

District Court, Denver County, Colorado 1437 Bannock Street Denver, CO 80202	<b>EFILED Document</b> <b>CO Denver County District Court 2nd JD</b> <b>Filing Date: Dec 9 2011 3:20PM MST</b> <b>Filing ID: 41326745</b> <b>Review Clerk: Charmaine Bright</b>
FRED J. JOSEPH,  Securities Commissioner for the State of Colorado,  Plaintiff,  v.  SEAN MICHAEL MUELLER, MUELLER CAPITAL MANAGEMENT, LLC, and MUELLER OVER UNDER FUND, LP,  Defendants.	<p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p>
Attorneys for: C. Randel Lewis, Receiver Name: Michael T. Gilbert, #15009 John C. Smiley, #16210 John A. Chanin, #20749 LINDQUIST & VENNUM P.L.L.P. Address: 600 17 <sup>th</sup> Street, Suite 1800 South Denver, CO 80202 Phone No.: 303-573-5900 Fax No.: 303-573-1956 Email: <a href="mailto:mgilbert@lindquist.com">mgilbert@lindquist.com</a> <a href="mailto:jsmiley@lindquist.com">jsmiley@lindquist.com</a> <a href="mailto:jchanin@lindquist.com">jchanin@lindquist.com</a>	Case Numbers: 2010CV3280  Division: Courtroom:
<b>RECEIVER'S DECEMBER 2011 REPORT</b>	

C. Randel Lewis, in his capacity as Receiver, submits this Report on the status of the Receivership proceedings.

### I. PROCEDURAL HISTORY

1. On April 23, 2010, the Commissioner filed his Complaint for Injunctive and Other Relief.

2. On April 27, 2010, this Court entered an Order Appointing the Receiver (the "Receivership Order"). The Receiver was appointed for Mueller Capital Management, LLC

("MCM"), Mueller Over Under Fund, LP, as well as any related businesses, including Mueller Partners, LP, MCM, LLC, and Mueller Fund, LP (collectively, the "Sham Business" or the "Estate"). *Receivership Order*, Findings ¶ 3.

3. This report is submitted to summarize the current status of the Receiver's administration of the Estate.

## II. RECEIVER'S INVESTIGATION

### A. MUELLER WAS RUNNING A PONZI SCHEME.

4. The Receiver has taken possession of all known business and financial records of the Sham Business, except certain computer files. The Receiver's Counsel has reviewed all of these business records.

5. The Receiver, with the assistance of counsel, has conducted initial interviews of Sean Michael Mueller ("Mueller"), his wife, Angela Mueller, a number of investors in the Sham Business, and several employees of MCM.

6. The Receiver's counsel has also taken the depositions of two accountants, William Schaefer and William Saetveit, who provided start-up capital to and were part owners of the Sham Business, for a period of time shared offices with Mueller, and who referred many of the defrauded investors to Mueller.

7. The Receiver has employed a forensic accounting firm to assist with the investigation. The Receiver's counsel has obtained brokerage and bank records of the Sham Business. The accounting firm the Receiver has engaged has reviewed all available broker and bank records and has completed its initial analysis regarding investor deposits with and payments from the Sham Business. Based upon his investigation, the Receiver has confirmed the following:

a. From 2000 through 2010, 148 separate persons or entities invested approximately \$147 million with Mueller. During its operation, the Sham Business paid out approximately \$85 million to Investors, partly in false returns on investments, partly as return of principal. Approximately \$38 million was lost in trading, approximately \$6 million was paid for various expenses, including Mueller's personal expenses, and approximately \$7 million was paid to Mueller.

b. Between August 2002 and March 2010, Mueller created fraudulent account statements and sent them to Investors to conceal his losses. Statements to Investors purport to show that as of March 2010 (the last statements issued), Investors held accounts worth approximately \$138 million. In reality, as of April 2010, the Sham Business had assets on hand of little more than \$9 million.

c. Account statements that were sent to investors consistently reported gains in investor accounts, never losses.

d. Mueller was operating a Ponzi scheme, and he concealed his ongoing fraud in an effort to hinder and delay other current and prospective investors from discovering the fraud. Money received from investors was used to make distributions to, or payments on behalf of, other investors. Money sent to Mueller for investment purposes was used to keep the operation afloat and enrich Mueller and others.

e. On November 1, 2010, Mueller pled guilty in Denver District Court to violating the Colorado Organized Crime Control Act, C.R.S. § 18-17-104(3), a class two felony, and Securities Fraud and Theft, both class three felonies. On December 6, 2010, he was sentenced to forty (40) years in prison and ordered to pay in excess of \$65 million in restitution.

**B. STATUS OF INVESTORS AND LITIGATION.**

8. According to the records the Receiver has obtained, there were approximately 148 separate investors in the Sham Business who invested approximately \$147 million with Mueller. It appears that 96 investors lost a total of approximately \$72 million. The Receiver has identified approximately 48 “Net Winners,” persons or entities who received payments from the Sham Business exceeding their principal investments.

9. The Receiver has entered into Tolling Agreements with approximately 35 Net Winners to suspend the running of the statute of limitations on potential claims against them in an effort to pursue extra-judicial settlement of potential claims against them. The Net Winnings subject to Tolling Agreements exceeds \$8 million.

10. On April 22, 2011, the Receiver filed 13 separate complaints against Investors seeking to recoup funds for the benefit of the Estate. In addition, the Receiver filed a 14<sup>th</sup> Complaint against KingRogerLee Partnership (“KRL”), and approximately 30 of its general partners. Two of the partners in KRL, the accountants Schaefer and Saetveit, not only referred investors to Mueller, they each owned a 5% interest in the Sham Business and each received substantial payments from Mueller and the Sham Business as compensation. The amount at issue pursuant to these 14 complaints exceeded \$7 million. Copies of the complaints have been posted on the Receivership website, <http://www.muellerreceivership.com/default.aspx>. The table below reflects the current status of each of these cases:

**CASES ORIGINALLY FILED 4/22/11**

<b>#</b>	<b>Case No.</b>	<b>Parties</b>	<b>Status</b>
1	2011CV3071	<i>Lewis v. Tim Foote</i>	Dismissed per settlement
2	2011CV3072	<i>Lewis v. KingRogerLee Partnership, et al.</i> (the "KRL Case")	At issue; mediation scheduled January 9-10, 2012
3	2011CV3073	<i>Lewis v. Michael Little</i>	Dismissed per settlement
4	2011CV3074	<i>Lewis v. Merle Ginsburg, et al.</i>	Dismissed; now pending in NY state court
5	2011CV3075	<i>Lewis v. Catherine Anderson</i>	Dismissed per settlement
6	2011CV3076	<i>Lewis v. Mountain Shadows MHS LLP</i>	Dismissed per settlement
7	2011CV3077	<i>Lewis v. Rocky Mountain Radiologists P-S Plan, FBO Lawrence Pertcheck, et al.</i>	Stayed pursuant to agreement of parties pending mediation on January 17, 2012
8	2011CV3078	<i>Lewis v. Stature Multi-Allocation Fund LLC</i>	Dismissed
9	2011CV3079	<i>Lewis v. Julie Giglio, IRA, et al.</i>	Removed 7/1/11; case now pending in Arizona state court
10	2011CV3080	<i>Lewis v. John Hughes</i>	Notice of Chapter 7 bankruptcy filed 5/31/11; action stayed pursuant to 11 U.S.C. § 362(a)
11	2011CV3081	<i>Lewis v. James McClain Sweet</i>	Motion to approve Settlement Agreement filed 11/8/11; no objections filed; now pending Court approval
12	2011CV3082	<i>Lewis v. Kathryn Holderman, et al.</i>	Removed 7/1/11; case now pending in Arizona state court
13	2011CV3083	<i>Lewis v. Anne Hemmert, et al.</i>	Dismissed per settlement
14	2011CV3084	<i>Lewis v. Gerard C. Lewis</i>	Motion to approve Settlement Agreement filed 11/30/11

11. On October 14, 2011, the Receiver filed a Complaint against Steve Taylor in Arapahoe County District Court, Case No. 2011CV2071, seeking to recoup \$332,851 in net profits Mr. Taylor received from Mueller. On December 2, 2011, Mr. Taylor filed his answer, counterclaim and a third-party complaint against William R. Saetveit and the accounting firm of Bailey Saetveit & Co., P.C. The table below summarizes the status of the active clawback cases:

<b>ACTIVE CASES AS OF DECEMBER 2011</b>			
<b>#</b>	<b>Case No.</b>	<b>Parties</b>	<b>Status/Location</b>
1	2011CV3072	<i>Lewis v. KingRogerLee Partnership, et al.</i> (the "KRL Case")	Mediation scheduled January 9-10, 2012
2	2011CV3074	<i>Lewis v. Merle Ginsburg, et al.</i>	Pending in New York
3	2011CV3077	<i>Lewis v. Rocky Mountain Radiologists P-S Plan, FBO Lawrence Pertcheck, et al.</i>	Mediation scheduled January 17, 2012
4	2011CV3082	<i>Lewis v. Kathryn Holderman, et al.</i>	Pending in Arizona
5	2011CV3079	<i>Lewis v. Julie Giglio, IRA, et al.</i>	Pending in Arizona
6	2011CV2071	<i>Lewis v. Steve Taylor</i>	Pending in Arapahoe County District Court

12. On November 14 and 15, 2011, the Receiver participated in mediation with five separate investors who had executed Tolling Agreements and who had received net profits of approximately \$2.2 million from Mueller. Settlements were not reached, but discussions are ongoing. The Receiver has agreed to extend the Tolling Agreements with these parties through the end of January 2012 in the hope of reaching acceptable settlements; if settlements are not reached with these parties by then, the Receiver will file additional complaints against these investors.

13. Settlements have been reached with 10 of the Tolling Agreement parties; Tolling Agreements have been extended with 7 Tolling Agreement parties to afford additional time to investigate potential settlements; further investigation has resulted in the Receiver reaching accommodations with 5 Tolling Agreement parties not to pursue claims against them; negotiations are ongoing with two additional Tolling Agreement parties, and unless settlements are reached with them, the Receiver anticipates filing lawsuits against them before the end of 2011.

### III. SUMMARY OF SETTLEMENTS TO DATE

14. To date, the Receiver has negotiated settlements with 18 individual investors for a total of \$2,295,179.47. To date, the Receiver has received \$1,376,184.10 in settlement payments; an additional \$926,364.57 remains to be paid subject in part to approval by the Court of pending motions to approve settlement agreements.

15. An agreement was also approved with Mr. Mueller's wife pursuant to which she turned over to the Estate various assets she held either in her name or jointly with Mr. Mueller, including a joint personal bank account with a balance of approximately \$96,000, a Mercedes automobile that has been sold for approximately \$43,000, and other items of personal property that the Receiver will sell, whose ultimate value is unknown.

### IV. TAX MATTERS

16. The Receiver's tax professionals have filed federal and state income tax returns for Mueller Capital Management, LLC, Mueller Over Under Fund, LP, Mueller Fund, L.P., and Mueller Partners, L.P. (collectively, the "Funds") and have issued Schedule K-1s to individual investors in the Funds.

### V. ADDITIONAL MATTERS

17. On October 12, 2011, various investors apparently reached a settlement with Messrs. Schaefer and Saetveit and their firm of Bailey Saetveit & Co., P.C. Upon information and belief, these investors include the following, all of whom have filed claims in the Receivership Action for the following amounts:

<b>Investor</b>	<b>Amount of Claim</b>
Linda Dean	\$1,381,078.67
Jon McGrath	\$1,393,671.50
Michael Giglio	\$1,720,369.22
Penelope Giglio	\$253,906.62
Doug Champion	\$1,281,475.37
Barry and Linda Talley	\$2,705,833.00
Edward Calus	\$2,843,491.78

18. The terms of the settlements reached with the above investors apparently contain a confidentiality provision that prevents the public disclosure of the terms of the settlements. The Receiver was not willing to agree to be bound by any confidentiality order that would

preclude the disclosure of all matters relevant to the Receivership and has therefore not been able to discover the material terms of the above settlements. The Receiver anticipates issuing subpoenas to the settling parties in order to discover the settlement terms.

## VI. ESTATE ASSETS

19. In addition to the litigation claims referred to above, the Receivership accounts have a balance of approximately \$10.6 million, most of which has been invested in United States Treasury Bonds of varying short-term maturities.

20. The Receiver continues to investigate the possibility of additional litigation which could bring additional assets into the Estate.

## VII. SUMMARY OF ESTATE LIABILITIES

21. On September 30, 2010, this Court entered its Order establishing a procedure for parties to submit claims against the Estate and setting a claims bar date of November 30, 2010. Approximately 94 claims have been submitted by investors exceeding \$110 million. An additional 5 claims have been submitted by other creditors totaling approximately \$430,000.<sup>1</sup>

22. To date, two fee applications have been submitted to and approved by the Court, resulting in the following payments:

Receiver Fees	\$38,416.25
Receivership Disbursements	\$26,718.06
Attorneys' Fees – Lindquist & Vennum P.L.L.P.	\$360,171.50
Costs – Lindquist & Vennum P.L.L.P.	\$20,959.10
Receivership Accounting	\$2,146.50
Forensic Accounting	\$113,490.68
Total	\$550,766.77

<sup>1</sup> Many investors have filed claims seeking to recover the fictitious profits reported to them on the fraudulent account statements. The Receiver does not express any opinion on the legitimacy or value of the claims that have been submitted.

23. The Receiver is in the process of finalizing a third fee application to be submitted before the end of this year seeking approval of the following fees and costs:

Receiver Fees	\$198,750.00
Receivership Disbursements	\$ 8,586.69
Attorneys' Fees – Lindquist & Vennum P.L.L.P.	\$290,781.00
Costs – Lindquist & Vennum P.L.L.P.	\$ 16,793.27
Receivership Accounting	\$ 1,755.00
Forensic Accounting	\$121,590.50
Richards Kibbe & Orbe LLP (NY Litigation Counsel)	\$ 16,101.29
Snell & Wilmer (AZ Litigation Counsel)	\$ 16,356.17
Nisen & Elliott, LLC (Illinois Litigation Counsel)	\$ 1,362.00
Total	\$672,075.92

Dated: December 9, 2011.

**LINDQUIST & VENNUM P.L.L.P.**

*original signature on file*

By: /s/ Michael T. Gilbert

Michael T. Gilbert, #15009

John C. Smiley, Esq., #16210

John A. Chanin, Esq. #20749

Counsel for C. Randel Lewis, Receiver



## CERTIFICATE OF MAILING

The undersigned hereby certifies that on December 9, 2011, a true and correct copy of the foregoing **RECEIVER'S DECEMBER 2011 REPORT**, was served via Lexis/Nexis and/or U.S. Mail on the following:

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*All investors and creditors listed on the service list for this case, which is maintained in the Receiver's records.*

/s/ Sue Toms (original signature on file)