IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. DETROIT MEMORIAL PARTNERS, LLC and MARK MORROW Defendants.	:	Civil Action No. 1:13-CV-01817-WSD

OBJECTION OF ROBERT D. TERRY, RECEIVER FOR SUMMIT WEALTH MANAGEMENT AND OTHER ENTITIES, TO RECEIVER'S MOTION TO APPROVE PLAN OF DISTRIBUTION, AND BRIEF IN SUPPORT

Movant Robert D. Terry, the Receiver appointed by Order dated September 21, 2012, in *Securities and Exchange Commission v. Summit Wealth Management, Inc.*, et al, Civil Action No. 1: 12-CV-3261-WSD ("Summit Receiver"), respectfully files this Objection to Receiver's Motion to Approve Plan of Distribution.

I. SUMMARY OF POSITION

The Plan of Distribution filed by the Receiver ("DMP Receiver") for Detroit Memorial Partners, LLC ("DMP") is unfair to a large number of

people who invested in the same Ponzi scheme, but who would receive a much lower percentage of their claims if the DMP Receiver's Plan is approved. The most obvious example of this inequity is that under the DMP Receiver's Plan, claims of investors who invested in another entity that, in turn, transferred significant sums to DMP are not being considered on equal footing with investors who invested only directly with DMP. The Summit Receiver files this objection in order to urge the Court to order that the assets and claims of the two receiverships be pooled into one receivership. The Summit Receiver makes this request because the Ponzi scheme activities and investment funds of DMP and those funds over which the Summit Receiver has been appointed receiver were so commingled and intertwined that separate administrations and distribution schemes would be inefficient and inequitable to many investors.

If this Court decides to pool the assets of the two receiverships, the Summit Receiver proposes that all assets and claim information be turned over to the DMP Receiver, and that the DMP Receiver be responsible for making distributions to claimants in both receiverships. This would also be equitable and appropriate for various reasons, among which are that the Summit Receivership has significantly fewer assets (approximately $1.8 million) than the DMP Receivership (approximately $13 million), and the

cost of administering claims in the Summit Receivership separately would have a disproportionately negative impact on the funds that claimants in that receivership would receive. The Summit Receiver is prepared to turn over all assets and claim information, and to cooperate with the DMP Receiver in coordinating claims, should the Court order that this be done.

Alternatively, if the Court does not order the two receiverships to be pooled, the Summit Receiver requests that his claims, submitted on behalf of the entities over which he has been appointed Receiver, be allowed in this Receivership. The DMP Receiver has proposed to disallow said claims.

II. BACKGROUND

In 2003, Mark Morrow and Angelo Alleca began operating a Ponzi scheme. For the next nine years, using a variety of corporate entities owned or controlled by them individually or collectively, they raised millions of dollars from unsuspecting investors and continually moved the money around between the entities. Sometimes they paid investors, but often they used the funds being transferred for their own purposes. Through a collaborative effort of concealment, their activities went undetected until September 2012.

To perpetuate and conceal their scheme, Morrow and Alleca used a number of entities, including four investment vehicles that were funded by

investors, ostensibly for legitimate business and investment purposes, but that were, without exception, used for fraudulent ends. Those investment vehicles were Summit Investment Fund, LP ("SIF"), Asset Class Diversification Fund ("ACDF"), Private Credit Opportunities Fund, LLC ("PCOF"), and Detroit Memorial Partners ("DMP").

On September 18, 2012, the SEC brought an action against three of those funds, SIF, ACDF, and PCOF (the "Summit Funds"), the registered investment adviser operated by Alleca, Summit Wealth Management, Inc. ("SWM"), and Alleca himself. The Court appointed Movant Robert D. Terry as receiver for those entities. On May 30, 2013 after additional investigation and inquiry into the activities of SWM and the Summit Funds, the SEC brought the present action against DMP and Morrow. On November 22, 2013 the Court appointed Jason Alloy as receiver for that receivership.

As a result of their activities in this scheme, Morrow and Alleca were also charged criminally in this district with counts alleging mail fraud and wire fraud with respect to DMP and the Summit Funds, and conspiracy to commit those acts. *United States of America v. Angelo Alleca and Mark Morrow*, Case No. 1:15-CR-458. Alleca has pleaded guilty to two counts in the indictment -- conspiracy to commit mail and wire fraud with respect to

the Summit Funds, and conspiracy to commit mail and wire fraud with respect to DMP. The case against Morrow continues.

From DMP's inception through 2012, Alleca, Morrow, and their respective entities caused DMP to be funded through a combination of contributions from investors who were investing directly in DMP, as well as substantial funds contributed to DMP from two of the Summit Funds, ACDF, and PCOF. In addition, DMP actively participated in the Ponzi scheme by transferring funds to the Summit Funds and to other entities which, although not subject to either Receivership, were conduits in effectuating the Ponzi scheme. The Summit Receiver filed a claim with the DMP Receiver to recover the amounts transferred to DMP from ACDF and PCOF. These transfers are accurately summarized in the DMP Receiver's Motion, and the Summit Receiver does not disagree with their description. The DMP Receiver, however, has proposed to deny the Summit Receiver's claim.

At the end of the scheme, DMP ended up with distributive rights, through its ownership of an interest in Midwest Memorial Group ("Midwest"), to a lawsuit settlement and to DMP's ownership share of the value of 28 cemeteries owned by Midwest. These valuable assets were acquired by DMP by use of funds from Summit customers. The DMP

Receiver collected substantial sums relating to those assets and now proposes to distribute $12,808,212.01 to DMP investors.

The Summit Receiver does not object to the DMP Receiver's manner of calculation or to his measure of proposed allowed investor claims using the "rising tide" methodology. Rather, the Summit Receiver files this objection in order to urge the Court to pool the assets and claims of the two receiverships in recognition of the fact that the Ponzi scheme activities of DMP, PCOF, ACDF, and SIF, and of Alleca and Morrow themselves were so intertwined and commingled that separate administrations and distribution schemes would be inefficient and would be inequitable to many of the investors.

III. ARGUMENT AND CITATION OF AUTHORITY

A. The DMP and Summit Funds are Inseparably Interrelated.

It is well-established that Morrow and Alleca collaborated in the Ponzi scheme. A Grand Jury issued the indictment of Alleca and Morrow, alleging:

> Beginning on a date unknown, but from in or about January 2003, and continuing through in or about September 2012, in the Northern District of Georgia and elsewhere, the defendants, ANGELO ALLECA and MARK MORROW, together with others known and unknown to the Grand Jury, did knowingly combine, conspire, confederate, agree and have a tacit understanding with each other and others known and unknown

> to the Grand Jury, to commit certain offenses against the United States . . . .

See Exhibit 1, ¶ 1. The indictment further recites facts that show a combination by Alleca and Morrow to operate a single fraudulent enterprise. Of particular note is Morrow's involvement with the Summit entities:

> MORROW was the administrator of the Summit Fund. As, the administrator, MORROW's duties included wiring funds to investors and receiving subscription documents. MORROW was also the authorized signer on bank accounts for the Summit Fund and Asset Class Fund.

Exhibit 1, ¶ 5. These allegations are borne out by the testimony of Morrow himself. In his deposition, Morrow admits serving as administrator of Summit Investment Fund and being paid to wire money to different accounts. [Doc. No. 24-1, pp. 33-34]. He also revoked Alleca's signing authority over a Summit Investment Fund bank account and substituted his own authority. *Id*., p. 35.

The indictment continues:

> In or about 2003, ALLECA and MORROW started the Summit Fund and the Summit Capital Fund and solicited investments . . . . ALLECA and MORROW also fraudulently used assets of the Summit Fund to operate other businesses, pay redemptions and cover losses and interest payments on other investments.

Exhibit1, ¶ 6. Morrow confirmed in his deposition that he was involved in soliciting Summit investments. [Doc. 24-1, p. 37].

Other allegations of the indictment are borne out by the banking records and other evidence, including evidence of Morrow's use of Summit Fund moneys for DMP purposes:

> In 2008, MORROW improperly transferred or caused the transfer of $100,000 from Asset Class Fund's bank account to Detroit Memorial's bank account.
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> In October and November 2011, MORROW improperly withdrew $50,000 from the Asset Class Fund's bank account.
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> From at least 2007 until 2012, ALLECA and MORROW misappropriated funds that were invested with the Summit Fund, Asset Class Fund, Private Credit Fund, and the Summit Capital Fund in order to pay interest and redemption requests in other investments, cover securities trading losses and to pay personal expenses, including personal vacations, property renovations and other personal expenses.

Exhibit 1, ¶ ¶ 9, 11, 14. Morrow's testimony further establishes that he personally caused about $1 million in DMP funds to be invested in the Summit Funds, and that the $10 million that DMP used to purchase the interest in Midwest was raised exclusively by SWM. [Doc. No. 24-1, pp. 38, 46].

SWM and the Summit Funds were integral to the financial activities of DMP, and vice versa. Bank records of the entities show that, over the life of DMP, no fewer than twenty transactions were conducted directly between DMP and a Summit Fund. Morrow also caused $4,590,138 of DMP assets to

be used for SIF investment redemptions. Additionally, Morrow directly withdrew from SIF $121,000 in cash in five different transactions between 2008 and 2010.

The role of another of the Summit Funds, PCOF, in fueling DMP's activities is even starker. On 10 occasions, PCOF wired funds totaling $7,397,625 to DMP. In connection with at least three of these transfers, these funds appeared to comprise the bulk, if not all, of the total cash assets of DMP, and were immediately re-transferred to DMP investors. Those transfers, therefore, ultimately directly affected the distribution proposal here, by either eliminating DMP investors from the distribution pool, or reducing the amount to which they would otherwise be distributed.

Finally, all of the non-equity DMP investors were obtained by Alleca and his staff from the SWM customers. Alleca actively pushed sales of DMP "notes" in the Atlanta, San Antonio, Chicago, and Beverly Hills offices of SWM, and those customers comprise virtually all of the DMP claimants, as well as all of the Summit Receivership investor claimants. In fact, since DMP (and all of the Summit Funds) produced no actual income from their own efforts, all of the distributions received by investors during the scheme came from money raised by Alleca in other funds, principally including PCOF, or from other DMP investors.

In short, although SIF, ACDF, PCOF, and DMP were legally distinct entities, the activities of Morrow and Alleca over a period of nine years so intermingled their financial activities that, for the purposes of resolving investor claims in the scheme, those entities should be disregarded.

B. The Proposed Plan Would Result in Anomalous and Unfair Distributions to Many Claimants.

The Summit Receivership has received claims from 375 claimants totaling approximately $40,000,000. 213 of those claims relate to PCOF investments, of which 66 were submitted by claimants who also invested in DMP. The Summit Receiver has also received 57 claims relating to ACDF investments, 32 of which claimants also invested in DMP. Of the 13 claims the Summit Receiver received based on SIF investments, nine claimants also invested in DMP.

The total amount of all non-DMP claims received by the Summit Receiver is $22,159,583. The Summit Receiver received $17,346,094 of claims that were based on DMP investments. These latter claims are duplicated in the DMP receivership, in that the DMP claimants filed substantially the same DMP-based claims in both receiverships.

Under the DMP Receiver's proposal, the DMP investors, including those who filed claims with the Summit Receiver, will ultimately receive approximately 70.81% of their investments, after combining the proposed

distribution with amounts (usually characterized as "interest" or "redemptions") they received during the operation of the scheme.

Claimants who invested in the three Summit Funds who did not invest directly in DMP received an average of approximately 14% of their original investments during the scheme, leaving 86%, in the aggregate, still unrecovered. If these remaining non-DMP investors are limited to distributions from the funds currently available to the Summit Receiver, those investors will receive, on average, only approximately 7% of their investments as a distribution. Assuming the DMP Receiver's proposal is approved, the average total return for all non-DMP investors, including distributions already received, will be less than 25%, compared to over 70% for the DMP investors.

C. Pooling of the Two Receivership Assets is Appropriate in this Case and Would Achieve the Most Equitable Result for the Largest Number of Investors.

The DMP Receiver's Plan, by proposing to deny the Summit Receiver's claim, mistakenly ignores the fact that this was a single, indivisible scheme, and proposes to treat direct DMP investors more favorably than (1) those investors whose funds were transferred to DMP from one of the Summit Funds; and (2) those investors in the Summit Funds who do not have direct claims against DMP. But if the two receiverships

were viewed as administering claims over a unified fraudulent scheme, there would be no logical basis for such disparate treatment.

The Summit Receiver urges the court to consider applying the principles of "pooling," or aggregating the claims and assets of the DMP and Summit receivership into one pool, for distribution to the aggrieved investors of both receivership estates. Although there are currently two separate receiverships, as explained herein the money received and transferred between the entities that are involved in both receiverships all relates to the same Ponzi scheme and are so interrelated that two distributions by two receiverships would result in an unfair distribution to many claimants.

Combining of assets of the entities and assets in the DMP and Summit Receiverships is analogous to the combination of separate entities under one receivership. The combining of assets of separate entities whose funds are commingled under one receivership for a distribution has been permitted by other courts. *See SEC v. Founding Partners Capital Management*, 2014 WL 2993780, *6 (M.D Fla. 2009) (courts may authorize the treatment of various receivership entities as one substantively pooled estate for the purpose of distribution, upon good cause shown), *citing SEC v. One Equity Corp.*,

2:08–CV–667, 2011 WL 1002702, *1 (S.D. Ohio Mar.16, 2011) (permitting pooling of six receivership entities upon good cause shown).

The Summit Receiver respectfully suggests that, in deciding whether to combine the two receiverships entities, the rationale used by other courts in deciding to combine different entities under one receivership should be applied by analogy. According to *SEC v. Founding Partners*:

> Under the "good cause" test for pooling, courts have examined a number of different factors, including whether: (1) a unified scheme to defraud existed among the receivership entities; (2) the investors across the various receivership entities are similarly situated; and (3) funds were commingled among the receivership entities. *See SEC v. Amerifirst Funding*, 2008 WL 919546 at *4 (pooling receivership entities because they were all involved in a unified scheme to defraud investors, even where there was no commingling of funds); [*CFTC v.*] *Walsh*, 712 F.3d at 749 [(2nd Cir. 2013)] (upholding district court's finding that investors are similarly situated for purposes of a pro rata distribution plan when they are similarly situated in relationship to the fraud, in relationship to the losses, in relationship to the fraudsters, and in relationship to the nature of their investments); *CFTC v. Eustace*, No. 05–2973, 2008 WL 471574, *3 (E.D. Penn. Feb. 19, 2008) (approving pooling of assets and *pro rata* distribution in light of evidence of joint marketing of receivership entities and commingling of funds).
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> 2014 WL 2993780 at *6.

The combining of the two receiverships is the most fair and equitable result for all of the aggrieved investors of both receiverships estates. The equity power of a court to combine entities for a plan that is fair and equitable is well established. *SEC v. Sunwest Management, Inc.*, 2009 WL

3245879, *8 (D. Or. 2009). ("A district court administering an equity receivership has the power to fashion any distribution plan that is fair and equitable"); citing *SEC v. Hardy*, 803 F.2d 1034, 1037 (9th Cir. 1986); *SEC v. Wang*, 944 F.2d 80, 84–85 (2d Cir. 1991); *see also SEC v. Basic Energy & Affiliated Res., Inc.*, 273 F.3d 657, 670–71 (6th Cir. 2001); *SEC v. Forex Asset Mgmt. LLC*, 242 F.3d 325, 331 (5th Cir. 2001); *SEC v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992).

D. The Pooled Assets Should be Administered in the DMP Receivership

Based on the foregoing, in the interest of fairness to the broadest number of investors, and to promote efficiency through reduction of costs, the Summit Receiver proposes that the DMP Receiver would be the appropriate person to fulfill the administration and resolution of all claims in both receiverships, in that the DMP claims comprise a substantial number of the aggregate claims, and a majority of the amount of such claims. The Summit Receiver is prepared to cooperate fully in order to allow for such a joint administration of all assets and claims by the DMP Receiver.

E. In the Absence of Pooling, The Summit Receiver's Claims Should be Allowed.

The basis for the DMP Receiver's proposed disallowance of the Summit Receiver's claims is that they should be offset by distributions DMP

made to other entities "controlled" by Alleca, including, SIF, with which Morrow was also involved, and Summit Capital Holdings. Once received by SIF and Summit Capital Holdings, some of that money was used for Alleca's own purposes, while some of it was used to re-pay investors. Certainly the portion used for Alleca's own purposes should not be used to offset the claims of those PCOF and SIF investors whose funds were used to invest in DMP. Similarly, to offset the claims of PCOF and SIF broadly when only certain PCOF and SIF investors received any benefit from those "offsetting" transfers unjustly penalizes those PCOF and SIF investors who received no benefit whatsoever from such transfers.

Summit Capital Holdings was not an entity into which any person invested, nor is it a party to the Summit receivership or part of the Summit Receiver's estate. It was a conduit used to transfer money for Alleca's and Morrow's purposes. If the Summit Funds' investors are to be distinguished from the DMP investors for the purposes of distribution, they should not be charged with all of the nefarious actions of Alleca in regard to entities he "controlled" where those actions ultimately were part of the scheme that benefitted DMP.

If the assets and claims of the receiverships are not pooled for the purpose of addressing victims' claims, then the assets and claims relating to

each entity should be considered separately. In such case, the claims of the Summit Receiver on behalf of ACDF and PCOF should be allowed.

The DMP Receiver urges that the Court allow, as a condition of a DMP investor participating in the proposed distribution, that DMP claimants be required to assign their respective interests in any recovery in the class action case of *Curry, et al. v. TD Ameritrade, Inc., et al.*, Case No. 1:14-CV-01361-WSD, currently pending before the Eleventh Circuit Court of Appeals as No. 16-01241. As a general concept, the Summit Receiver does not object to the concept of an assignment of claims, but only to the extent those claims relate to the particular estate. The class action case involves investors, and claims, in PCOF, ACDF, DMP, and SIF. Therefore, if the Court denies the Summit Receiver's recommendation to pool the receiverships, any assignment should be limited to recoveries specifically identified as relating to DMP, or to the extent that an investor's aggregate claims proportionately arise out of his or her DMP investment. Practically, it would be difficult to apportion the values of a class member's claim as between DMP and Summit Fund claims, which is yet another reason why pooling is appropriate.

IV. CONCLUSION

The money transfers that occurred among the various entities involved in this scheme all contributed to the status of the scheme at the end: An entity called Detroit Memorial Partners, LLC ended up with assets which were worth approximately $13,000,000. The accumulation of these assets was fueled by the investments made by hundreds of investors over many years who were unwittingly duped by the actions of Morrow and Alleca. The PCOF funds which enabled the earlier DMP investors to be re-paid contributed to the outcome by delaying the unravelling of the scheme, giving rise to the assets available for distribution today. The fact that the PCOF investors, in particular, did not make direct investments in DMP does not diminish the fact that their funds were used directly for its benefit.

As set forth above, the ultimate goal of a receivership should be an equitable distribution of recovered assets to victims. Under the DMP Receiver's proposal a large number of Summit Wealth Management clients who invested in DMP will receive significant distributions up to approximately 70% of their initial DMP investments. The remaining claimants -- including, notably, investors who invested in and whose funds were immediately transferred to DMP -- will receive much less. Yet, ironically, PCOF was created for the very purpose of providing funds to

DMP so it could satisfy obligations to its noteholders. Combining the assets and claims, as well as the administration and distribution, of the two receiverships results in the most equitable result for all of the aggrieved investors.

Respectfully submitted this 7th day of October, 2016.

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CERTIFICATE OF SERVICE

I certify that the foregoing was prepared with one of the font and point selections approved by the Court in LR 5.1B. I further certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notice of electronic filing to counsel of record.

Respectfully submitted this 7th day of October 2016.

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