



Richard B. Roper, III (“Receiver”) files this Report to the Court regarding the affairs and findings of the Receivership, respectfully showing as follows:

By order dated March 26, 2009, this Court appointed Richard B. Roper as Receiver for the assets and records of the Defendants and Relief Defendants in the above-referenced case and all entities they own or control. The Receivership Order, and the subsequent orders re-appointing the Receiver, direct the Receiver to prepare and submit written periodic reports to the Court and to the parties. This Report is intended to brief the Court on the status of matters undertaken for the benefit of the Receivership Estate. Furthermore, the Receiver submits this request for approval of a proposed pro rata interim distribution to investors.

## **I. OVERVIEW**

This Receiver’s Report is the fourth substantive update to the Receivership Court of the Receiver’s activities. Because the Receiver’s prior reports have provided significant detail regarding the Receiver’s work in the relevant periods, rather than repeating the extensive contents of those prior reports, each is summarized here to provide both a summary of the Receiver’s work to date and a context for the work performed in the last year.

### **A. SUMMARY OF DECEMBER 2009 RECEIVER’S REPORT**

The Receiver’s Report of December 4, 2009 [Dkt. 115] (the “2009 Report”) detailed at length the structure of the Millennium Entities and the manner in which the fraud on the investors occurred. Essentially, Millennium Bank and its related entities functioned as a simple Ponzi scheme, under the direction of Defendant William Wise. Investors in the various entities purchased a “certificate of deposit” for a set term of

years, and for a set interest rate. The “interest,” however, was fictitious, as Wise simply paid out matured CDs with the money of new investors who believed they were also purchasing CDs. The rest of the money was appropriated by Wise and his associates for personal use, in the manner detailed at length later in this Report. It was never invested. The Millennium Entities had very little corporate structure, and maintained a physical presence in Napa, California, Raleigh, North Carolina, and offshore on the island of St. Vincent and the Grenadines.

No actual investment of investor funds has been identified throughout the course of the Receivership. Instead, Wise spent the money on a lavish lifestyle, literally spending tens of millions of dollars for an island resort, airplanes and pilots, an extensive wine collection, boats, luxury automobiles and drivers, world travel, and large sums paid to his wife and various girlfriends, among other things. The findings of the forensic accountants explain the misappropriation of funds as thoroughly as possible in light of the poor recordkeeping of the Millennium businesses and the unavailability of William Wise himself.

The first Receiver’s Report discussed tasks and matters undertaken by the Receiver in order to satisfy his appointed duties and responsibilities, such as review, seizure, and relinquishment of Millennium office locations; location, securing, and liquidation of assets; review and analysis of investor claims; and many other tasks and actions related to the litigation of claims by Defendants and Relief Defendants. The bulk of the Receiver’s work in locating and liquidating assets had been accomplished as of the December 2009 Report to this Court.

**B. SUMMARY OF NOVEMBER 2010 RECEIVER'S REPORT**

On November 22, 2010, the Receiver filed an additional Receiver's Report with the Court [Doc. 147] outlining the work undertaken by the Receiver, his agents, and representatives since the December 2009 Report ("the 2010 Report"). The 2010 Report focused on the Receiver's substantial work, along with his forensic accountants, to better understand the financial activities of the Millennium Entities. This task was central to the Receivership Estate, both because it may provide insight as to how to recoup some of the lost funds and also because the Court, along with investors and other creditors, needs a clear explanation of what happened to those investor funds which cannot be recovered.

The Receiver obtained the assistance of forensic accounting firm Litzler, Segner, Shaw & McKenney LLP ("LSS&M") in order to analyze the bank deposits and withdrawals of Millennium Bank and its sister entities (the "Millennium Entities") in an effort to determine how funds were used. LSS&M created a database of all the identifiable bank transactions conducted by the Millennium Entities to allow LSS&M and the Receiver to review the monies moving in and out of the Millennium Entities. This database was instrumental in aiding the Receiver's understanding of the Millennium Entities' financial activity. The results of an analysis of this database are covered in significant detail in the 2010 Report.

As detailed in the 2010 Report, the work by LSS&M revealed that the investor funds were deposited into one primary account, and that the money was appropriated by William Wise and his associates to fund a lavish lifestyle and little more, paying off earlier investors in order to perpetuate the scheme. At least \$156.9 million was deposited into accounts of the Millennium Entities since the Ponzi scheme's inception. All of this

\$156.9 million is believed to have come from investor deposits, and \$127.5 million can be traced back directly to the Millennium Entities' bank records. A detailed explanation of the spending analysis and the accounting challenges encountered by the Receiver and LSS&M to produce these figures is found at pages 8 to 12 of the 2010 Report.

**C. SUMMARY OF APRIL 2012 RECEIVER'S REPORT**

On April 9, 2012, the Receiver filed an additional Receiver's Report with the Court [Doc. 192] outlining the work undertaken by the Receiver, his agents, and representatives since the November 2010 Report ("the 2011 Report"). The 2011 Report focused on the Receiver's work in initiating and prosecuting ancillary litigation against various parties that benefited from illegitimate transfers from the Millennium Entities, cooperation with government authorities, and cooperating with the St. Vincent Joint Provisional Liquidators.

In the course of the Receiver's work, some illegitimate transfers of funds came to light. These transactions are deemed illegitimate because no reasonably equivalent exchange was made by the persons/entities who received certain funds from Millennium Bank or any of its sister entities. *See SEC v. Res. Dev. Int'l, LLC*, 487 F.3d 295, 301 (5th Cir. 2007); *Warfield v. Byron*, 436 F.3d 551, 559 (5th Cir. 2006). Because those transactions amount to "fraudulent transfers" under the applicable law, the Receiver sought to recoup those funds paid out to these certain individuals through ancillary litigation, which was prosecuted in accordance with procedures approved by the Court's Order Granting Receiver's Motion to Approve Procedures for Recovery of Receivership Assets in Third-Party Litigation [Dkt. 156].

The Receiver commenced three ancillary suits. First, the Receiver determined that while numerous investors have been defrauded and lost most, if not all, of their investment in the Millennium Entities, other investors were paid back in full, with interest (the “Net Winning Investors”). On March 1, 2011, the Receiver filed his Original Complaint in this Court against those Net Winning Investors who did not respond to the Receiver’s request for repayment or who refused to comply with repayment (*Cause No. 7:11-cv-00031*). The Complaint named 312 Defendants and sought more than \$5,000,000 in net winnings, alleging actual and constructive fraudulent transfer under California’s Uniform Fraudulent Transfer Act, unjust enrichment, and constructive trust. The Receiver spent a considerable amount of time discussing and settling claims with the Net Winning Investors. The Receiver also filed motions for default judgment and motions for summary judgment against the Net Winning Investors.

Second, the Receiver’s investigation revealed that Atlanta Northside Aviation received significant funds from the Millennium Entities during the course of the Ponzi scheme. On March 1, 2011, the Receiver filed his Original Complaint against Atlanta Northside Aviation (“ANA”) in this Court, Cause No. 7:11-cv-00034. The Complaint sought to recover \$800,000 from ANA, alleging Actual and Constructive Fraudulent Transfer under Georgia’s Uniform Fraudulent Transfer Act, unjust enrichment, and constructive trust. In January 2012, the Receiver filed his Motion for Summary Judgment against ANA.

Third, the Receiver instituted suit against three of the brokers, Robert Kelty, David Jones, and Scott Christopher, working to sell Millennium CD products over the years. Because of their relationships with Wise and the Millennium Entities, on March 1,

2011, the Receiver filed his Original Complaint against Jones, Kelty, and Christopher in this Court, Cause No. 7:11-cv-00036. Jones filed for bankruptcy shortly after commencement of the ancillary suit. The Receiver, assisted by Kentucky local counsel Bingham Greenebaum Doll LLP (“BGD”), appeared, opposed the discharge, and the Court ultimately stayed its jurisdiction lifting the automatic stay against Jones.

## **II. RECENT WORK UNDERTAKEN BY THE RECEIVER**

Since the 2011 Report was filed, the Receiver’s work has focused on prosecuting and collecting on the ancillary litigation against the Net Winning Investors, Atlanta Northside Aviation, and the Brokers.

### **A. NET WINNING INVESTORS**

The Receiver and his counsel worked diligently to resolve the litigation against the Net Winning Investors through settlement where possible. The Receiver effectively completed settlement of the claims against 104 of the Defendants as of April 2012 and dismissed those who completed the terms of their settlement agreements. The Receiver and his counsel spent significant time corresponding with investor defendants and working to resolve the claims against them.

The Court granted summary judgment on March 29, 2012 against 16 of the Defendants. Further, many of the Defendants failed to answer the Receiver’s complaint. On April 9, 2012, the Court granted the Receiver’s default judgment against 57 of the Defendants. Because all of the Net Winning Investors had settled or defaulted or dispositive motions have been resolved in favor of the Receiver, the Court suggested that the case be administratively closed at the April 19, 2012 pre-trial hearing. The Receiver has collected over \$1.5 million from the Net Winning Investors. The Receiver is now

beginning the process of collecting on the default and summary judgments. The Receiver is attempting to determine the most efficient means of collection given the scarce resources of the Receivership Estate.

**B. ATLANTA NORTHSIDE AVIATION**

This Court's ruling on the parties' cross-motions for summary judgment found that ANA is liable to the Receivership Estate for \$445,000 in funds fraudulently transferred to ANA prior to institution of the Receivership. Following settlement discussions that were ultimately unconsummated, the Receiver took steps to finalize that judgment and recover the funds for the benefit of the Receivership Estate. Since that time, the Receiver received a partial payment on settlement, but awaits completion according to the agreed-upon terms. The Receiver filed a Motion for Entry of Final Judgment Against ANA on September 28, 2012. On October 12, 2012, the Court granted the Receiver's Motion for Entry of Final Judgment against ANA [Dkt. 40]. The Receiver has since received full payment from ANA in settlement of his claims.

**C. BROKERS**

The Receiver is in the discovery phase of the litigation against the Millennium Brokers, following his success in lifting a bankruptcy stay to be able to pursue the litigation. Because of the bankruptcy, the Receiver's claims against the brokers have not moved at the same pace as the other ancillary litigation. Due to the recent developments in the Kentucky bankruptcy court, however, the Receiver has resumed the prosecution of his claims against the brokers, and discovery has commenced in the case.

The parties mediated the case on October 9, 2012. Defendant Robert Kelty and the Receiver reached a tentative agreed resolution, but Defendant Scott Christopher and

Defendant David Jones and the Receiver did not settle the claims at issue during the mediation. Defendant Kelty completed the settlement terms and was dismissed from the suit on November 28, 2012 [Dkt. 42]. Further, the Court has extended the discovery period in this case to allow the Receiver to debrief William Wise (who is now in custody and has agreed to cooperate), and to depose Scott Christopher. If the cases are not resolved prior to the close of discovery, the Receiver anticipates filing motions for summary judgment to resolve the case.

**D. WILLIAM WISE & JACQUILINE HOEGEL**

On February 21, 2012, a federal grand jury returned a 23-count indictment, charging William Wise and Jacqueline Hoegel with conspiracy, mail fraud, and wire fraud. After the arrest and initial appearance of Jacqueline Hoegel, she was released on bond.

On April 17, 2012, Wise turned himself in and appeared in court in San Francisco. Wise has agreed as part of his plea arrangement to cooperate with the Receiver, and the U.S. Attorney's Office in San Francisco has agreed to make Wise available in November or December of 2012 for the Receiver to debrief him. *See* William Wise Plea Agreement, attached hereto as Exhibit A. The Receiver is hopeful that Wise's arrest will provide the Receiver with additional information about missing money and assets, as well as to provide information necessary to resolve the still-pending ancillary litigation.

**III.  
REMAINING TASKS**

The primary tasks facing the Receiver to complete his duties are completing the ancillary litigation, and distributing the funds to defrauded investors and other creditors.

Specifically, the Receiver will:

- Complete the Broker Litigation;
- Debrief William Wise; and
- Determine if William Wise has any remaining assets or accounts.

Concerning the ancillary litigation, the Receiver will continue pursuing the judgments against the Net Winning Investors. The Receiver will also pursue the judgment rendered on his behalf against Atlanta Northside Aviation. While a final distribution is not yet possible, the Receiver would like to make some interim distribution to defrauded investors who lost money.

**IV.  
REQUEST FOR INTERIM DISTRIBUTION**

**A. STATUS OF LIQUIDATION AND RECOVERY OF ASSETS**

The Receiver now has \$2,995,341.72 available for distribution to net winning investors claimants. This net amount was funded from the liquidation of assets, proceeds from settlement in the ancillary litigation, and balance of the Millennium Entities' accounts. This does not include the \$872,199.29 in judgments obtained by default and summary judgment in the ancillary litigation against the net winning investors. In addition to the liquidated assets, the Receiver may recover and add to the distribution fund amounts for these judgment once they are collected upon. Further, any additional

recoveries from the Broker Litigation or cooperation from Wise will be deposited into the Receivership Estate for ultimate distribution.

**B. ANALYSIS OF INVESTOR CLAIMS**

Since the inception of the Receivership, the Receiver has actively solicited and obtained claims and supporting documentation from those persons and investors who believe they are owed money by Millennium Entities and/or the Individual Defendants. At this time, 522 investors have made claims with the Receivership Estate.

The Receiver has asked investors to provide him with documents substantiating the amount of their investment in the Millennium Entities. This process has proven to be somewhat complex, as it is evidently difficult for some investors to sort out the money they actually, physically deposited into CDs from fictitious interest or profits they may have rolled over into a “new” investment. Other investors simply believe their investment is larger than the principal they originally invested based on fictitious accounting statements generated by Defendants and provided to the investors over time.

The Receiver has taken the following steps to identify the net losing investors (the “Net Losing Investors”). The determination of which investors in the Millennium Entities were net losers was performed by counsel, agents, and representatives of the Receiver based on the review of records and databases recovered from the offices of the Millennium Entities in seizures performed by the Receiver’s counsel, agents, and other representatives. Based upon such, 450 of the investors who made claims lost their principal investment in the Millennium Entities. *See* Net Losing Investor Distribution Schedule, attached hereto as Exhibit B. Further, 12 investors, who made claims but did not appear in Millennium Bank records or databases as “losing investors,” provided

sufficient documentation to support the claim that as of January 2009 their principal was still invested in the Millennium Entities. *See* Millennium Entities Statements of Claimants, attached hereto as Exhibit C. Thus, evidence exists to substantiate that a total of 462 claimants are also net losing investors (the “Allowed Net Losing Investor Claims”).

Further, according to the above-described evidence, the Net Losing Investors have a collective principal loss balance of \$87,538,618.43. Although the collection and liquidation process is still underway, the Receiver proposes an interim distribution.

### **C. PROPOSED DISTRIBUTION**

Although the Receiver is still trying to recover more assets for the Receivership Estate through litigation, the Receiver believes he has enough money to make a meaningful interim distribution to the investors. The Receiver therefore proposes and asks for authority to make an initial interim distribution of \$2,262,679.22 on Allowed Net Losing Investor Claims, on a pro rata basis. A \$2,262,679.22 distribution would pay 2.59% of the total allowed claims, meaning each investor would receive 2.59% of his or her allowed claim at this time and perhaps more in the future after the pending litigation is concluded. The distribution amount is calculated as follows:

<b><u>Amount to be Distributed</u></b>		<b><u>\$2,262,679.22</u></b>		<b><u>Distribution Percentage</u></b>
<b>Total Allowed Claims</b>	=	<b><u>\$87,538,618.43</u></b>	=	<b>2.58%</b>

The Net Losing Investor Distribution Schedule, attached hereto as Exhibit B, shows the exact amount each approved claim would receive through this interim distribution.

All investors who made a claim and are identified on the databases maintained by the Millennium entities have been included in the proposed Distribution Plan. The

Receiver has been able to verify the balances due to each net losing investor from the record previously maintained by the Millennium Entities and the Receiver's forensic accountants. The Receiver proposes to provide written notice to each investor, based on the above calculations, of their net investment, which is the approved claim amount. Each investor claimant will be advised in writing of the calculation of the claim.

**D. AUTHORITIES**

In the March 2009 Order Appointing Receiver, the Court found it was “necessary and appropriate in order to prevent waste and dissipation of the assets . . . to the detriment of the investors” to appoint the Receiver. In overseeing and administering an equitable receivership such as the instant case, this Court's discretion in approving the Plan is given great deference and may be disturbed on appeal only upon the showing of an abuse of discretion. *See SEC v. Sharp Capital, Inc.*, 315 F.3d 541, 545 (5th Cir. 2003). The plan of distribution proposed by the Receiver is consistent with plans approved by the SEC in other cases. *See SEC v. Great White Marina & Rec., Inc.*, 428 F.3d 553, 556 (5th Cir. 2005); *SEC v. Forex Asset Mgmt. LLC*, 242 F.3d 325, 331 (5th Cir. 2001).

***1. It is appropriate to determine the amount of investors' losses on a cash basis, without regard to the unpaid illusory, fictitious returns.***

The investors' losses were calculated on a “cash-in—cash-out” basis—the amount of principal invested less any returns, fees, or other funds received by the investor. Investors' claims will not be increased by any “earned” but unpaid returns. Not only is this the most efficient method of calculating loss, it is the most fair. When confronted with similar situations and challenges to this method of establishing the loss amount, courts have upheld this method of determining a loss as fair and reasonable. *See Great White*, 428 F.3d at 556; *Forex Asset*, 242 F.3d at 331 (affirming trial court's approval of

plan that calculated each investor's allowed claim as a percentage of their loss as measured against the losses of all of the unpaid claimants as "fair and equitable").

**2. *It is appropriate to treat all the monies recovered as a "common fund" from which payment to all investors will be made.***

The Receiver's plan of distribution aggregates all available money into a single fund. No effort has been made to trace any specific investor's funds. From the earliest Ponzi scheme cases, courts have made clear that this is almost always the most equitable way to treat investors. *Forex Asset*, 242 F.3d at 331 (district court did not abuse its discretion when it determined that, despite the fact that some of the funds available for distribution were segregated and traceable to one investor, allowing one investor to trace its funds and avoid a pro-rata distribution among all of the investors would be an inequitable remedy).

The proposed distribution is consistent with the prevailing principles of equity and comports with plans approved in other SEC receiverships. It provides a fair process for distributing money to investors.

**V.  
CONCLUSION**

The Receiver has devoted the bulk of his time since his last report to this Court to attempting to recoup assets paid out to third parties as fraudulent transfers in order to restore additional funds to the Receivership Estate. The analysis contained in this Report represents the best possible picture of Millennium Bank's financial affairs in light of the extremely poor recordkeeping of the Defendants, the limitations of the bank records provided in response to the Receiver's subpoena, and the unavailability until now of the

master of the scheme, William Wise. The Receiver will continue to undertake those tasks required to faithfully and most efficiently administer the Estate.

The Receiver asks this Court to approve this interim distribution and, if necessary, to set a hearing and then enter an order authorizing the Receiver to make the distribution to the approved claimants consistent with Exhibit B. The Receiver asks for such other and further relief, general or special, at law or in equity, to which he may otherwise be entitled.

Respectfully submitted,

**THOMPSON & KNIGHT, LLP**

/s/ Jennifer Rudenick Ecklund

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RICHARD B. ROPER**

**CERTIFICATE OF SERVICE**

On November 29, 2012, I electronically submitted the foregoing document to the Clerk of the Court for the United States District Court for the Northern District of Texas using the electronic case filing system of the Court.

/s/ Jennifer Rudenick Ecklund

Jennifer Rudenick Ecklund