriment of later investors and would therefore be inequitable”); *United States CFTC v. Wilson*, 2013 U.S. Dist. LEXIS 99992, at \*18 (S.D. Cal. Jul. 17, 2013); *In re Receiver*, 2011 U.S. Dist. LEXIS 71961, at \*7-8 (D. S.C. Jul. 1, 2011); *SEC v. Parish*, 2010 U.S. Dist. LEXIS 11757, at \*16-24 (D. S.C. Feb. 10, 2010).

**VI. CHALLENGES TO THE RECEIVER'S OBJECTIONS TO CERTAIN CLAIMS**

The Court's *Order Authorizing Claims Process* [D.E. 305] set forth process:

The investors and claimants with whom the Receiver has unresolved objections and who are served with the Omnibus Claims Objection Notice shall have 30 days, that is, until April 8, 2016, in which to respond to the Receiver's objections by sending a letter, email or other communication to the Receiver so indicating and setting forth their position. Any investor or claimant who does not respond to the Omnibus Claims Objection Notice shall be deemed to have waived his/her challenge to the objection and consented to the amount of the claim proposed by the Receiver. The Receiver shall assemble and categorize all responses received and shall make an omnibus filing one week after the end of the 30-day period, by April 15, 2016.

Id. at 2.

During the 30-day period for claimants to challenge the Receiver's objections to certain claims, the Receiver's accountant and the Receiver received phone calls, emails, facsimiles, and letters where claimants raised questions, concerns, or formal challenges regarding the Receiver's objections. In numerous instances, the Receiver worked comprehensively and successfully to resolve claimants' questions, concerns, and objections. In such cases, the claimant was either satisfied with the basis for the Receiver's objection (thus withdrawing any challenge) or the claimant was able to provide the Receiver with new information or documentation that resulted in the Receiver withdrawing his objection. However, there were certain claimants who objected to the Receiver's recommendation in the *Omnibus Objections* and continue to disagree with all or part of the Receiver's recommendation.

The Receiver attaches the three written objections<sup>1</sup> that remain unresolved and require a ruling from the Court. *See Exhibits 2-4*. To facilitate the Court's efficient review, the Receiver

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<sup>1</sup>To the extent a claimant's objection contained sensitive information, such as personal bank account or social security numbers, the Receiver redacted those items for the purpose of the CM/ECF filing.

has organized the claimants' challenges according to the basis for the Receiver's original objection. For each category below, the following is provided: (a) the basis for the Receiver's original objection, (b) the claimant's challenge, and (c) the Receiver's response.

#### **A. THE RECEIVER'S OBJECTION TO "SSH2" CLAIMS**

As stated in the Receiver's *Omnibus Objections*, these are claims by individuals and/or entities who allege investment losses relating to SSH2, a non-COL entity and separate investment vehicle operated by many of the same principals of COL. On information and belief, some of the same persons involved in COL had solicited money using other investment entities that were not the subject of this litigation or under the control of the Receiver pursuant to the Court's orders. These claimants assert they suffered financial losses from money they invested in SSH2 and are now seeking recovery from the COL Receivership estate. While the Receiver sympathizes with these SSH2 investors, the Receiver does not believe these SSH2 investors can properly be compensated for their losses in this proceeding and, therefore, their claims should be denied.

The SEC's Complaint in this matter sets forth the jurisdictional basis for the COL Receivership to the investors of Commodities Online. *See* Complaint at ¶¶1-5 [D.E. 1]. During the course of these proceedings, numerous other defrauded individuals have communicated with the Receiver regarding losses they suffered as a result of investments made into SSH2. However, while many of these individuals and companies suffered losses at the hands of the same principals of COL, the investment scheme and fraud of SSH2 was ultimately different and is not part of COL Receivership.

Specifically, these SSH2 investors share two commonalities: (1) they invested in a different investment scheme, SSH2; and (2) they are unable to show that they invested money directly into COL. The Receiver does not doubt that many non-COL investors suffered investment losses at

the hands of some of COL's principals who also were involved in SSH2. Nonetheless, SSH2 is outside the scope of the SEC's Complaint and thus, this COL Receivership. More importantly, compensating victims of these non-COL schemes would lead to inequitable results for those victims who were defrauded directly by the COL scheme that is the subject of this litigation.

**1. Challenge by Ark Resources Inc.**

**a. Ark Resources Inc.'s Position (see Exh. 2)**

Ark Resources Inc. submitted an objection to the Receiver, asserting that Ark Resources' losses of money it invested in SSH2 should be compensated from the COL Receivership Estate. Ark Resources asserts that it is entitled to COL Receivership funds for the losses it incurred because it allegedly intended to invest certain monies into COL and allegedly believed it had invested in COL. Ark Resources provided documentation that is attached at Exhibit 2.

**b. The Receiver's Position**

Based on the correspondence and documentation provided by Ark Resources and the Receiver's forensic accountants thorough analysis of COL records, the Receiver determined that Ark Resources' funds were never actually deposited or transferred into a COL account. Instead, Ark Resources funds were deposited into a "SSH2" account. Although Ark Resources provided documentation that it was informed by former COL employees that Ark Resources was investing in COL, those representations were false. The records indicate that Ark Resources invested only in SSH2, and that Ark Resources never invested money in COL.

The Receiver has made a diligent effort to determine whether SSH2 investors can be properly compensated under the COL Receivership. However, the Receiver does not believe there is a proper basis for compensating these non-COL investors over others, and thus has recommended that SSH2 investors claims, including Ark Resources' claim, against the COL



Receivership estate should be denied.

**B. THE RECEIVER'S OBJECTION: "SSH2 -INCLUDING COL CLAIM"**

As stated in the Receiver's *Omnibus Objections*, these are claims by investors who allege losses relating to *both* Commodities Online and SSH2. 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> As discussed above in subsection VI.A., the Receiver believes the SSH2 portion of these claims cannot be compensated from the COL Receivership based on jurisdictional and legal limitations; however, the COL portion of these claims should be allowed.

**1. Challenge by Enterprise Network & Security Consultants LLC**

**a. Enterprise Network & Security Consultants LLC's Position (see Exh. 3)**

Enterprise Network & Security Consultants LLC filed an objection asserting that all Enterprise's investment losses should be compensated from the COL Receivership Estate. Enterprise invested in both COL and SSH2, and disagrees with the Receiver's recommendation to deny the SSH2 portion of this claim totaling \$129,000. Enterprise argues that COL and SSH2 funds were commingled and that COL and SSH2 shared bank accounts, and thus, it asserts that these Enterprise investment losses into SSH2 should be compensated from the COL Receivership estate. Further, Enterprise allegedly believed that it was investing this \$129,000 in COL.

**b. The Receiver's Position**

Based on the correspondence and documentation provided by Enterprise and the Receiver's accountants thorough analysis of COL records, the Receiver determined that Enterprise's SSH2

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<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.

portion of its claim (\$129,000) was never actually deposited or transferred into a COL account. Instead, these Enterprise specific funds were deposited into a “SSH2” account. Contrary to Enterprise’s contention, COL and SSH2 had distinct bank accounts and there is no evidence of any commingling of the SSH2 and COL account funds. Moreover, while Enterprise may have intended to invest this specific money (\$129,000) into COL, in fact, Enterprise’s funds were not deposited or transferred into any COL account. Thus, the records confirm indicate that regarding this portion of Enterprise’s claim for \$129,000, Enterprise invested only in SSH2, and not in COL.

The Receiver has made a diligent effort to determine whether investments into SSH2 can be properly compensated under the COL Receivership. However, the Receiver does not believe there is a proper basis for compensating these non-COL investments over others, and thus has recommended that SSH2 claims, including this SSH2 portion of Enterprise’s claim (\$129,000), against the COL Receivership estate should be denied.

## **2. Challenge by Yolanda Weston and E&V Partners LCC**

### **a. Yolanda Weston and E&V Partners LLC’s<sup>3</sup> Position (see Exh. 4)**

Yolanda Weston filed an objection asserting that all her investment losses should be compensated from the COL Receivership Estate. Ms. Weston invested in both COL and SSH2.

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<sup>3</sup> Ms. Weston was originally included in the “No response” category of the Receiver’s *Omnibus Objections* [D.E. 311, Ex. A]. As indicated in the *Omnibus Objections*, if the Receiver did not receive any response from an investor either agreeing or disagreeing with the Receiver’s recommended claim amount, the Receiver recommended denial of these claims. *Id.* During the recent 30-day period after the Receiver provided notice of the *Omnibus Objections* to claimants, Ms. Weston responded, objecting to the Receiver’s denial of her claim of \$1,012 for investment loss into COL and added another additional loss of \$1,000 to her claim for her investment via E&Y Partners LLC in SSH2. The Receiver agrees with Ms. Weston and recommends allowing claim of investment loss into COL for \$1,012. However, the Receiver continues to object to the SSH2 portion of her claim regarding her investment via E&Y Partners for \$1,000. Accordingly, she now falls under this category of objections.

Her investment into COL was made under her name directly, and her investment into SSH2 for \$1,000 was made via E&V Partners LLC. Ms. Weston disagrees with the Receiver's recommendation to deny the SSH2 portion of her \$1,000 claim, invested via E&V Partners LLC. She essentially asserts that her investment losses into SSH2 should be compensated from the COL Receivership estate.

**b. The Receiver's Position**

Based on the correspondence and documentation provided by Ms. Weston and the Receiver's accountants thorough analysis of COL records, the Receiver determined that Ms. Weston's portion of her claim invested via E&V Partners (\$1,000) was never actually deposited or transferred into a COL account. Instead, these specific funds were deposited into a "SSH2" account. Thus, the records indicate that for this portion of Ms. Weston's claim for \$1,000, she invested only in SSH2, and not in COL.

The Receiver has made a diligent effort to determine whether investments into SSH2 can be properly compensated under the COL Receivership. However, the Receiver does not believe there is a proper basis for compensating these non-COL investments over others, and thus has recommended that SSH2 claims, including this SSH2 portion of Ms. Weston's claim (\$1,000), against the COL Receivership estate should be denied.

**CONCLUSION**

The Receiver respectfully requests that the Court (1) determine that the permitted amount for any objecting investor's claim set forth in this Report be limited to the total dollar amount of his or her monetary investment(s) into COL consistent with the specific COL fraud set forth in the SEC's Complaint, (2) adopt the Receiver's position on the disputed claims as set forth above, and (3) grant any further relief it deems just and proper.

*SEC v. Commodities Online, LLC, et al.*  
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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. Further, 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.

Dated: April 15, 2016

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed via CM/ECF filed this April 15, 2016.

/s/ Nina Stillman Mandel