

District Court, Denver County, Colorado 1437 Bannock Street Denver, CO 80202	<p style="text-align: center;">▲ COURT USE ONLY ▲</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.	
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 th 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	Case Number: 2010CV3280 Division: Courtroom:
RECEIVER'S MAY 2011 REPORT	

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, who for a period of time shared offices with Mueller, and who referred many of the defrauded investors to Mueller.

7. The Receiver continues to investigate the Sham Business's investment activities and 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 in part pursuant to subpoenas issued by the Commissioner and in part pursuant to subpoenas the Receiver has issued. The Receiver is in the process of subpoenaing additional bank and brokerage records. 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.

8. From 2000 through 2010, investments in the Sham Business totaled approximately \$147 million. The Sham Business paid out approximately \$86 million to investors, partly in false returns on investments, partly as return of principal. Analysis is ongoing with respect to the remaining \$61 million, but it appears that approximately \$14 million was lost during the Sham Business's trading activities, and millions more were paid for the Sham Business's expenses, including millions to fund Mueller's personal and family expenses.

9. Between August 2002 and March 2010, Mueller created fraudulent account statements and sent them to investors to conceal actual trading losses. Statements to investors purport to show that as of March 2010, investors held accounts worth approximately \$120 million. In reality, as of April 2010, the Sham Business had assets on hand of only about \$9 million.

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

11. 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.

12. In an attempt to conceal the ongoing fraud and thereby hinder, delay, and defraud current and prospective investors, the Sham Business paid to or on behalf of certain investors the inflated amounts reflected in the falsified account statements, including non-existent principal and fictitious profits. Mueller was able to continue the Sham Business only by using the principal invested by new investors to pay other investors or their designees.

13. All of the investors' funds were placed into common accounts and were not segregated. According to the Receiver's investigation, Mueller employed unnecessarily complex and inconsistent accounting procedures without any apparent business purpose, such as moving money among various bank, management, and fund accounts. Mueller did not allow audits of his Funds, and he reported unreasonably high returns in light of the performance of the overall stock market during the time he operated the Sham Business. Mueller also split the tax accounting work for the Sham Business between different accounting firms without apparent business purpose.

14. 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.

B. STATUS RE: INVESTORS AND LITIGATION.

15. According to the records the Receiver has obtained, there were approximately 146 investors in the Sham Business. 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.

16. 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.

17. 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 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 exceeds \$7 million. Copies of the complaints have been posted on the Receivership website, <http://www.muellerreceivership.com/default.aspx>. Service

upon the defendants named in these "Claw Back Cases" is ongoing. All of the Claw Back Cases have been assigned to Courtroom 203.

III. SUMMARY OF ESTATE ASSETS

18. In addition to the litigation claims referred to above, the Receivership has the following assets.

19. The Receiver has seized the Sham Business's bank accounts. The money from these accounts has been transferred to accounts controlled by the Receiver. As of May 2011, these accounts had a balance of approximately \$9.6 million.

20. The Receiver has negotiated an agreement with Mr. Mueller's wife pursuant to which Mrs. Mueller has agreed to turn over, or has turned over, to the Estate various assets she holds 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.

21. On April 29, 2011, this Court approved a Settlement Agreement with one of the winning investors which resulted in a \$200,000 payment to the Estate.

22. The Receiver continues to investigate other potential assets, including the possibility of additional litigation which could bring additional assets into the Estate.

IV. SUMMARY OF ESTATE LIABILITIES

23. 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 \$430,000.¹

24. Pursuant to the Receiver's first application for payment of fees and expenses, submitted to and approved by the Court in October 2010, the Estate has paid the following:

¹ 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.

Receiver Fees	\$38,416.25
Receivership Disbursements	\$15,582.74
Attorneys' Fees – Lindquist & Vennum P.L.L.P.	\$145,732.50
Costs – Lindquist & Vennum P.L.L.P.	\$9,823.78
Total	\$209,555.27

The Court's October 2010 Order also authorized an additional \$1,012.50 payment to Finance & Accounting Solutions, LLC. Within the next 30 days, the Receiver anticipates filing a second Application for Fees and Expenses incurred from October 1, 2010, through April 30, 2011.

V. TAX MATTERS

25. The Receiver has hired tax professionals to prepare 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"). In part due to difficulty obtaining accurate records, the Receiver has not been able to prepare 2010 returns and has accordingly filed for extensions through September 15, 2011, in which to file them.

26. Before September 15, 2011, the Receiver anticipates issuing Schedule K-1s to individual investors in the Funds. The Receiver, however, will not be able to issue K-1s that show individual investors' income, gain, loss, deductions or credits. The Receiver anticipates mailing the K-1s with a cover letter explaining why he is unable to allocate these items to individual investors.

27. The Receiver advises all investors to consult with their own tax advisors. The Receiver and his counsel cannot provide tax advice to investors.

V. ADDITIONAL MATTERS

28. Within the next 30 days, the Receiver anticipates filing recommendations of proposed procedures to streamline discovery and reduce costs in the Claw Back Cases. The Receiver believes that much of the discovery defendants may seek in these cases will be duplicative and that a centralized internet document repository should be established to make documents available to the Claw Back defendants. Deposition discovery should be coordinated to eliminate repetitive depositions. The Receiver has concerns regarding the confidentiality of investor information which will need to be addressed in a protective order applicable to all Claw Back Cases. The Receiver is also aware of three pending related cases, all filed against, *inter alia*, the accountants Schaefer and Saetveit: (1) *Giglio v. Schaefer, et al.*, 2010-CV-8817, Denver County District Court; (2) *Dean & McGrath, et al. v. Schaeffer, et al.*, Case Nos. 2010-CV-1902 & 2011-CV-101, Arapahoe County, District Court; and (3) *Talley et al. v. Bailey*

Saetveit & Co., P.C. et al., 2011-CV-519, Arapahoe County District Court. The Receiver has produced documents in both of the first two cases.

29. To the greatest extent possible, the Receiver believes that the Estate and Mueller's victims will best be served by minimizing litigation costs and preserving funds for the Estate. In that regard, in the next week the Receiver will be sending correspondence to the Tolling Agreement parties referred to in paragraph 16 requesting that they engage in settlement discussions, either informally, or through mediation the Receiver anticipates will be held September 6-9, and 13-14, 2011. The Receiver also believes that mediation may be helpful for the parties in the Claw Back Cases and anticipates seeking the cooperation of the Claw Back defendants to engage in it.

30. The Receiver continues to investigate the assets and liabilities of the Estate and anticipates that he will have further recommendations regarding the disposition of the Estate for the benefit of those claiming an interest therein.

Dated: May 12, 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 May 12, 2011, a true and correct copy of the foregoing **RECEIVER'S MAY 2011 REPORT**, was served via Lexis/Nexis and/or U.S. Mail on the following:

Russell B. Klein
Assistant Attorney General
Business and Licensing Section
Office of the Attorney General
1525 Sherman St., 5th Floor
Denver, CO 80203

Richard K. Kornfeld
Heather R. Hanneman
Recht & Kornfeld, P.C.
1600 Stout Street, Suite 1000
Denver, CO 80202

David H. Goldberg
Greenberg Traurig, LLP
1200 Seventeenth Street, Suite 2400
Denver, Colorado 80202

Jeffrey T. Johnson
Holland & Hart LLP
555 17th Street, Suite 3200
Denver, CO 80202

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)