

<p>DISTRICT COURT, DENVER COUNTY, COLORADO</p> <p>1437 Bannock Street Denver, CO 80202</p> <hr/> <p>FRED J. JOSEPH, Securities Commissioner for the State of Colorado,</p> <p>Plaintiff,</p> <p>v.</p> <p>SEAN MICHAEL MUELLER, MUELLER CAPITAL MANAGEMENT, LLC, and MUELLER OVER UNDER FUND, LP,</p> <p>Defendants.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>BY THE COURT:</p>	<p>Case No.: 2010 CU 3280</p> <p>Courtroom:</p>
<p>ORDER APPOINTING RECEIVER</p>	

THIS MATTER is before the Court on the Emergency Verified *Ex Parte* Motion for Order Appointing Receiver (the "Motion") filed by Fred J. Joseph, Securities Commissioner for the State of Colorado ("Commissioner") and being otherwise fully advised in the matter, and good cause having been shown, the Court hereby FINDS:

1. Jurisdiction and venue are proper.
2. The allegations set forth in the Complaint for Injunctive and Other Relief ("complaint") and the Motion establish a right to the appointment of a Receiver.
3. Pursuant to applicable law, the Commissioner is entitled to request the appointment of a receiver for all of Mueller Capital Management, LLC ("MCM") and Mueller Over Under Fund, LP (the "Fund") assets of any kind or nature

whatsoever related in any manner to his investment advisory business as further described in the Complaint for Injunctive Relief, including, without limitation, all of MCM's and the Fund's cash, bank and deposit accounts; accounts receivable, notes receivable, and other receivables; business investments and interests, whether legal or equitable, direct or indirect, in other business enterprises; tangible personal property; general intangibles; inventory; investment property; payment intangibles; real property; claims, causes of action, and choses of action of any kind or nature; instruments, documents, chattel paper, intellectual property, and letter-of-credit rights; together with: (i) all substitutions and replacements for and products of any of the foregoing; (ii) proceeds of any and all of the foregoing; (iii) in the case of all tangible goods, all accessions; (iv) all accessories, attachments, parts, equipment and repairs now or hereafter attached or affixed to or used in connection with any tangible goods whether now owned or hereafter acquired, and (v) all other things of value owned by MCM and the Fund, including without limitation the books, records and other papers of any business or entity operated by Sean Michael Mueller ("Mueller"), MCM and the Fund, as well as related entities Mueller Partners, LP, MCM, LLC, and Mueller Fund LP (collectively, the "Estate").

4. C. Randel Lewis is a Managing Director of Cloyses Partners, LLC, whose address is 1441 18th Street, Suite 200, Denver, CO, and is an experienced and suitable party to be appointed Receiver for the Estate.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED:

1. C. Randel Lewis is appointed as Receiver for the Estate (hereinafter referred to as the "Receiver").

2. The Receiver shall post a bond in the amount of \$10,000 with the Court within five court days hereof, the expense of which shall be charged as an expense of this Receivership proceeding; and shall forthwith file his oath of Receiver. The Bond shall be maintained until further order of this Court.

3. The Receiver is hereby directed and empowered to take immediate control and possession of the Estate, and to hold the Estate for this Court *in custodia legis*. The Receiver shall operate, manage, maintain, protect, and preserve the Estate, subject to the supervision and exclusive control of this Court, for the benefit of creditors and owners of the Estate.

4. Mueller, MCM and the Fund, and all persons in active concert and participation with him, including, without limitation, his current and former employees, shareholders, agents, representatives, managers, members, attorneys, accountants, banks, contractors, subcontractors and all who claim under them, be, and the same hereby are, ordered to deliver immediately over to the Receiver all of the Estate.

5. The Receiver is hereby given the powers and authority usually held by receivers and reasonably necessary to accomplish the purpose of this Receivership including, without limitation, the specific power to:

a. take from Sean Michael Mueller, or any others in control of the Estate, immediate control of the Estate, to the exclusion of all others;

b. take control of the Estate and operate, manage, maintain, protect, and preserve the Estate as reasonably necessary to maximize the value and prevent diminution of its value; take possession of all bank and other deposit accounts of the Estate and all funds therein; and open, transfer and change all bank and trade accounts relating to the Estate, so that all such accounts are in the name of the Receiver;

c. close bank accounts in the name of the Estate and transfer the funds to one or more bank accounts at a bank or banks, financial institutions, mutual fund, brokerage institution or other commercial depositories in the Denver, Colorado metropolitan area selected by the Receiver, in the name of the Receiver;

d. collect rents and revenues, income, profits, and other benefits from the operation and management of the Estate;

e. collect all accounts, accounts receivable, notes receivable, income, profits and proceeds that are part of the Estate or represent proceeds of the Estate; including, as necessary, negotiate and deposit checks made payable to the Estate into accounts maintained by the Receiver, and, as necessary to collect and review mail directed to the Estate in order to collect incoming accounts receivable;

f. invest funds of the Estate, without further permission of the Court, in savings accounts or in securities backed by the full faith and credit of the United States including mutual funds;

g. change any and all locks on any and all physical property of the Estate and limit access thereto;

h. operate, manage, maintain, protect, and preserve the Estate, including, to the extent the Receiver deems appropriate, the going concern value of any business operated by the Estate;

i. investigate the assets and liabilities of the Estate, and report to this Court, within ninety (90) days after entry of this Order, regarding the nature of the assets and liabilities of the Estate, including recommendations to the Court regarding the further disposition of the Estate for the benefit of those claiming an interest therein;

j. with prior Court approval, sell or otherwise dispose of the Estate; provided, however, that the Receiver need not obtain prior Court approval to sell or otherwise dispose of any tangible personal property having a depreciated aggregate value, as reflected on the Estate's books, less than \$20,000;

k. abandon, upon prior court approval, any property of the Estate of inconsequential value and benefit, or any property of the Estate that may be burdensome to the Estate;

l. establish, with prior court approval, a claims administration procedure for the assertion and resolution of Claims affecting the Estate;

m. investigate and prosecute, as appropriate, claims and causes of action of the Estate against third parties;

n. incur and pay, in the ordinary course of business, all reasonable expenses of administration of the Estate, including, but not limited to, the authority to:

- i. pay taxes, insurance, utility charges and other expenses and costs reasonably incurred in managing, preserving, and liquidating the Estate;
- ii. hire as an expense of the Estate, on a contract basis wherever possible, or as employees where required by applicable federal law, the personnel necessary to manage, preserve and liquidate the Estate, including, as the Receiver deems appropriate, personnel previously employed by the Estate;
- iii. hire as an expense of the Estate, on a contract basis, the personnel necessary to maintain a complete and accurate accounting of the income and expenses of the Estate, including, in the Receiver's discretion, the retention of personnel of individuals hired by the Estate to maintain such accounting, and to pay the reasonable value for the services rendered;
- iv. hire as an expense of the Estate such employees, accountants, consultants, attorneys and other professionals, as his counsel, as is necessary and proper for the administration of the Estate. The employment of such attorney or accountant shall first be approved by the Commissioner. The Receiver shall make an application of the Court for payment of reasonable and necessary fees, costs and expenses incurred as Receiver, including but not limited to, disbursement of professional fees and expenses to himself, his counsel, or accountant, and shall be entitled to payment of said fees and expenses as hereinafter provided. Copies of the application to the Court shall be provided to counsel for the parties and to the Commissioner. Such parties shall have ten (10) calendar days following the filing of such application to file any objections with the Court. Objections will not be general in nature, but are to be specific, stating all amounts objected to on an item-by-item basis and stating the amount, in detail, if any, which is not objected to by the objector. If no objections are filed with the Court within ten (10) calendar days, the Receiver may thereupon draw funds from his trust account sufficient to pay such fees, disbursements and expenses without

further order of the Court. If any objections are filed, the Receiver may draw funds from his trust account sufficient to pay the amount not objected to, and the Court will conduct a hearing on any objections within twenty (20) days from the filing of the objection. At such hearing, the compensation of the Receiver or other professional as well as allowable disbursements and expenses will be determined by the Court.

v. hire as an expense of the Estate, on a contract basis, attorneys, accountants, consultants and other professionals previously utilized by the Estate to provide such services as the Receiver may direct;

vi. contract and pay for and obtain such services, utilities, supplies, equipment, and goods as are reasonably necessary to manage, preserve, and liquidate the Estate as the Receiver may reasonably deem necessary; provided that no contract shall extend beyond the termination of the Receivership without the permission of the Court.

o. to pay expenses of the operation of the Estate that arose pre-receivership, as determined by the Receiver to be necessary for the preservation of value of the Estate;

p. negotiate and enter into such leases (including equipment leases), contracts and other agreements as the Receiver may reasonably deem appropriate to manage, preserve and liquidate the Estate; provided that no such lease, contract, or agreement shall extend beyond the termination of the Receivership without the permission of the Court;

q. reject, assume, or decline to assume any leases or unexpired contracts of the Estate that are burdensome, upon Court approval;

r. exercise all rights of the Estate as a shareholder, member, equity owner, or Trustee or beneficiary of any Voting Trust, of any other business enterprise, including, but not limited to, the right to vote on any

issues requiring the approval of equity owners, and the right to receive distributions on account of the equity interests;

s. obtain and renew all insurance policies that the Receiver deems reasonably necessary to manage and preserve the Estate and the interest of the Receiver and the parties to this action; and notify any insurers of the Estate of the pendency of these proceedings and that, subject to the prior rights of any person possessing a lien on the Estate, any proceeds paid under such policies shall be paid to the Receiver;

t. upon prior Court approval, borrow from third parties on such reasonable terms as may be acceptable to the Receiver, funds to meet the needs of the Estate in excess of the income of the Estate, and issue Receiver's Certificates, bearing interest not to exceed the rate of 15% per annum, in exchange for funds so advanced, with all such Receiver's Certificates, collectively, to hold a first and prior lien and a preference claim upon the property of the Estate, or a portion of it at the Receiver's election;

u. apply for, obtain, maintain, and renew as reasonably necessary all trademarks, copyrights, patents, licenses, permits and other intellectual property rights required for the preservation of the Estate;

v. institute, prosecute, and continue the prosecution of such legal actions as the Receiver deems reasonably necessary, including actions necessary to enforce this Order, to collect accounts and debts, enforce agreements relating to the Estate, to protect the Estate, and to recover possession of the Estate from persons who may now or in the future be wrongfully possessing or occupying the Estate, or any part thereof, and bring such actions as may be necessary, in the judgment of the Receiver, to set aside any transfer, conveyance, encumbrance or lien affecting all or any portion of the Estate, including, but not limited to, any transfer of an asset of the Estate avoidable under applicable law, in this and other jurisdictions, and to settle or compromise any such proceedings, and to appeal or seek judicial review in respect of any order or judgment entered in any such proceeding;

w. issue such subpoenas or subpoenas duces tecum, interrogatories, and/or requests for production of documents as necessary and appropriate under Rules 26 and 28 through 34, C.R.C.P.

x. do such other lawful acts not inconsistent with this Order as the Receiver reasonably deems necessary to manage and preserve the Estate and to perform such other functions and duties as may from time to time be required and authorized by this Court, by the laws of the State of Colorado or by the laws of the United States of America.

6. In addition to the powers and authority granted the Receiver in paragraph 5 of this Order, the Receiver shall have the right and the sole authority to exercise all of the powers of the Estate entities, through or in place of their boards of directors, managers, members, and officers, to the extent necessary to manage the affairs of each of MCM and the Fund in the best interests of its shareholders and creditors. Such corporate governance powers and authority shall include, without limitation, the authority to petition for protection under the Bankruptcy Code, 11 U.S.C. § 101 *et seq.* (the "Code"), for MCM and/or the Fund, and in connection therewith be and be deemed a debtor-in-possession for MCM and/or the Fund in proceedings under Chapter 11 of the Code, and prosecute such adversary proceedings and other matters as may be permitted under the Code and/or applicable law. Upon and concurrent with the filing of bankruptcy petitions for MCM and/or the Fund as authorized by this paragraph, the Receivership Case pending in this Court shall be suspended, and all further action concerning the Receivership estate in this Court shall be stayed. The corporate governance powers and authority vested in the Receiver pursuant to this paragraph are in addition to, and not derivative of, the usual and customary receivership powers vested in the Receiver pursuant to Paragraph 5 of this Order.

7. The Receiver is hereby authorized to apply the proceeds of the Estate in the following order of priority:

- a. first, to pay the cost of the bond;
- b. second, to pay the Receiver's fees incurred in connection with this Receivership, and to prepay or reimburse the out-of-pocket

expenses of the Receiver, and to pay the Receiver's professional fees, including attorneys' fees, accountant's fees, and consultant's fees;

c. third, to pay the necessary and reasonable administrative costs of managing and preserving the Estate; and

d. fourth, to repay any Receiver's Certificates, with interest as provided for therein.

All funds in possession of the Receiver after satisfaction of the foregoing obligations shall be maintained by the Receiver pending further order of this Court.

8. The Receiver shall be compensated at the hourly rate of \$365.00 for his services hereunder. The Receiver's compensation for services under this Order and the Receiver's reasonable out-of-pocket expenses shall be paid on a monthly basis. The Receiver shall submit to the Commissioner and counsel for any party to this proceeding itemized monthly billing statements for his professional services and other expenses, and shall submit to the Commissioner and counsel for any party to this proceeding itemized monthly billing statements for services performed by the Receiver's attorneys, accountants, and consultants.

9. Within 30 days of the date of this Order, the Receiver shall notify all known investors and creditors with the Estate, or their successors, of the appointment of a receiver in this action. Within 30 days of the date of this Order, the Receiver shall also notify the Internal Revenue Service and the Colorado Department of Revenue of the appointment of a receiver in this action. The Receiver shall file with the Court and serve upon the parties, within 60 days after entry of this Order, a preliminary report setting out the identity, location and value of the Receivership Assets, and any liabilities pertaining thereto. The Receiver shall make and file with the court, and provide copies to the Commissioner, the parties to this action, and the investors, quarterly reports of the condition of the Estate on the last day of the month after the end of each quarter, for each prior quarter. Upon prior notice in a Receiver's Report, the Receiver may report less frequently. The Receiver shall not be required to, but as reasonably necessary may, follow generally accepted accounting principles, or use auditors or accountants in the preparation of his reports to the Court. The quarterly reports shall include an inventory of all Property of the Estate, the current status or

liquidation thereof, Claims against the Estate, receipts, disbursements, debts and obligations contracted and expenditures made. The Receiver shall keep the court and all parties to this proceeding apprised of all material developments concerning the operation of the receivership, and subject to preservation of any and all privileges, including the attorney-client and attorney work product privileges, shall provide to all parties to this proceeding upon request any documents or information under the control of the Receiver.

10. Except as may be expressly authorized by this Court upon notice and a hearing, Mueller and the Estate is enjoined from:

- a. collecting the Estate, or any proceeds, revenues, accounts, issues, profits or other revenues thereof;
- b. withdrawing funds from any bank or other depository account belonging to the Estate;
- c. terminating or causing to be terminated any license, permit, lease contract or agreement relating to the Estate;
- d. altering, erasing, or destroying any Records, as defined in Paragraph 10(b) below, without the prior written consent of the Receiver; and
- e. otherwise interfering with the operation of the Estate or the Receiver's exercise of any power hereunder or the Receiver's discharge of his duties.

Upon receipt of a copy of this Order, or upon actual knowledge of the entry of this Order, any other person or business enterprise shall also be bound by this Paragraph 9.

11. Mueller and the Estate shall:

- a. advise the Receiver of the existence of any property of the Estate in such party's possession and deliver immediately over to the

Receiver or his agents all collections of proceeds of the Estate, including accounts receivable, properly endorsed to the Receiver when necessary;

b. advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the Estate or the business or affairs of the Estate, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (collectively, the "Records") in such party's possession or control; provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto; and provide assistance to the Receiver in gaining immediate access to the information in the Records as the Receiver may in its discretion require, including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information; provided however that nothing in this paragraph shall require the delivery of Records, or the granting of access to Records, consisting of the personal property of the party in possession thereof, and not the Estate, which may be subject to any attorney-client privilege;

c. continue to deliver immediately to the Receiver all collections of proceeds of the Estate, including accounts receivable, other collections, books and other records relating to the operation, maintenance and management of the Estate, and to permit the Receiver to carry out his duties hereunder without interference; and

d. when necessary or when requested by the Receiver, explain the operation, maintenance, preservation, and liquidation of MCM's and the Fund's assets to the Receiver or his agents.

12. Except as may be expressly authorized by the Receiver or by application to this Court, no person may buy, sell, or otherwise transfer any portion of the Estate not in the control of the Receiver.

13. Any provision of law to the contrary notwithstanding, the Receiver controls the assets and documents of the Estate until further order of this Court.

14. All claims and demands against the Estate, the Receiver, or the Estate shall be brought in this Court. No equitable proceeding or enforcement process in any court or tribunal in this Jurisdiction shall be commenced or continued against the Receiver except with the written consent of the Receiver or upon order of this Court. All actions within this Jurisdiction whether legal or equitable in nature or which purport to seek equitable relief against the Receiver, Mueller, or the Estate are hereby stayed pending further action of this Court. No new actions, whether legal or equitable in nature, shall be brought against the Receiver, Mueller and/or the Estate without the party seeking to bring such action first obtaining permission of this Court.

15. All persons having notice of this Order, and having oral or written agreements with the Estate, or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, utility or other services to the Estate are hereby restrained until further order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver; and the Receiver shall be entitled to the continued use of the Estate's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the entry of this Order shall be paid by the Receiver in accordance with the ordinary course of business of the Estate and such supplier, or such other practices as may be agreed upon by the Receiver and the supplier, or as may be ordered by this Court.

16. Sheriff's assistance to enforce the terms of this Order in the form of peace-keeping duties is hereby authorized.

17. All real and personal property lessors to the Estate are hereby enjoined, for a period not to exceed thirty days from entry of this Order, from seizing, or preventing the Receiver from taking possession of the Estate, or any portion thereof. Delivery of a copy of this Order on any such lessor shall serve as formal notice of this Order and the lessor's obligations under this paragraph.

18. All who are acting, or have acted, on behalf of the Receiver at the request of the Receiver, including his attorneys and accountants, are protected and privileged with the same protections of this Court as that of the Receiver. In order to avail the agents of the Receiver with these protections and privileges, the Receiver should file a notice of the agency with this Court.

19. The Receiver shall serve any request for relief or approval of any action required by this Order on the Commissioner, his counsel, the Estate, its counsel, and any other party filing an entry of appearance in this proceeding. Unless an objection to the motion is filed with the Court within ten (10) calendar days after service thereof, approval of the Court shall be deemed granted and the Receiver shall be authorized to take such action. As appropriate, the Receiver may nevertheless request entry of a Court order granting such motion. If an objection to the motion is filed with the Court, the Court shall promptly hold a hearing on the motion, on at least three (3) days' notice to all objecting.

20. The Receiver's Bond and the Oath of Receiver may be filed by facsimile transmission or other electronic means and this Order shall become effective upon the Court's receipt of such transmission provided, however, that the Receiver replace the facsimiles with originals within seven days of filing.

21. The Receiver may from time to time request that the Court enter additional orders to supplement, clarify or amend this Order, upon notice in accordance with this Order.

22. Any notice required hereunder shall be deemed served on the date it is deposited in the United States mail, first class postage prepaid, to counsel of record for any party, or directly to any party not represented by counsel, and any computation of time for purposes of this Order shall be governed by the provisions of Colorado Rules of Civil Procedure, Rule 6.

23. The Receiver shall forthwith provide a copy of this order to any other persons in possession of any portion of the Estate or any other persons otherwise affected by this order.

24. Notwithstanding anything to the contrary contained in this Order, the Receiver shall not take any action with regard to ownership, operation, control, storage, generation, or disposal of: (a) any substance deemed a "hazardous substance", "pollutant", "contaminant", or similar substance under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675, the Conservation and Recovery Act of 1976, the Solid Waste Amendments of 1984, the Superfund Amendments and Reauthorization Act of 1986, and any other amendments; or (b) any other chemical, toxin, pollutant or substance defined as hazardous or dangerous to human health under any other federal, state or local law, regulation, rule or ordinance, including, without limitation thereto, petroleum, crude oil, or any fraction thereof (all collectively referred to herein as "Hazardous Substances"), without first applying for an obtaining an Order of this Court specifically setting forth the action or actions proposed to be taken by Receiver. Without first applying for and obtaining such an Order of this Court, the Receiver shall have no ownership, control, authority or power (neither shall receiver have any obligation to exercise ownership, control, authorize or power) over the operation, storage, generation or disposal of any Hazardous Substance. All decisions relating to the ownership, operation, control, storage, generation and disposal of any Hazardous Substances shall be resolved by this Court.

25. The Receiver serves herein, and discharges all his duties under this Order, as an officer of this Court, solely in a representative capacity, and not in an individual capacity, and does not, in being appointed as Receiver or by acting as Receiver consistent with this Order hereunder, thereby become personally liable to any person or governmental entity under any law, statute, regulation or other doctrine of law or equity.

26. The Receiver shall continue in possession of the Estate until discharged by the Court. The Receiver shall endeavor to wind up the Receivership expeditiously or otherwise at the direction of the Court, and to submit a final report and motion for discharge no later than forty-five (45) days after all the Estate has been collected, sold, liquidated, disposed of or abandoned by the Receiver, and all proceeds thereof have been distributed in accordance with this Order and subsequent orders of this Court. If no objections to the final report and motion for discharge have been delivered to the Court, the Receiver, and other parties having entered their appearance in this proceeding, by first-class mail to such address as is

reflected in the Court records, within fifteen (15) days after the final report and motion for discharge are filed with the Court, the final report will be accepted by the Court, and the Court will enter an order terminating the Receivership and discharging the Receiver. The Receiver's bond shall be dismissed following the approval of the final report and entry of the discharge order.

BY THE COURT THIS ^{29th} DAY OF April, 2010:

Catherine A. Neeson
District Court Judge