UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SECURITIES AND EXCHANGE COMMISSION,	)	
Plaintiff,	)	CIVIL ACTION FILE NO. 1:13-CV-01817-WSD
v.	)	
DETROIT MEMORIAL PARTNERS, LLC and MARK MORROW,	)	
Defendants.	)	

SEC'S RESPONSE TO OBJECTION BY SUMMIT RECEIVER ROBERT D. TERRY TO MOTION OF DMP RECEIVER JASON S. ALLOY TO APPROVE PLAN OF DISTRIBUTION

Plaintiff Securities and Exchange Commission ("Commission"), by its counsel, files this response to the objection by Robert D. Terry, the Receiver for certain Summit entities[1] per his appointment in *SEC v. Angelo Alleca, et al.*, Civil Action No. 1:12-cv-3261-WSD, to the proposed plan of distribution by Jason S. Alloy, Receiver in the above-captioned action, stating as follows:

[1] Mr. Terry was appointed as the Receiver for Defendants Summit Wealth Management, Inc., Summit Investment Fund LP, Asset Class Diversification Fund, LP, and Private Credit Opportunities Fund, LLC (collectively, the "Summit" entities).

The Commission previously advised Mr. Alloy that it had no objection to his plan of distribution as Receiver for Detroit Memorial Partners ("DMP"), subject to the staff's right to evaluate and opine on any specific objections submitted. The Commission has now reviewed Mr. Terry's objection to Mr. Alloy's plan of distribution and Mr. Alloy's response thereto. The Commission still has no objection to Mr. Alloy's plan.[2]

Mr. Terry proposes that the DMP and Summit Receiverships be combined both for purposes of pooling assets and considering claims. While equitable principles permit the consolidation of receivership entities under certain circumstances, the Commission does not believe that the equitable factors favor consolidation of the DMP and Summit receiverships. The Summit and the DMP schemes were separate and distinct. The DMP Receiver has identified the funds transferred between DMP and Summit entities, and he has calculated the amount by which the net flow of funds from DMP to Summit exceeds the funds going the other way. Defraying the Summit investors' losses at the expense of the DMP investors would not be equitable. It is not clear to the Commission why those

[2] The Commission staff takes no position at this time regarding the objection of claimant Leonard J. Walter to the DMP Receiver's proposed plan of distribution, Doc. 171, but simply acknowledges the Court's discretion to grant or deny the objection in whole or in part.

Summit investors who purchased none of the fraudulent DMP notes offered by Mr. Morrow should be entitled to benefit from the sale of DMP's interest in the cemeteries that were the purported security for the notes to the detriment of the victims of the DMP scheme.

The courts have considered various factors in determining whether good cause for pooling receivership entities has been established. *See, SEC v. Founding Partners Capital Management, et al*., 2014 WL 2993780, *6 (M.D. Fla. 2009); *SEC v. One Equity Corp.*, 2011 WL 1002702, *1 (S.D. Ohio Mar.16, 2011). Recognizing that these cases involve the pooling of receivership entities subject to the control of a single receiver, rather than combining entities controlled by separate receivers, Mr. Terry contends that the cases should be applied by analogy. (Terry Objection to DMP Distribution Plan at 12-13).

The request by Mr. Terry to combine the receiverships comes late in the day, and would create substantial costs and inefficiencies, as Mr. Alloy points out in his response. This is a circumstance that appears not to have been a factor in the cases discussing the possible pooling of receivership entities. The interests of the respective victims of the Summit and DMP fraud schemes are paramount, and although the inefficiencies and costs that Mr. Terry's request entails should be part

of the overall calculus in determining what is most equitable, what should matter most is what is most equitable for the victims.

Thus, for reasons even apart from the added costs and inefficiencies, the Commission believes that pooling the assets of the two Receiverships would not produce the most equitable outcome. The factors typically considered when determining whether receivership entities within a single receivership should be pooled are examined below. *See, e.g., Founding Partners Capital Management*, 2014 WL 2993780 at *6.

The first factor is whether a unified scheme to defraud existed among the receivership entities. *Id*. While the Summit and DMP schemes did involve certain overlapping persons, the two-way transfer of funds between Summit and DMP entities, and the investment in DMP by some of the Summit investors, the Commission does not regard the Summit and DMP schemes as being part of a single unified scheme. The Commission separately described and charged the respective schemes in two separate civil actions, with Alleca being the principal architect of the Summit scheme, and Morrow being the principal architect of the DMP scheme. As the allegations in the respective Complaints demonstrate, each of the schemes had its own salient features, characteristics, and facts.

The second factor is whether the investors in the various entities are similarly situated. *Id.* The Commission does not believe that the investors in DMP and Summit are similarly situated, even though there is some overlap between them. Many of the investors in Summit did not invest in DMP. Conversely, a significant percentage of the funds invested in DMP came from persons who were not clients of Summit Wealth Management or investors in any of the Summit funds. Moreover, the Summit investors thought they were depositing there money into funds that would build wealth through Angelo Alleca's investing prowess, whereas the DMP investors thought they were buying promissory notes secured by real estate.

The third factor to be considered in determining whether to pool receivership entities is whether funds were comingled among the receivership entities. *Id.* As noted, as the DMP receiver has determined that funds flowed both from DMP entities to Summit entities and the other way around, but the DMP Receiver has netted out these transfers and has determined that significantly more funds flowed out of DMP into Summit than flowed into DMP from Summit. A more compelling case for pooling receiverships could be made if funds were co-mingled beyond a receiver's ability reasonably to account for them, but that does not appear to be the

case.[3] The entities used separate bank accounts, with the DMP accounts controlled by Morrow, and the Summit accounts controlled by Alleca. The DMP receiver's successful unwinding of the transactions between the fraud schemes weighs against combining the receiverships at this late date.

Finally, while the Commission recognizes that the cases cited by Mr. Terry about pooling receivership entities which are under the control of a single receiver provides a useful reference point for analyzing his request, merging two receiverships established more than three years ago in separate civil actions is a significantly different proposition. Mr. Terry and Mr. Alloy were given their respective mandates in the Orders which established the receiverships and appointed them as the respective receivers. Mr. Terry's mission is to marshal the assets of the Summit entities and to distribute those assets through a claims process, and Mr. Alloy's orders are to do the same with respect to the assets of DMP. The Commission filed separate actions seeking the appointment of different receivers because it believed that doing so would lead to the most equitable

[3] Mr. Terry contends in his objection to Mr. Alloy's distribution plan that the funds of the two Receiverships were "comingled and intertwined" (Terry Objection to DMP Distribution Plan at 2), but he appears not to refute specifically Mr. Alloy's contention that the flow of funds between DMP entities and Summit entities can be traced and netted out. Mr. Terry does not reference any accounting that he may have done as part of his Receivership.

outcome for the defrauded investors. No information has come to the attention of the Commission that has caused it to change its views in this regard.

Dated: October 17, 2016

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing brief was prepared in Times New Roman 14 point font.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **SEC's Response to Objection by Summit Receiver Robert D. Terry to Motion of DMP Receiver Jason S. Alloy to Approve Plan of Distribution** has been filed electronically with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all attorneys of record.

The pleading is also being served by email and UPS on Defendant Mark Morrow at the following addresses:

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Dated: October 17, 2016