

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.

**RECEIVER'S SUPPLEMENT TO OMNIBUS OBJECTIONS
TO CERTAIN CLAIMS [D.E. 311] AND
MOTION FOR DETERMINATION OF CERTAIN CLAIMS [D.E. 314]**

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 Supplement to Omnibus Objections to Certain Claims [D.E. 311], and Motion for Determination of Certain Claims [D.E. 314].

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.

On October 19, 2015, the Court entered its Order Authorizing Claims Process (the “Order”). [D.E. 308]. Pursuant to the Order, the Receiver sent Claim Forms to investors and creditors, relying upon files and computer databases seized from the Defendants that revealed information regarding individuals who “invested” in 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.

On March 9, 2016, in accordance with the Order, the Receiver's sent his Omnibus Objections to Certain Claims Received in the Claims Process ("Omnibus Objections") [D.E. 311] to all claimants and creditors regarding the Receiver's recommendations for their claims against the COL Receivership estate, and notified claimants that they had 30 days to provide any response to the Receiver's recommendations. The Omnibus Objections set forth the basis for the Receiver's objections to 252 investor claim forms and generally to 14 creditors' claims. Exhibit A to the Omnibus Objections set forth any reasons for the Receiver's objections to investor claims and Exhibit B set forth reasons for the Receiver's objections to creditors' claims. D.E. 311-1. Pursuant to the Court's Order, any claimant who did not respond to the Omnibus Objections within the 30-day deadline was 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].

The Receiver and the Receiver's forensic accountant worked diligently to review and respond to the claimants who provided responded with any information or objection to the Receiver's Omnibus Objections during the 30-day period. We reached agreements with many of the claimants who responded in this 30-day period regarding their objections through further communication and explanation of the COL records. Many of our discussions with these claimants resulted in the claimants' withdrawing their challenges to the Receiver's recommendations, but some claimants persisted in their objections. The Court's Order directed

the Receiver to file an Omnibus Report regarding the status of any claimants who still objected to the Receiver's recommendation after this 30-day period. [D.E. 308 at 2].

Accordingly, on April 15, 2016, the Receiver filed his Omnibus Report Regarding Status of Claims after 30-day Period and Motion for Determination of Certain Claims [D.E 314] ("Motion for Determination of Certain Claims"). This Motion set forth three written objections by 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. *Id.* With respect to these three objecting claimants, the Receiver respectfully requested that the Court determine the permitted amount be limited to the total dollar amount of the investor's monetary investment(s) into COL consistent with the specific COL fraud set forth in the SEC's Complaint and adopt the Receiver's position on the disputed claims. The Motion for Determination of Certain Claims is still pending with the Court.

II. THE RECEIVER'S SUPPLEMENT TO THE OMNIBUS OBJECTIONS

Since the filing of the Receiver's Omnibus Objections [D.E. 311], the Receiver has learned additional information and is providing the Court with a Supplement to Exhibit A of the Omnibus Objections regarding certain claims to which the Receiver does not object. Specifically, the Receiver withdraws his objection regarding a claim or a portion of claim for 14 investors as set forth in the attached Exhibit 1. *See attached* Exhibit 1, Update to *Exhibit A* of Receiver's Omnibus Objections. The Receiver has revised his previous objections to these 14 claimants and recommends allowance of these claims based on the claimants' responses. As to some claimants, the Receiver had incorrect contact information and has since received updated information. The corrected amount for each of these investors is set forth in attached Exhibit 1.

III. THE RECEIVER'S MOTION FOR DETERMINATION OF ALL CLAIMS

In sum, the Receiver submits that taking together his Omnibus Report [D.E. 311], which included the Receiver's recommendations as to claims in Exhibit A [D.E. 311-1], and supplemented by the attached Exhibit 1 with the Receiver's revised recommendations for the 14 claimants, the Court now has the Receiver's recommended claim amounts for all non-objecting claimants. The Receiver respectfully requests that the Court adopt the Receiver's recommendations for all non-objecting claimants.

As for objecting claimants, the Receiver set forth his recommended claim amounts for those three investors in his Motion for Determination of Certain Claims [D.E. 314]. According to the Court's Order, the Court reserved ruling on what type of claims from investors and other creditors would be recognized until after the conclusion of the claims process [D.E. 308].

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).

CONCLUSION

In sum, the Receiver respectfully requests that the Court (1) adopt the Receiver's position regarding all non-objecting claims, (2); grant the Receiver's Motion for Determination of Certain Claims; and (3) grant any further relief it deems just and proper.

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 August 24, 2016.

/s/ Nina Stillman Mandel