

SEC v. MILLENNIUM BANK, ET AL.
December 10, 2010 Status Report and Update

The Receiver is mindful of the financial strain and many concerns of the defrauded investors of Millennium Bank and its sister entities. Over the past several months, the Receiver has been awaiting results from his forensic accountants, analyzing those results in the context of the information known to him about people and entities involved in the Ponzi scheme, assisting various government authorities with their ongoing investigations, and analyzing the costs and benefits of litigation against third parties who may hold monies that should be returned to the Receivership Estate. Unfortunately, until some of this information was available to the Receiver for his use in making decisions, there was little to report to investors in the interim. This report, while it has taken considerable time to reach investors, is intended to fully brief investors on the findings and plans of the Receiver in light of the results made available by the work of his accountants and attorneys.

The Millennium Entities and Individual Defendants kept extremely poor records. In fact, the only records available to the Receiver were incomplete databases in which investors were tracked. These databases supposed that money was actually being invested, however, and that interest was actually being earned. It was not. The bank records obtained by the Receiver confirmed initial fears that no money was ever invested. Unfortunately, this means that the databases are of limited utility, because they assume money was “invested” in Millennium even when that money was not real. For example, if an investor did not “cash out” a CD upon maturity, but rather rolled it over into a new “investment,” the databases count that money twice. Moreover, the databases suppose that the “interest” accrued on the first investment actually existed. Shown another way, the databases may reflect the following scenario:

Investor A pays \$100,000 for a Millennium CD.
Over a five year term, the CD “earns interest” of an additional \$20,000.
At the end of the term, Investor A re-invests all \$120,000.

The databases would show that Investor A invested \$220,000, even though only \$100,000 of real money was actually deposited into a Millennium account.

The inaccuracy of the databases and the complete lack of recordkeeping on the part of the Defendants made the Receiver’s task of determining how much money had actually been taken in by the scheme extremely difficult. Even more difficult was trying to determine how much money was taken out of the scheme, and where it went. At the time of the last Receiver’s Report and update to investors, the vast majority of the known assets had already been seized and liquidated, and the money available to compensate defrauded investors was a tiny fraction of what the Receiver believed had been invested in Millennium Bank. But because the record-keeping was so poor, the Receiver was forced to rely on bank records to establish the manner in which money came into and out of the Ponzi scheme, and to determine whether or not additional assets may exist. Because Millennium did not have any bank records, the Receiver had to subpoena the

various banks involved just to obtain the records, before any review or analysis was possible.

Once the records were received, the forensic accountants employed by the Receiver had to input every single bank transaction from all bank accounts known to the Receiver or the SEC from 2004 through 2009. Once input, these transactions each had to be categorized to try to determine where the money came from, or where it went. This process was extremely time-consuming.

Because witnesses could not identify any other assets to be seized or liquidated and the Receiver's and SEC's investigations did not reveal any additional assets beyond what had already been reported to investors and to the Court, the Receiver had to wait for the accountants to complete this process in order to determine whether additional assets may exist or be secreted. The details of the accounting are included in the Receiver's November 22, 2010 Report to the Court, and establish that most of the money was indeed *spent*, and usually not on high-dollar tangible assets which may still be recovered. The accounting results seem to confirm what the Receiver feared from his initial interviews and investigation, that William Wise in particular led an extravagant and fiscally irresponsible lifestyle at the expense of his investors.

Initial interviews suggested that Wise spent large amounts of money on himself and in support he provided to others. Reports indicated that he provided \$5000 per week to his wife. In addition, other witnesses provided information that he regularly spent various sums, tens of thousands of dollars per month, supporting various escorts and girlfriends, most of whom were from Eastern Europe. These women are not available to be interviewed, and not believed to be in the United States. Over the course of five years, conservatively, Wise would have spent millions on support to his wife and female companions alone, not counting money spent on rent, mortgages, transportation, travel, or credit cards. Wise made numerous cash withdrawals from all over the world during the scheme.

The bank records did bear out that money was never invested, and that much of it was spent. Money that was taken in cash withdrawals, in cashier's checks, or from ATMs cannot be further explained based on the records. The Receiver knows that significant sums were paid to earlier investors in order to keep the Ponzi scheme afloat. More details of the spending are available in the Receiver's Report.

Once the forensic accountants had done their work, the Receiver's attorneys had to analyze those results and apply their knowledge about the various people involved in the scheme to fully categorize spending and consider whether additional assets may have been secreted. Additionally, the money paid by and to the more than 1000 investors had to be calculated and analyzed in conjunction with the investments in the database and the claims made against the Estate. This process also took considerable time and effort.

Ultimately, it became apparent that the only way to recover additional funds for the Receivership Estate, and ultimately, for the benefit of defrauded investors, was to

consider a series of lawsuits intended to bring money back into the Estate which had been fraudulently transferred. The Receiver believes, based on the applicable law, that the money was fraudulently transferred because the people who received the money did not exchange any consideration or reasonable value for it. Therefore, the Receiver had to analyze and consider lawsuits against a number of people, including charities, other businesses, brokers, and unfortunately, some investors who received more money back than they invested. Because no other assets are currently known to the Receiver at this time, the Receiver's only option to recover additional monies on behalf of the Estate is to sue those people who received what was essentially stolen money, even if they may have done nothing wrong themselves. These lawsuits are more fully addressed below.

Many investors have expressed anger and disappointment that William Wise and other defendants have not been arrested or brought to justice in a criminal context. The Receiver and his counsel have tried to diligently address these concerns each time they have arisen, but the fact remains that the Receiver has *no power whatsoever* to apprehend or arrest anyone. The only action the Receiver can take is to assist the various government agencies when called upon—and the Receiver has worked diligently to ensure that all government authorities have whatever information they may need to carry on their respective investigations. The Receiver will continue to provide any assistance possible to help apprehend William Wise. The unavailability of William Wise has also created challenges for the Receiver in identifying additional assets, if any. Often when a schemer is in custody, he may cooperate with authorities in the hope for a lighter sentence. The Receiver believes that the Department of Justice and various federal law enforcement agencies are engaged in this matter. Hopefully, charges will be forthcoming.

A number of other investors have expressed concern over why the Receiver has not undertaken full-scale international searches for assets that may have been hidden offshore. The Receiver did engage an international asset search firm to perform an initial investigation, which was detailed in the Receiver's Report of December 4, 2009. However, the search yielded no positive results. The cost of performing this type of asset search is extremely expensive. Because the Receivership Estate contained very little money, it did not seem prudent to spend additional funds of the limited Estate to engage in additional searches when no leads were developed from the initial search.

Additional details from the Receiver's work and Report to the Court are included below to further explain the work that has been done over the past twelve months.

FORENSIC ACCOUNTANTS' INITIAL RESULTS

As previously noted, the forensic accountants hired by the Receiver to review the Millennium entities' financial documents have completed their initial review. Their conclusions support the SEC's charges against Wise and the Millennium entities—investors' funds were never invested by the Millennium entities but were instead spent by the Defendants on items such as wine, a private airplane, and various other personal benefits. In total, the records indicate that \$156.9 million was deposited with Millennium

entities for investment over the life of the scheme. There is no record of any of those funds being invested. Of that \$156.9 million, at least \$29.8 million was returned to investors and over \$70.6 million was spent for the Defendants' benefit. However, the Receiver has only had access to records from 2004 forward, so it is unknown how much money was spent or provided to earlier investors before that time.

RECOVERY OF INTEREST FROM NET WINNERS

The Receiver and his agents have spent considerable time and effort pursuing all assets recoverable by the Receivership Estate. The Receiver's forensic accountants have completed their initial review of the financial records obtained by the Receiver. Their work confirms the Receiver's concerns that Wise and the other Millennium Defendants spent the vast majority of the funds invested with the Millennium Entities to support their lavish lifestyle.

Because there are no other large assets, the interest payments made to investors is the largest remaining source of material funds available to the Receivership Estate. After careful consideration, the Receiver determined that it would be proper to attempt to recover the funds from certain investors who received more from the Defendants than they invested.

On July 28, 2010, the Receiver sent letters to approximately 300 investors who received more cash from the Millennium entities than they invested. These investors are considered "Net Winners." The Receiver limited his request for reimbursements from Net Winners to only the amounts they received in excess of the principal that they invested.

To date, the Receiver has collected almost \$600,000 from the Net Winners, and more than \$5,000,000 remains to be collected. The Receiver anticipates that he will be required to file suit to collect the majority of the remaining \$5,000,000. Although the Receiver does not relish the possibility of bringing suit against the Net Winners, he believes that it is necessary to fulfill his duties both to the court and to the remaining investors.

COOPERATION WITH ST. VINCENT JOINT PROVISIONAL LIQUIDATORS

The Receiver understands that investors are frustrated with a perceived lack of cooperation between him and the St. Vincent Joint Provisional Liquidator appointed there to handle all assets and claims on that island. The Receiver has been in contact with KPMG Bermuda, who was appointed in St. Vincent and the Grenadines to liquidate the Millennium Bank entity and assets there. The Receiver understands that KPMG has solicited investor claims and is conducting its own claims and estate distribution process. The Receiver has no access or authority over the funds held by KPMG for the benefit of its own liquidation estate. At this time, the Receiver does not know how much money has been recovered pursuant to the JPL's authority in St. Vincent, or how much will be available for return to defrauded investors. The Receiver will *not* be able to exercise any

discretion or authority over the liquidation process in St. Vincent, nor the ultimate distribution of funds there.

The Receiver believes that a significant number of valuable assets were located in St. Vincent, including a resort property, the improvements on that property, boats, wine, and cash. The Receiver has received some information suggesting that some of these assets were looted when word of the Ponzi scheme and investigations broke on the island. In any event, the assets located in St. Vincent were seized and liquidated by KPMG, and were not available to the Receiver for purposes of increasing the Receivership Estate in the United States.

MISCELLANEOUS ASSET LIQUIDATION

In June 2010, the Receiver liquidated another of William Wise's automobiles, a 2009 Escalade which was sold for \$50,000. Wise owed \$42,309.69 on the note, so the sale resulted in a gain of \$7,690.31 for the Receivership Estate.

One additional piece of real property owned by the Hoegels exists in Washington State. The Receiver has seized this property; however, it is believed to be "under water" in the depressed real estate economy, and it is worth only a few thousand dollars currently. This property will be disposed of in the most efficient way possible in order to maximize any value to the Receivership Estate.

ANCILLARY LITIGATION

The Receiver anticipates that he will begin filing claims against various individuals and entities, including Trenholm Healy, Atlanta Northside Aviation, and Millennium's brokers. Each of these parties received funds from the Millennium Estate that the Receiver believes are fraudulent transfers. The Receiver will seek to recover these funds and pursue any other available relief in the coming months.

CLAIMS PROCESS

Once the Receiver is satisfied that he has collected all available assets, he will begin the process of preparing a distribution plan for claimants. This process, which must be approved by the Receivership Court, will attempt to equitably distribute available funds of the Receivership Estate, if any, to investors and other claimants. The Receiver's goal throughout his administration of the Receivership has been to maximize the amount available to distribute to investors.

RECENT FILINGS WITH THE RECEIVERSHIP COURT

On November 22, 2010, the Receiver filed three documents with the Court. These documents are available at the Receiver's website: http://tklaw.com/millennium_bank_receivership.cfm. First, the Receiver filed a Report to the Court, which includes more detail from the forensic accountants' preliminary results

from their review of the financial records obtained by the Receiver. The Receiver encourages all interested parties to review the Report, as it provides details about the Defendants' spending from 2004 to 2009. It also provides more detailed descriptions of the ancillary litigation the Receiver intends to conduct.

Second, the Receiver filed a Motion Requesting Reappointment of Receiver, which will permit the Receiver to extend his jurisdiction to all federal districts in which the Receiver has located recoverable assets.

Third, the Receiver filed a Motion to Approve Procedures for Recovery of Receivership Assets in Third-Party Litigation, which requests the Court to approve the procedures by which the Receiver will seek to recover assets from third parties. Once these recovery procedures are approved by the Court, the Receiver can begin pursuing the ancillary litigation to recover funds he believes belong in the Receivership Estate.