

- For Defendants: Michael Monico (lead trial attorney), Jacqueline Jacobson, and Barry Spevak of Monico & Spevack in Chicago, Illinois.
- For the Receiver: N. Neville Reid (as Receiver), Ryan Schultz, and Sujal Pandya of Fox Swibel Levin & Carroll LLP in Chicago, Illinois.

B. This Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. § 77v(a)] and Sections 21(d), 21(e), and 27 of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §§ 78u(d), 78u(e), 77aa].

C. The Complaint asserts that Defendants violated the federal securities laws by: (a) offering and selling unregistered securities; and (b) committing fraud in the offer and sale of securities. No counterclaims have been asserted.

D. Major legal and factual issues in the case.

Whether: (a) Defendants offered or sold unregistered securities by use and means and instrumentalities of interstate commerce; (b) Defendants, by use and means and instrumentalities of interstate commerce, employed a scheme to defraud, obtained money or property by means of untrue statements of material fact or omissions, and engaged in transactions, practices, or courses of business which operate as a fraud or deceit upon purchasers of the securities; (c) Defendants, by use and means and instrumentalities of interstate commerce, employed a device, scheme or artifice to defraud or engaged in acts, practices or course of business which operated as a fraud or deceit upon certain persons; (d) Defendant Mueller directly or indirectly controlled the corporate Defendants and was a participant in their federal securities violations; (e) Defendants acted with scienter and/or

negligently; (f) the Court should permanently enjoin Defendants from future securities laws violations; (g) the Court should order Defendants to disgorge the ill-gotten proceeds of their securities laws violations, and in what amounts; and (h) the Court should order Defendants to pay civil monetary penalties, and in what amounts.

- E. The SEC seeks the following relief: (a) findings that Defendants violated the registration and antifraud provisions of the federal securities laws; (b) permanent injunctions against future violations; (c) disgorgement of Defendants' ill-gotten proceeds, together with prejudgment interest; and (d) civil monetary penalties. In addition, upon motion of the SEC, and upon consent of the Defendants, the Court has appointed N. Neville Reid as Receiver of the Defendant entities in this action, together with various affiliated entities, to marshal and preserve assets.

II. Pending Motions and Case Plan

- A. The date of the Initial Status Hearing is Thursday, October 31, 2019.
- B. Pending motions and Answer dates:
- There is one pending motion: Receiver's Motion to Enforce Receivership Order and for Entry of an Order Compelling J.P. Morgan Chase Bank, N.A. to Account For and Turnover Receivership Assets to Receiver (Docket No. 53). This motion was originally noticed for October 23, 2019 and continued to October 31, 2019.
 - Defendants' Answers are due on November 8, 2019.
- C. Counsel for the parties have read the Court's Standing Order for the Mandatory Initial Discovery Pilot Project ("MIDP"), as amended on December 1, 2018, and

understand their obligations thereunder. At this time, there are no disagreements regarding such discovery.

D. Discovery.

- In light of the status of the settlement discussions outlined below and the previously agreed-to receivership over the Defendant entities, the SEC and Defendant Mueller anticipate that they will be able to narrow the scope and extent of discovery needed. If a bifurcated settlement (described below) is reached, the SEC intends to conduct written and/or oral discovery for purposes of assessing a recommended disgorgement amount and civil penalty against Defendant Mueller and/or the Defendant entities. This written and oral discovery will be directed to both parties and non-parties, and will focus on Defendants' financial statuses and the use and disposition of investor funds.
- The SEC proposes to issue its first-set of written discovery within 30 days after Defendant Mueller produces his mandatory initial discovery responses.
- Any amendment of pleadings due within three months of mandatory initial discovery responses.
- In the absence of (partial) settlement, the parties propose that fact discovery be completed nine months after mandatory initial discovery responses.
- To the extent expert discovery is needed, the parties propose to: designate primary experts and produce primary expert reports, if any, within 10

months of mandatory initial discovery responses; designate rebuttal experts and produce rebuttal expert reports, if any, within 11 months of mandatory initial discovery responses; and complete expert discovery within 12 months after mandatory initial discovery responses.

- In the absence of (partial) settlement, the parties propose that dispositive motions be filed twelve months after mandatory initial discovery responses.
- The parties agree that the dates proposed above are not intended to, and shall not, amend or supersede any dates, obligations or other provisions of the Order Appointing Receiver (Docket No. 22).

E. The SEC has requested a jury trial. If this action were to proceed to trial, the parties currently estimate that trial would last at least two weeks.

III. Consent to Proceed Before a Magistrate Judge

At this time, the parties do not all consent to proceed before a Magistrate Judge for all matters in the case.

IV. Status of Settlement Discussions

The SEC and Defendant Mueller are discussing the possibility of an imminent partial settlement that would eliminate the need for the parties to litigate the merits of Mueller's liability and would render permanent the previously granted preliminary injunctions against violations of the federal securities laws at issue in the Complaint. In this scenario, the remaining relief sought by the SEC—disgorgement, prejudgment interest, and civil penalties—would be resolved by the Court at a later date. This type of partial settlement, a regular form of resolution in SEC enforcement actions, is often referred to as a “bifurcated”

settlement. *See, e.g., SEC v. Zenergy Int'l, Inc.*, 2016 U.S. Dist. LEXIS 127630 (N.D. Ill. Sept. 20, 2016); *SEC v. Goyal*, Case No. 14-cv-3900, Docket No. 8 (N.D. Ill. May 28, 2014); *SEC v. Resources Planning Group, Inc.*, Case No. 12-cv-9509, Docket No. 51 (N.D. Ill. Sept. 29, 2014); *SEC v. Merendon Mining Inc.*, 2012 U.S. Dist. LEXIS 195584 (W.D. Wash. Oct. 30, 2012); *SEC v. Integrity Fin. AZ, LLC*, 2012 U.S. Dist. LEXIS 6758 (N.D. Ohio Jan. 20, 2012); *SEC v. Universal Express, Inc.*, 646 F. Supp. 2d 552 (S.D.N.Y. 2009), *aff'd* 438 Fed. Appx. 23 (2d Cir. 2011); *SEC v. Providence Fin. Investments, Inc.*, Case No. 16-cv-1877-SRN-FLN, Docket 90 (D. Minn. Oct. 4, 2016). The parties intend to update the Court regarding the status of the settlement discussions at the Initial Status Hearing, on October 31, 2019. The parties do not request a settlement conference at this time.

V. Status of Receivership

The parties have been advised that the Receiver and/or his counsel will be present at the Initial Status Hearing and prepared to provide a status update to the Court as needed.

Dated: October 25, 2019

Respectfully submitted by:

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