

**IN THE UNITED STATES DISTRICT COURT FOR
OKLAHOMA-WESTERN DISTRICT**

**Commodity Futures Trading
Commission,**

Plaintiff,

vs.

**Mark S. Trimble, and
Phidippides Capital Management LLC,**

Defendants, and

Phidippides Capital LP,

Relief Defendant.

Civil Action No: 09 CV

00154-D

Judge Timothy D. DeGiusti

**MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR
APPOINTMENT OF A RECEIVER**

Plaintiff, Commodity Futures Trading Commission ("Commission" or "CFTC") submits this Memorandum in Support of its Motion for the Appointment of a Receiver. The CFTC is requesting the appointment of a Receiver to marshal and preserve the assets of the defendants and to liquidate or otherwise preserve them for the benefit of defrauded investors.

FACTS

In December 2004, Mark Trimble began accepting funds from members of the public for the purpose of trading commodity futures contracts. Initially, he deposited those funds into his personal accounts. For instance, in July 2005, he accepted \$100,000 from a customer which he deposited into his account at Tinker

Federal Credit Union. (See Exhibit 1 (redacted)) Since at least October 2005, Trimble has been accepting funds in the name of Phidippides Capital Management LLC ("PCM") for the purpose of trading commodity futures contracts.

(Declaration of Thomas Bloom, attached hereto) Until October 2007, Trimble traded commodity futures in his own name. Two things happened in October 2007. First, the defendants opened a commodity futures trading account in PCM's name at MF Global. Second, the defendants began using Archway Technology as an electronic bookkeeping service to prepare and generate statements for the pool participants. The defendants were responsible for providing Archway with copies of the pool trading account statements that Archway would use to compute the Net Asset Value of the Pool participant accounts.

Trimble admits that every MF Global statement he gave Archway for the PCM account was false. (Declaration of Thomas Bloom) The discrepancies between the actual trading results and the results on the statements he gave Archway are set out on Exhibit 2 attached. In summary, the spreadsheet shows that in October 2007 MF Global statements Trimble gave Archway overstate the actual MF Global statements by \$549,276. In succeeding months, Trimble submitted additional false statements to Archway that also overstated the actual performance of the PCM accounts. Thus, the discrepancy between the cumulative profit and loss that Trimble reported to Archway and the actual MF Global

statements increased to more than \$13.5 million by December 2008. (Declaration of Thomas Bloom, Exhibit 2)¹

I. LEGAL ARGUMENT

The appointment of a Receiver is a well-established equitable remedy available to the Commission in civil enforcement proceedings for injunctive relief. See, e.g., CFTC v. Skorupskas, 605 F.Supp. 923, 943 (E.D. Mich 1985); CFTC v. Muller, 570 F.2d 1296, 1300 (5th Cir. 1978); CFTC v. CoPetro Marketing Group, Inc., 680 F.2d 573, 583 (9th Cir. 1982) (finding Section 6c of the Act is broad enough to authorize appointment of receiver, an order requiring that the receiver have access to books and records and an order for an accounting); CFTC v. Wall Street Underground Inc., 2004 WL 957852 (D. Kan.) (appointment of a receiver was necessary to preserve defendants' assets that may ultimately provide relief for defrauded investors); see generally, Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a).

This Court has "broad discretion" to fashion appropriate equitable relief, including the appointment of a temporary receivership when presented with "[a] prima facie case of illegality." Muller, 570 F.2d at 1300; see also CoPetro Marketing Group, Inc., 680 F.2d at 582; but see CFTC v. Comvest Trading Corp., 481 F. Supp. 438 (D. Mass. 1979) (court applied a public purpose test to the issue

¹ Trimble gave Archway accurate statements for the PC LP account at MF Global.

of the appointment of receiver). In this case, the Complaint and attachments thereto, as well as the Declaration of Thomas Bloom and the attachments thereto show that Plaintiff has made a *prima facie* showing that the Defendants defrauded investors and violated the Act and Commission Regulations.

Since there may not be enough funds available to fully compensate all of the pool participants, Plaintiff believes that the appointment of a receiver will facilitate the claims process and insure that all investors are treated equitably. If appointed, a receiver will marshal and preserve the assets of the receivership estate, maintain the *status quo* during the pendency of this matter, and take the steps necessary to assure prompt and equitable distribution of Fund assets to the investors including setting up and establishing a claims procedure.

Collecting assets for future distribution to investors and maintaining the *status quo* will require the immediate appointment of someone to collect and inventory all assets for safekeeping. As set out in the motion, the immediate appointment of a receiver is necessary because the receivership estate will include a house, automobiles, an exchange membership and a horse and season tickets to the Oklahoma Thunder. A Receiver would be responsible for marshalling those assets and preventing their disposition in a manner contrary to the best interest of all investors.

For the foregoing reasons, the Commission requests that the Court grant its request for the appointment of a Receiver.

Date: March 11, 2009

Respectfully submitted,

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