

<p>District Court, Denver County, Colorado 1437 Bannock Street Denver, CO 80202</p> <hr/> <p>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>	<p>▲ COURT USE ONLY ▲</p>
<p>Attorneys for: C. Randel Lewis, Receiver Name: Michael T. Gilbert, #15009 John C. Smiley, #16210 John A. Chanin, #20749 LINDQUIST & VENNUM L.L.P. Address: 600 17th Street, Suite 1800 South Denver, CO 80202 Phone No.: 303-573-5900 Fax No.: 303-573-1956 Email: mgilbert@lindquist.com jsmiley@lindquist.com jchanin@lindquist.com</p>	<p>Case Numbers: 2010CV3280 Courtroom: 203</p>
<p>RECEIVER'S MAY 2013 REPORT</p>	

C. Randel Lewis, in his capacity as Receiver 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, 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. The Sham Business was run by Sean Michael Mueller (“Mueller”).

3. 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 years in prison and ordered to pay in excess of \$65 million in restitution.

4. 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.

5. The Receiver has employed forensic accountants who have completed their investigation into the Sham Business. The accountants have 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.

6. 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.

B. STATUS OF INVESTORS AND LITIGATION.

7. Of the approximately 148 separate investors in the Sham Business, approximately 96 lost a total of approximately \$72 million. The Receiver has diligently pursued recovery from

“Net Winners” in the Ponzi scheme, *i.e.*, persons or entities who received payments from the Sham Business that exceeded the amount of their principal investments. The Receiver has identified approximately 48 Net Winners.

8. The Receiver 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 claims against most Tolling Agreement parties have been resolved. The sole remaining Tolling Agreement in effect is with a net winner of \$837,439.

9. 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 14th Complaint against KingRogerLee Partnership (“KRL”), and approximately 30 of its general partners. Two of the partners in KRL, the accountants William Schaefer (“Schaefer”) and William Saetveit (“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.

10. All but two of these cases have been resolved at the trial court level, through settlement or otherwise. In total, the Receiver has entered into settlements totaling approximately \$4.9 million with net winners and others, and has collected \$4.7 million. One settling investor has executed four promissory notes totaling \$200,000, which are secured by real property and which will mature in 2016. In addition, the Receiver has obtained stipulated judgments against Schaefer and Saetveit for \$1 million each.

11. The two cases which have not been resolved by trial courts are *Lewis v. Holderman*, Case No. CV 2011-014452 and *Lewis v. Giglio*, Case No. CV 2011-014451, both pending in the Superior Court in Maricopa County, Arizona. The amount of the net winnings at issue in those cases is \$229,401 and \$1,012,083, respectively. Neither case is currently set for trial.

12. On October 14, 2011, the Receiver filed a Complaint against Steve Taylor. On January 4, 2013, the Receivership Court entered summary judgment in the Receiver’s favor and against Mr. Taylor awarding the Receiver \$487,305.29, the total amount by which Mr. Taylor’s distributions exceeded his principal investment. Mr. Taylor has appealed the judgment entered against him but has deposited \$500,000 with the Receiver, which the Receiver holds in a separate interest bearing account pending the results of the appeal.

13. On March 2, 2012, the Receiver filed an arbitration proceeding with the Financial Industry Regulatory Authority (FINRA) against M.S. Howells, Inc. and two of its employees. M.S. Howells was one of the Sham Business’ introducing brokers. In the FINRA arbitration against M.S. Howells, the Receiver is seeking approximately \$11 million in compensatory

damages and the same amount in punitive damages. The arbitration is currently set for November 4-13, 2013.¹

14. On April 13, 2012, the Receiver filed a FINRA arbitration against Jefferies & Company, Inc. Jefferies was the clearing broker for M.S. Howells. In the arbitration against Jefferies, the Receiver is seeking \$42 million in damages. The Jefferies arbitration hearing is scheduled for July 22, 2013.

15. On April 23, 2013, the Receiver filed a FINRA arbitration against Morgan Stanley & Co. Morgan Stanley is a primary broker with whom Mueller traded commodity futures starting in June 2009. The arbitration claim seeks damages exceeding \$17.5 million. Morgan Stanley's response to the claim is not due until June 7, 2013, and no date has been set for the arbitration hearing.

III. SUMMARY OF RECOVERIES TO DATE AND ESTATE ASSETS

16. To date, the Receiver has recovered approximately \$4.7 million in settlement and obtained judgments for an additional \$2.5 million. The amount that may be recovered on those judgments is uncertain. The Receiver is currently pursuing two litigation cases against net winners in Arizona seeking damages of approximately \$1.2 million, and three FINRA arbitration proceedings against brokers seeking over \$70 million in damages. The damages that may be recovered in these proceedings is again uncertain.

17. There is approximately \$11.8 million in the Receivership general account and an additional \$500,000 in a segregated account to secure payment of the judgment against Steve Taylor, should it be affirmed on appeal. Most of the Receivership funds are invested in United States Treasury Bonds of varying short-term maturities.

IV. TAX MATTERS

18. The Receiver's tax professionals have filed final 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. and have issued final Schedule K-1s to individual investors in these Funds.

¹ Copies of the Receiver's Statement of Claims in the three arbitration proceedings, as well as other relevant pleadings, documents, and notices, are posted on the Receivership website, www.muellerreceivership.com.

V. SUMMARY OF ESTATE LIABILITIES

19. 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. The Receiver's preliminary analysis of these claims indicates that on a cash-in, cash-out basis, there are approximately \$93 million in investor claims against the Estate. An additional 5 claims have been submitted by other creditors totaling approximately \$430,000.²

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

Receiver Fees	\$ 448,666.25
Receivership Disbursements	\$ 30,670.68
Attorneys' Fees – Lindquist & Vennum LLP	\$1,272,962.75
Costs – Lindquist & Vennum LLP	\$ 68,876.68
Receivership Accounting	\$ 6,574.50
Forensic Accounting (Rubin Brown)	\$ 359,270.80
Out-of-State Legal Fees (Richards Kibbe; Snell & Wilmer; Nisen & Elliott)	\$ 211,754.45
Total	\$2,398,776.11

² 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.

21. On May 10, 2013, the Receiver filed a sixth fee application for the following fees and costs:

Receiver Fees	\$ 98,790.00
Receivership Disbursements	\$ 387.78
Attorneys' Fees – Lindquist & Vennum LLP	\$ 427,856.01
Costs – Lindquist & Vennum LLP	\$ 16,029.95
Receivership Accounting	\$ 1,012.50
Forensic Accounting (Rubin Brown)	\$ 65,611.25
Out-of-State Legal Fees (Snell & Wilmer; Richards Kibbe & Orbe LLP)	\$ 26,242.14
Total	\$ 635,929.63

Dated: May 10, 2013.

LINDQUIST & VENNUM L.L.P.
original signature on file

By: /s/ Michael T. Gilbert
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John A. Chanin, Esq. #20749

Counsel for C. Randel Lewis, Receiver

CERTIFICATE OF MAILING

The undersigned hereby certifies that on May 10, 2013, a true and correct copy of the foregoing **RECEIVER'S MAY 2013 REPORT**, was served via ICCES and/or first class U.S. Mail, postage prepaid, 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)