UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v. Case No. 8:09-cv-0087-T-26TBM

ARTHUR NADEL,
SCOOP CAPITAL, LLC,
SCOOP MANAGEMENT, INC.

Defendants,

SCOOP REAL ESTATE, L.P.
VALHALLA INVESTMENT PARTNERS, L.P.,
VALHALLA MANAGEMENT, INC.
VICTORY IRA FUND, LTD,
VICTORY FUND, LTD,
VIKING IRA FUND, LLC,
VIKING FUND, LLC, AND
VIKING MANAGEMENT,

Relief Defendants.
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RECEIVER'S MOTION TO EXPAND THE SCOPE OF RECEIVERSHIP TO INCLUDE QUEST ENERGY MANAGEMENT GROUP, INC.

Pursuant to 28 U.S.C. § 754, Rule 66 of the Federal Rules of Civil Procedure, and Local Rule 3.01, Burton W. Wiand, as Receiver (the "**Receiver**"), moves the Court to expand the scope of this Receivership to include Quest Energy Management Group, Inc. ("**Quest**"). The Receiver's investigation has revealed that Christopher Moody ("**Chris Moody**") and Neil Moody (collectively with Chris Moody, the "**Moodys**") funded Quest with proceeds from Arthur Nadel's ("**Nadel**") Ponzi scheme (the "**scheme**").

As discussed in more detail below, the Moodys:

(i) were officers, directors, and/or principals of two fund management companies used to perpetrate the scheme;

(ii) were principals and fiduciaries for three hedge funds used to perpetrate the scheme;

(iii) received more than $43 million of scheme proceeds as "fees" for purported services between 2003 and 2008;

(iv) chose not to contest claims of federal securities fraud brought by the Securities and Exchange Commission (the "**Commission**") in an enforcement action arising from their conduct in connection with the scheme; and

(v) consented to the entry of permanent injunctions against them and to disgorgement of ill-gotten gains.

In light of the large sums of scheme proceeds that flowed to the Moodys; their uncontested, severely reckless role in the scheme; and their use of scheme proceeds to fund Quest, the company should be added to this Receivership to bring its assets under the Receiver's control and to preserve them for the benefit of defrauded investors. Contemporaneously with this motion, the Receiver is filing the Declaration Of Burton W. Wiand In Support Of The Receiver's Motion To Expand The Scope Of Receivership To Include Quest Energy Management Group, Inc. (the "**Wiand Declaration**"). The Receiver has advised Quest's representatives of the relief sought herein.

BACKGROUND

On January 21, 2009, the Commission initiated this action to prevent the Defendants from further defrauding investors in hedge funds managed by them. That same day, the Court entered an order appointing Burton W. Wiand as Receiver for Defendants Scoop Capital, LLC ("**Scoop Capital**") and Scoop Management, Inc. ("**Scoop Management**") and Relief Defendants Scoop Real Estate, L.P. ("**Scoop Real Estate**"); Valhalla Investment

Partners, L.P. ("**Valhalla Investment**"); Valhalla Management, Inc. ("**Valhalla Management**"); Victory Fund, Ltd. ("**Victory Fund**"); Victory IRA Fund, Ltd. ("**Victory IRA Fund**"); Viking IRA Fund, LLC ("**Viking IRA Fund**"); Viking Fund, LLC ("**Viking Fund**"); and Viking Management, LLC ("**Viking Management**").[1] *See* Order Appointing Receiver (Doc. 8); Wiand Decl. ¶ 3.

The Court subsequently granted nine motions to expand the scope of the Receivership to include the following entities and businesses (the "**Receivership Entities**"), which were funded with scheme proceeds:

- Venice Jet Center, LLC, and Tradewind, LLC (Order, Jan. 27, 2009 (Doc. 17));
- Laurel Mountain Preserve, LLC; Laurel Preserve, LLC; the Marguerite J. Nadel Revocable Trust UAD 8/2/07; and the Laurel Mountain Preserve Homeowners Association, Inc. (Order, Feb. 11, 2009 (Doc. 44));
- The Guy-Nadel Foundation, Inc. (Order, Mar. 9, 2009 (Doc. 68));
- Lime Avenue Enterprises, LLC, and A Victorian Garden Florist, LLC (Amended Order, Mar. 17, 2009 (Doc. 81));
- Viking Oil & Gas, LLC (Order, July 15, 2009 (Doc. 153));
- Home Front Homes, LLC (Order, Aug. 10, 2009 (Doc. 172));
- Traders Investment Club (Order, Aug. 9, 2010 (Doc. 454));
- Summer Place Development Corp. (Order, Sept. 12, 2012 (Doc. 911)); and
- Respiro, Inc. (Order, Sept. 21, 2012 (Doc. 916)).

[1] Scoop Real Estate, Valhalla Investment, Victory IRA Fund, Victory Fund, Viking IRA Fund, and Viking Fund are collectively referred to as the "**Hedge Funds**." Defendants Scoop Capital, Scoop Management, Valhalla Management, and Viking Management are collectively referred to as the "**Fund Managers**."

Wiand Decl. ¶ 4. Subsequent Orders reappointing the Receiver were issued on June 3, 2009 (Doc. 140), January 19, 2010 (Doc. 316), September 23, 2010 (Doc. 493), and October 29, 2012 (Doc. 935).[2] Wiand Decl. ¶ 5. The original Order, together with these subsequent ones, vested the Receiver with the duty and authority to: "administer and manage the business affairs, funds, assets, choses in action and any other property of the Defendants and Relief Defendants; marshal and safeguard all of the assets of the Defendants and Relief Defendants; and take whatever actions are necessary for the protection of the investors." Orders Appointing Receiver at 1-2; Wiand Decl. ¶ 6.

Viking Oil & Gas, LLC

Viking Oil & Gas, LLC ("**Viking Oil**") was formed by the Moodys and funded by them with proceeds of Nadel's scheme. Monies were transferred from the Hedge Funds to the Fund Managers, then to the Moodys, who transferred them to Viking Oil. *See* Docs. 151 (motion to expand Receivership), 152 (Receiver's declaration). Based on these facts, the Court extended this Receivership over Viking Oil on July 15, 2009. *See* Doc. 153 (Order).

Valhalla Investment

Valhalla Investment is a Relief Defendant in this action and one of the Hedge Funds through which Nadel operated his Ponzi scheme. As discussed in more detail below, Valhalla Investment loaned Quest $1.1 million of scheme proceeds through the execution of two promissory notes.

[2] All Orders appointing and reappointing the Receiver are collectively referred to as the "**Orders Appointing Receiver.**"

Quest Energy Management Group, Inc.

Quest purports to be an oil and gas exploration and production company based in Texas.[3] Paul Downey is its Chief Executive Officer, and Jeff Downey is its Chief Operating Officer (collectively, the "**Downeys**"). The Moodys used scheme proceeds to fund Quest, first by acquiring an all equity interest in one of its drilling projects with scheme proceeds and, later, by extending a loan using scheme proceeds secured by Quest stock. A memorandum of understanding dated January 6, 2006 (the "**First Memo**") reflects the Moodys paid $3,000,000 (in scheme proceeds) in exchange for a 40% interest in the "Quest Silverado #1 Production" ("**Silverado**"). See Wiand Decl. ¶ 19, Ex. C.[4] Quest purportedly used a portion of that money to purchase two oil-producing properties in Texas – the Musselman property (13 wells) and the Kilgore property (45 wells). *Id.*

On April 4, 2007, the Moodys (through Viking Oil) entered into a second Memorandum of Understanding (the "**Second Memo**") with Quest, and agreed to pay $1,000,000 (in scheme proceeds) for an additional 10% interest in Silverado, thereby increasing to 50% the Moodys total stake in that development. *See id.* ¶ 20, Ex. D. That agreement also called for Quest to repurchase Viking Oil's interest in Silverado in exchange for $4 million and 40% of the equity in Quest.[5] *Id.* According to the Second Memo, Quest

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[3] This Court has jurisdiction over Quest because the Receiver complied with the requirements of 28 U.S.C. § 754.

[4] In addition to the 40% interest in Silverado, the Moodys also received (1) the right to 10% of the net proceeds from any sale of Quest's "VICR 2X2 EOR Water Flood proprietary technology;" (2) an option to be "leveraged out of Silverado after 18 months;" and (3) a right of first refusal to participate in Quest's future oil and gas production purchases. *See id.*

[5] Quest's repurchase of Viking's interest was contingent upon first obtaining $60,000,000 in "interim" financing; the repurchase never occurred.

would reinvest all profits in the purchase and development of oil and gas properties. *Id.* Eventually that growth would allow Quest to conduct a public offering of its shares. *Id.* The Moodys agreed to assist Quest in raising the estimated $500 million necessary to achieve this growth and also allow Quest to retain all (or almost all) revenue from operations while expenses were allocated almost entirely to Viking Oil. *Id.* Viking Oil would then receive tax credits due to its payment of these expenses.

On November 30, 2007, Quest and the Downeys (individually) executed a $600,000 promissory note in favor of Valhalla Investment, which then transferred that amount (in scheme proceeds) to Quest. *See id.* ¶ 21, Ex. E. As collateral, Quest and the Downey's pledged "100% of all their issued shares of stock" in Quest. *Id.* On July 29, 2008, Valhalla Investment, Quest, and the Downeys amended the original promissory note to reflect an additional loan of $500,000 (in scheme proceeds) from Valhalla Investment, which increased their aggregate indebtedness to Valhalla Investment to $1,100,000 (collectively with the 2007 promissory note, the "**Note**"). *See id.* ¶ 22, Ex. F. The Note matured on January 29, 2009 (*see id.*) – approximately one week after the initiation of this action following the collapse of Nadel's Ponzi scheme.

Collectively, through Viking Oil and Valhalla Investment, the Moodys funneled at least $5.1 million to Quest. *See id.* ¶ 23, Ex. G (deposit slips produced by Quest). Importantly, all of the funds transferred to Quest by the Moodys were proceeds of Nadel's scheme. The Moodys obtained the monies either (1) directly from Receivership Entities as "fees" or purported distributions in exchange for their role or investment in the scheme, or (2) indirectly through other endeavors that were funded with scheme proceeds.

The Moodys' Money Came From The Scheme

Because the only source of funding for Viking Oil and Valhalla Investment was Nadel's scheme, and because the Moodys' transferred the amounts described herein from those two entities, there is no question Quest received a large amount of scheme proceeds. Neil Moody was a principal, Director, and President of Valhalla Management and also was a principal, Managing Member, and President of Viking Management. *See* Chris Moody Aff. (Doc. 906) ¶ 3. Chris Moody was the Vice-President and Treasurer of Valhalla Management and the Co-Managing Member of Viking Management. *Id.* ¶ 2. Valhalla Management was the General Partner of Valhalla Investment, and Viking Management was the Managing Member of Viking Fund and Viking IRA Fund (collectively, Valhalla Investment, Viking Fund, and Viking IRA Fund are referred to as the "**Moody Funds**"). *Id.; see also* Wiand Decl. ¶¶ 13-14.

By ceding control of the Moody Funds to Nadel, the Moodys allowed him to use those funds as he did other Hedge Funds, as a tool to perpetrate and perpetuate his Ponzi scheme. Wiand Decl. ¶ 15. As a result, the Moody Funds' and the rest of the Hedge Funds' performance, as represented to investors and potential investors from 1999 forward (as applicable based on then existing Hedge Funds), was false and was based on grossly overstated investment returns, which were fabricated by Nadel. *Id.* The Hedge Funds' actual performance was never reported to investors or potential investors. *Id.*

Based on these fabricated investment returns, Nadel caused the Hedge Funds to pay tens of millions of dollars in fees to the Fund Managers, and ultimately, to the Moodys and others. *See id.* ¶ 16. Specifically, Valhalla Management received fees for purported

management services it provided to Valhalla Investment. *Id.* Those fees included (1) a quarterly "Performance Allocation" that was calculated as a percentage of purported net profits from investment and trading activities and (2) a monthly "Management Fee" that was calculated as a percentage of the purported net asset value of the fund. *Id.* Viking Management charged and collected similar fees from Viking Fund and Viking IRA Fund, except that its "Management Fee" was paid quarterly. *Id.* In turn, the Moodys funneled those fees to themselves. *Id.* Those "fees" were based on grossly inflated, false returns ultimately representing nothing more than Ponzi scheme proceeds. *Id.* Overall, the Moodys received more than $43 million of scheme proceeds from Valhalla Management and Viking Management all under the same false pretenses. *Id.*

As a result of the Moodys' conduct, on January 11, 2010, the Commission brought an enforcement action against them, alleging they violated antifraud provisions of the federal securities laws. *See generally S.E.C. v. Neil V. Moody & Christopher D. Moody*, Case No. 8:10-cv-00053-T-33TBM (M.D. Fla.) (the "**Moody SEC Action**"), Compl. (Doc. 1); *see also* Wiand Decl. ¶ 17, Ex. A. In that action, the Commission asserted that the Moodys misrepresented to the investing public that they actively managed and oversaw the assets of the Moody Funds. In reality, they allowed Nadel to exercise "complete control of the Moody Funds' assets and trading activities without any meaningful oversight or supervision." Ex. A ¶ 44. As such, the Moodys distributed bogus account statements and baseless offering materials to investors (*id.* ¶ 40); never audited or examined the Moody Funds' securities accounts (*id.* ¶ 44); never reviewed the monthly account statements (*id.*); failed to take any adequate measures to ensure the accuracy of account statements or offering materials (*id.*);

and ignored red flags that should have alerted them that Nadel was engaged in the scheme, including Nadel's repeated threats to withdraw investment advice if the Moodys insisted on auditing the Moody Funds (*id.* ¶ 42) and Nadel's refusal to provide monthly statements to the Moodys' accountant (*id.* ¶ 43). In short, according to the Commission's complaint, the Moodys' conduct amounted to fraud.

The Moodys waived their right to deny the Commission's allegations by executing consents in which they agreed "not to take any action . . . denying . . . any allegation in the complaint . . . ." *See* Moody SEC Action, Consents (Doc. 2) ¶ 3; *see also* Wiand Decl. ¶ 18, Ex. B. The Moodys also consented to the entry of a permanent injunction against them and agreed to disgorge all ill-gotten gains upon the Commission's request. Ex. B ¶ 2. Among the assets disgorged by Chris Moody and assigned to the Receiver was the note representing the $1.1 million debt owed by Quest to Valhalla Investment.

Quest Failed To Comply With Previous Attempts To Resolve This Matter

After the collapse of the Nadel scheme, Quest retained Chris Moody as a paid consultant to negotiate a compromise of the Note with the Receiver. After considerable effort, Quest offered to pay $2.3 million to the Receiver in exchange for a release of all claims. *See* Wiand Decl. ¶ 24. That offer was memorialized in a document in June of 2011. *Id.*, Ex. H. Quest was to make the payment within 30 days of the document's execution. *Id.* The Receiver would then have 10 days to move the Court for approval of the proposed compromise (during which time, he would hold Quest's payment in escrow), and like all settlements in this Receivership, the proposed compromise was conditioned on obtaining the Court's approval. *Id.* When it came time for Quest to make the payment however, it failed

to do so. *Id.* ¶ 25. The Receiver's demands for payment were repeatedly ignored and the negotiations devolved into efforts by Quest to take advantage of the proposed compromise without making the payment it committed to make or meeting any other obligation it committed to. Because Quest never paid the $2.3 million, the Receiver never moved the Court for approval of the proposed compromise. *Id.* As a result, there never was a settlement between the Receiver and Quest. *Id.*

On October 21, 2011, the Receiver demanded Quest and the Downey's repay the full principal amount of the Note ($1,100,000), together with accrued interest ($9,166.67).[6] *See id.* ¶ 26, Ex. I. In response, Jeff Downey sent a check in the amount of $9,342.78 with an accompanying cover letter intentionally mischaracterizing the interest payment as "another good faith payment toward the amount owed under Quest's settlement agreement with the Receiver." *See id.* ¶ 27, Ex. J. On January 3, 2012, the Receiver demanded Quest remove the condition attached to the check, as Quest never paid the consideration due under the proposed compromise and no accommodation (in the form of a "payment plan" or otherwise), was ever agreed to or even contemplated by the Receiver. *See id.* ¶ 28, Ex. K. Quest ultimately conceded, removed the restriction (*see id.* ¶ 29, Ex. L), and it continued to make interest payments on the Note.[7] In February 2013, Quest missed a payment and informed the Receiver it was "in a temporary cash flow bind." *Id.* ¶ 30.

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[6] Even though the Note was due in January 2009, the Receiver did not demand Quest repay the principal balance until this time because Quest continued to pay interest, and the Receiver was attempting to negotiate a global resolution of all his claims against Quest. When that negotiation failed, the Receiver demanded payment of the Note.

[7] Quest failed to make payments in August and September 2012, but on October 19, 2012, it sent a check for $27,726.96, which encompassed three months of interest payments.

Because Quest has (1) failed to repay the $1.1 million principal balance on the Note, which was due in January 2009; (2) failed to return any portion of the additional $4 million in scheme proceeds transferred to it by the Moodys; and (3) failed to comply with the proposed compromise designed to resolve these issues (meaning that no settlement was ever reached), the Receiver has no choice but to move the Court to expand this Receivership to include Quest so that the Receiver can preserve its value for the benefit of the Receivership Estate, and ultimately, for defrauded investors in Nadel's Ponzi scheme. Quest has been funded with scheme proceeds, and thus should be included in this Receivership.

ARGUMENT

The Court's power to supervise an equity receivership and to determine the appropriate action to be taken in the administration of the receivership is extremely broad. *SEC v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992); *SEC v. First City Fin. Corp.*, 890 F.2d 1215, 1230 (D.C. Cir. 1989). The Court's wide discretion derives from the "inherent powers of an equity court to fashion relief." *Elliott*, 953 F.2d 1560, 1566 (citing *SEC v. Safety Fin. Serv., Inc.*, 674 F.2d 368, 372 (5th Cir. 1982)).

I. BECAUSE QUEST RECEIVED MILLIONS OF DOLLARS IN SCHEME PROCEEDS, EQUITY REQUIRES IT BE ADDED TO THIS RECEIVERSHIP

As an exercise of its broad discretion to fashion equitable relief, this Court may expand the receivership to include entities related to those in receivership when there has been *inter alia* a comingling of funds that demonstrates "an element of injustice or fundamental unfairness." *See SEC v. Elmas Trading Corp.*, 620 F. Supp. 231, 233-34 (D. Nev. 1985), *aff'd*, 805 F.2d 1039 (9th Cir. 1986); *see also Elliott*, 953 F.2d at 1565 n.1 (court may extend equitable receivership over related entities). Receivership courts may also

consider: (1) the unauthorized diversion of funds or assets for other than corporate purposes; (2) the treatment by an individual of corporate assets as his own; and (3) the diversion of assets from a corporation by or to a stockholder or other person or entity to the detriment of creditors. *See Elmas Trading,* 620 F. Supp. at 234.

In determining whether to expand a receivership to include related entities, a federal court has broad discretion to disregard corporate separateness and form and to give effect to the substance of the enterprise. *Id*. at 233. "Under federal law, a corporate entity may be disregarded in the interests of public convenience, fairness, and equity. . . ." *Id.* at 234. In equity receiverships, courts employ a flexible approach because "the Receiver's primary objective … is to ensure that all available assets are brought within the Receivership and may then be properly distributed to creditors." *Id*.

Here, this Court's Orders Appointing Receiver expressly contemplate the expansion of the Receivership to encompass entities like Quest. Specifically, this court has stated:

> In the event that the Receiver discovers that funds of persons who have invested in the Corporate Defendants have been transferred to other persons or entities, the Receiver shall apply to this Court for an Order giving the Receiver possession of such funds and, if the Receiver deems it advisable, *extending this receivership over any person or entity holding such investor funds*.

See, e.g., Doc. 8 ¶ 24 (emphasis added). Quest is an "entity holding … investor funds" because it was funded with money the Moodys obtained from Nadel's Ponzi scheme. *See supra* pp. 5-9. Nadel fraudulently diverted the Hedge Funds' money to the Fund Managers, and ultimately, to himself and the Moodys, by fabricating the Hedge Funds' investment returns and causing the Hedge Funds to pay enormous "fees" based on their inflated asset values. *See* Wiand Decl. ¶¶ 9-10. To the detriment of the Hedge Funds' creditors and for

their own benefit, the Moodys used $5.1 million of the diverted money to fund Quest (*see* Ex. G), and so it would be unjust and fundamentally unfair to allow Quest to continue to benefit from the diverted funds. *See Elmas Trading*, 620 F. Supp. at 234.

Importantly, Quest need not have been funded exclusively with scheme proceeds to warrant its inclusion in this Receivership. Indeed, courts have held that "*any* comingling is enough to warrant treating all the funds as tainted." *S.E.C. v. Byers*, 637 F. Supp. 2d 166, 177 (S.D.N.Y. 2009). Because "money is fungible" it is "impossible to differentiate between 'tainted' and 'untainted' dollars. . . ." *S.E.C. v. Lauer*, 2009 WL 812719, *4-5 (S.D. Fla. 2009). "Once proceeds become tainted, they cannot become untainted." *United States v. Ward*, 197 F.3d 1076, 1083 (11th Cir. 1999); *c.f. Lauer*, 2009 WL 812719 at *3 (holding that "when tainted funds are used to pay costs associated with maintaining ownership of [a] property, the property itself and its proceeds are tainted by the fraud") (citing *United States v. One Single Family Residence Located at 15603 85th Ave. North, Lake Park, Palm Beach County, Fla.*, 933 F.2d 976, 982 (11th Cir. 1991))); *In re Fin. Fed. Title & Trust, Inc.*, 347 F.3d 880 (11th Cir. 2003) (imposing constructive trust on property purchased with Ponzi scheme proceeds).

In addition, whether Quest was involved with Nadel's scheme is not relevant to the resolution of this motion. Even in cases where an entity is concededly an innocent third party, courts have repeatedly held that lack of knowledge cannot foreclose equitable remedies if the money used to fund the transaction was fraudulently obtained. *See, e.g., Fin. Fed. Title & Trust*, 347 F.3d at 890 ("[A] lack of knowledge on the part of the person asserting the homestead exemption does not change this analysis, as it is the fraudulent

nature of the funds which is of utmost importance."); *Crawford v. Silette*, 608 F.3d 275, 277 (5th Cir. 2010) ("In this case, [the wife] retired the condominium's mortgage using fraudulently obtained money, yet she knew nothing of the scheme. Sadly, both parties are innocent and one party must lose.").

II. THE RECEIVER IS ENTITLED TO QUEST'S SHARES UNDER THE NOTE

In addition to the foregoing equitable reasons to expand this Receivership to include Quest, the Receiver is also entitled to control of Quest pursuant to the express terms of the Note. Specifically, the Note became due and payable on January 29, 2009 – approximately one week after the initiation of this action following the collapse of Nadel's scheme – but Quest did not repay the principal balance at that time. *See* Wiand Decl., Ex. F. Because Quest continued to pay interest on the Note, the Receiver did not immediately demand repayment. Instead, the Receiver attempted to negotiate a global resolution, which was ultimately unsuccessful. *Id.* ¶¶ 24, 25, Ex. H.[8]

Importantly, the Note was secured by Quest's stock: "Debtors hereby grant to Payees a preferred, first and only lean on 100% of all their issued shares of stock in Quest Energy Management Group, Inc." *Id.*, Ex. F (emphasis added). Further, the Receiver's forbearance after January 29, 2009, and attempts to negotiate a global resolution of his claims against Quest did not affect his right to declare an Event of Default and demand immediate payment of the Note:

[8] Despite failing to meet any obligation under the proposed compromise, Quest inexplicably took the position that the compromise of the $5.1 million debt was nonetheless effective and unilaterally attempted to initiate a "payment plan" in the proposed compromise amount of $2.3 million. Because Quest failed to make the $2.3 million payment contemplated by the proposed compromise, however, the Receiver never moved the Court for its approval, and there never was a settlement between the Receiver and Quest.

> "Debtors agrees [*sic*] that Payee, in its sole discretion, may extend the time period for payment of the debt evidenced hereby, in whole or in part, at any time voluntarily and/or at the request of the Debtor, without in any way otherwise affecting the liability of the Debtor."

Id. The Note further protects the Receiver:

> No delay or failure of Payee in exercising any right, remedy, power, or privilege under this Note shall affect such right, reedy [*sic*], power, or privilege, nor shall any single or partial delay or failure of Payee at any time to demand strict adherence to the terms of this Note shall be deemed to constitute a course of conduct inconsistent with the Payee's right at anytime, before or after any Event of Default, to demand strict adherence to the terms of this Note. Neither the failure by Payee to enforce any rights under this Note, nor the waiver by Payee of any breach or violation of the terms of the Note by Debtor, nor the extension or indulgence by Payee of any obligations of Debtor, shall be construed so as to (a) permit any further waiver, breach, extension, or indulgence, or (b) in any way abrogate or affect Payee's rights and Debtor's obligations under this Note.

Id. at 2. And the Receiver is entitled to his attorneys' fees and costs incurred to enforce the Note:

> If the indebtedness is not fully paid in accordance with the terms of this Note, debtors shall pay Payee all reasonable costs, expenses, and fees incurred by Payee to collect the Indebtedness, including (but not limited to) reasonable attorneys' fees; such costs, expenses, and fees shall be added to, and be a part of the Indebtedness.

Id.

Because (1) the Court has the authority to expand the Receivership to include Quest; (2) the Moodys funded Quest with money from Nadel's Ponzi scheme; (3) Quest and the Downeys failed to repay the Note, which was secured by 100% of Quest's shares; and (4) expansion of the Receivership is necessary for the protection of defrauded investors and the Receivership Estate, the Receiver respectfully requests that this Court expand the Receivership to include Quest.

CONCLUSION

For the foregoing reasons, the Court should issue an order granting the Receiver's motion to expand the Receivership to include Quest in there form attached as **Exhibit 1**.

LOCAL RULE 3.01(g) CERTIFICATION OF COMPLIANCE

The undersigned counsel for the Receiver has conferred with counsel for the Commission and is authorized to represent to the Court that the Commission does not oppose the relief requested in this motion. Counsel for the Receiver has also conferred with counsel for Quest, and Quest opposes the relief requested in this motion.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 21, 2013, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

I FURTHER CERTIFY that on March 21, 2013, I mailed the foregoing document by first-class mail to the following non-CM/ECF participant(s):

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