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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. FREDERICK J. GILLILAND, Defendant, and MM ACMC BANQUE DE COMMERCE, INC., Relief Defendant.	)	CIVIL ACTION FILE NO. 3:02CV128-Mu

SECURITIES AND EXCHANGE COMMISSION'S MOTION TO APPOINT RECEIVER

The plaintiff, Securities and Exchange Commission ("Commission" or the "Plaintiff"), respectfully asks this Court to enter an order, in the form submitted concurrently herewith, appointing Michael J. Quilling as a receiver in this matter. In a related proceeding, Rollar v. United States of America, Civil Action No. 3-02CV205-McK, (W.D.N.C.), a court in this district appointed a receiver to administer the return to investors of $19 million in proceeds from Frederick Gilliland's ("Gilliland's") fraudulent prime bank schemes. Those schemes raised more than $29 million from more than 200 investors between mid-1997 and November 1998. The Department of Justice froze the $19 million while it was in a bank account held by the relief defendant, MM ACMC Banque De Commerce, Inc. A receiver is needed in this matter to pursue the remaining

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proceeds from defendant's fraudulent offerings, such as the $4 million that Gilliland transferred to as of yet unidentified offshore bank accounts and $245,000 that Gilliland transferred to New Zealand and which the Commission believes is available for Gilliland's investors. As additional support for this motion, the Commission respectfully refers this Court to its supporting brief, which is filed concurrently herewith.

Respectfully submitted this 5th day of March, 2003.

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CERTIFICATE OF SERVICE

I, M. Graham Loomis, certify that I have served the foregoing SECURITIES AND EXCHANGE COMMISSION'S MOTION TO APPOINT RECEIVER on the Defendant and Relief Defendant by US Mail, postage prepaid, addressed as follows:

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This 5th day of March, 2003

M. Graham Loomis

Original

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

SECURITIES AND EXCHANGE COMMISSION,	)	
Plaintiff,	)	**CIVIL ACTION FILE**
v.	)	**NO. 3:02CV128-Mu**
FREDERICK J. GILLILAND,	)	
Defendant,	)	
and	)	
MM ACMC BANQUE DE COMMERCE, INC.,	)	
Relief Defendant.	)	

SECURITIES AND EXCHANGE COMMISSION'S BRIEF IN SUPPORT OF MOTION TO APPOINT RECEIVER

The plaintiff, Securities and Exchange Commission ("Commission" or the "Plaintiff"), files this brief in support of its motion to appoint a receiver as follows:

I. SUMMARY

Between at least mid-1997 through November 1998, Frederick Gilliland sold more than $29 million in interests in a succession of non-existent prime bank trading programs to more than 200 investors. In connection with his scheme, Gilliland misrepresented and omitted material facts concerning: (1) the existence of the trading programs; (2) the use of investor funds; (3) the promised return; and (4) the safety of the funds invested. Gilliland persuaded his investors to wire funds to at least four offshore bank accounts that he had established in the Isle of Mann, Bermuda and the Caribbean.

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Gilliland ultimately transferred these funds to several other accounts, including: approximately $20 million to an account held by MM ACMC Banque de Commerce, Inc. ("MBC"), the relief defendant, at NationsBank in Charlotte, North Carolina; $4 million to other offshore accounts; $2.5 million to an account at Wells Fargo in California; and approximately $600,000 to a bank account in New Zealand. The Department of Justice seized the funds in the NationsBank account and the court in that case, Rollar v. United States of America, Civil Action No. 3-02CV205-McK (W.D.N.C.) (the "Rollar Proceeding"), appointed a receiver to administer the return of the funds to investors. The New Zealand government also seized the funds in the New Zealand account and approximately $245,000 is believed to be available for Gilliland's investors. The Commission now seeks to appoint a receiver in this matter to pursue the remaining proceeds from Gilliland's fraudulent offerings, including the $6.5 million transferred to Wells Fargo and other unidentified accounts and the $245,000 in New Zealand.

II. FACTS

A. The Prime Bank Scheme

Gilliland collected in excess of $29 million from over 200 investors throughout the United States, Canada, and the United Kingdom, telling investors that they were investing in bank debenture or high-yield trading programs, which in fact did not exist. The investment agreements that investors typically signed referred to the investment programs as a "high-yield banking transaction." Most of these programs guaranteed high rates of return ranging from 30% per month to as high as 130% per 10 days, depending on the amount of investment. Moreover, the investment agreements stated that: (1) the investor's funds would be pooled with other monies provided by Sterling Management

Services, Inc. ("Sterling Management") in order to meet the minimum amount necessary to participate in the investment; (2) the principal investment would be fully collateralized by U.S. Treasury bills; (3) there was no risk to the principal; and (4) the full principal would be returned to the investor at the termination of the agreement. Gilliland promoted these investment programs to potential investors by live presentations he conducted, written materials and by word-of-mouth. Gilliland also provided some investors with a handout that described the purported history of bank debenture programs and the exclusivity of these opportunities. According to the handout, investor funds were placed with an established "Program Management" firm working directly with a major trading bank. The hand out assured investors of a guaranteed high return on a periodic basis with "no risk of losing [their] principal investment." The firm purported to guarantee such high returns because it traded in fully negotiable unencumbered "debt obligations of the Top One Hundred (100) World Banks." All of these representations were false.

Gilliland instructed most of his investors to wire funds into one of four bank accounts that he controlled, held in the name of Sterling Assets Services, Ltd. ("Sterling Asset") or Sterling Management.[1] During 1998, Gilliland transferred approximately $4 million from these accounts to other as of yet unidentified offshore accounts. He also transferred $2.5 million to an account at Wells Fargo in California. On September 16, 1998, Gilliland transferred approximately $20 million from one of the four accounts to an account held by MBC at NationsBank in Charlotte, North Carolina. In December 1998, the Department of Justice seized the approximately $19 million remaining in the MBC

[1] Sterling Asset was an international business corporation organized by Gilliland under the laws of the Isle of Mann. It was dissolved on April 12, 2001. Sterling Management was a corporation organized by Gilliland under the laws of the Turks and Caicos Islands, an overseas territory of the United Kingdom located in the Caribbean. It was dissolved on January 14, 2002.

account. The Commission staff has not yet identified what Gilliland did with the additional funds that were transferred to the MBC account.

Gilliland also transferred approximately $600,000 of investor funds from one of the four accounts to a bank account in New Zealand in the name of Paramount Insurance Co., Ltd. The New Zealand government froze almost $10 million in this account in November 2000, because it contained proceeds from another apparent prime bank scheme that is unrelated to Gilliland's scheme. A New Zealand court appointed a receiver, called a "release auditor," to administer the return of these funds to investors. The release auditor subsequently authorized the return of substantially all funds to various investors who had filed claims. However, the Commission and the Rollar receiver believe that approximately $245,000 of the investor funds originating from Gilliland remains to be dispersed. The Commission understands that the release auditor is willing to release these funds if a receiver for Gilliland appointed by a U.S. court makes the request.[2]

B. Related Proceedings

The United States Attorney's Office for the Northern District of Florida indicted Gilliland in December 2001 on charges of conspiracy to commit wire fraud and securities fraud. The District Court for the Northern District of Florida has issued an arrest warrant for Gilliland, but it has not been executed and Gilliland is currently considered a fugitive.

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[2] The U.S. Attorney's office for the Northern District of Florida and the receiver in the Rollar Proceeding requested the New Zealand authorities to postpone the disbursement of funds from the Paramount account until they had an opportunity to review bank records and determine whether any of these funds came from Gilliland-controlled entities. The New Zealand authorities declined this request and dispersed funds to those investors whose claims the release auditor had traced into this account.

Prior to Gilliland's indictment, one of Gilliland's investors, George Rollar, filed suit against the United States and others in the Rollar proceeding to recover his investment from the seized funds. The United States then moved to seek the appointment of a receiver in the Rollar Proceeding for the funds seized at the MBC account at NationsBank. The court appointed a receiver, who is to: 1) notify potential claimants to the seized funds, 2) review claims submitted, 3) recommend a distribution plan to the court, and 4) disburse the funds in the MBC account based upon the court's order. The Rollar receiver currently does not have authority to pursue the return of the funds in New Zealand or the other investor funds that did not flow through the MBC account.

III. DISCUSSION

Once the Commission properly invokes the equity jurisdiction of a federal district court by a prima facie showing of securities violations, the court possesses the necessary power to fashion appropriate interim remedies. Manor Nursing Centers, 458 F.2d 1082, 1103 (2d Cir. 1973). When a prima facie showing of fraud and mismanagement is made, "the appointment of a temporary receiver is often a necessary ancillary form of relief." SEC v. First Financial Group of Texas, 645 F.2d 429, 438 (5th Cir. 1981); see also SEC v. United Financial Group, Inc., 474 F.2d 354, 358-59 (9th Cir. 1973). When funds have been commingled between various companies, and no separation of funds has been maintained, courts have treated both the individual defendant and his various companies as one entity for purposes of the receivership proceeding. See SEC v. Elliott, 953 F.2d 1560, 1564 n.1 (11th Cir. 1992).

A receiver for Gilliland's estate, and the assets of Sterling Asset, Sterling Management and any other entity controlled by Gilliland, Sterling Asset or Sterling

Management is warranted in this proceeding. Such a receiver could pursue the return of the $4 million that Gilliland transferred to other bank accounts, the $2.5 million transferred to an account at Wells Fargo in California and the $245,000 that the Commission believes remains in New Zealand.

A receiver in this matter should have authority over Gilliland's estate, the assets of Sterling Management, Sterling Asset and any other company or entity that Gilliland used in connection with his prime bank schemes. Gilliland was the sole owner of these companies, exercised control over them, and used them to perpetrate his fraud. Moreover, it appears that he commingled funds from investors between the two companies. These facts should allow the receiver to recover assets in the possession of these companies. See SEC v. Elliott, 953 F.2d at 1564 n.1; SEC v. Elmas Trading Corp., 620 F. Supp. 231 (D. Nev. 1985) (receiver may assume control of any entity which was alter ego of estate); Levin v. Garfinkle 514 F. Supp. 1160, 1164 (E.D. Pa. 1981) (concluding that receiver appointed to oversee liquidation of individual's assets also had authority to liquidate and distribute assets of corporations that were essentially alter egos of individual). Also, Sterling Management and Sterling Asset have been dissolved and are no longer recognized as valid corporations. In such cases, the property of the dissolved corporation reverts to the owners of the corporation, i.e. Gilliland. In addition, Gilliland frequently transferred large monetary sums between the corporations and other entities. A receiver that controls all of Gilliland's property will be in a position to identify all monies that Gilliland currently controls that should be returned to investors.

III. CONCLUSION

Based on the foregoing reasons, the Court should enter an order, in the form

submitted herewith, appointing a receiver over Gilliland's estate and the assets of Sterling Asset, Sterling Management and any other entity that Gilliland used in connection with his prime bank scheme.

This 3rd day of March, 2003.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

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This 5th day of March, 2003.

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