

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

**UNITED STATES SECURITIES AND
EXCHANGE COMMISSION,**)

Plaintiff,)

v.)

**INTERNATIONAL FIDUCIARY CORP., S.A.,)
DANIEL ERIC BYER,)
MALCOLM CAMERON BOYD STEVENSON,)
PRESTON DAVID PINKETT, II,**)

Defendants,)

**TERRY MARTIN, CD2E, INC., WINCHELL)
CORPORATION, M&M TECHNOLOGIES,)
ROBERT LOWREY, SZE COAST)
OPERATING CORP.,**)

Relief Defendants.)

CASE NO. 1:06cv01354-GBL

**Hon. Gerald Bruce Lee
United States District Judge**

**RECEIVER'S MOTION FOR ENTRY OF AMENDED ORDER APPOINTING
RECEIVER OVER DEFENDANT INTERNATIONAL FIDUCIARY CORP., S.A., AND
FOR SUBSTANTIVE CONSOLIDATION OF INTERNATIONAL FIDUCIARY CORP.,
S.A. VIRGINIA AND INTERNATIONAL FIDUCIARY CORP., S.A. BELIZE
AND MEMORANDUM IN SUPPORT THEREOF**

COMES NOW Roy M. Terry, Jr. as duly appointed receiver ("Receiver") for International Fiduciary Corp., S.A. ("IFC"), and moves this Court for entry of the proposed Amended Order Directing Appointment of Receiver Over Defendant International Fiduciary Corp., S.A. (the "Amended Appointment Order"), attached hereto as Exhibit A, which provides for a technical and administrative correction regarding the scope of the Receiver's appointment,

for entry of an order substantively consolidating the estates of IFC Virginia¹ and IFC Belize², and for such other relief as is set forth in paragraph 13 herein. In support thereof, the Receiver respectfully states as follows:

BACKGROUND

1. On December 4, 2006, the United States Securities and Exchange Commission (“SEC”) filed its Complaint against the defendants in this action (Docket No. 1).

2. On January 19, 2007, the Court entered the Order Directing Appointment of Receiver Over Defendant International Fiduciary Corp., S.A. (Docket No. 25) (the “Appointment Order”). The Appointment Order appointed Roy M. Terry, Jr. as receiver over “Defendant IFC,” which was defined in the Complaint as IFC Virginia.

3. On or about April 10, 2007, the SEC filed its First Amended Complaint (Docket No. 61) (the “Amended Complaint”). Paragraph 14 of the Amended Complaint expanded the definition of Defendant IFC to include IFC Belize. It states:

14. International Fiduciary Corp., S.A.: Defendant IFC is a Virginia Corporation with offices in Arlington, Virginia. IFC is also incorporated in Belize and has offices in Miami, Florida and Washington, D.C. Defendant Pinkett was a director, and also chairman and CEO. IFC was incorporated [in Virginia] in July 2003. IFC maintained a password-protected website.

4. On June 19, 2007, the Court entered its Final Judgment of Default Against Defendant Malcolm Cameron Boyd Stevenson (Docket No. 100) and Final Judgment of Default Against Defendant Daniel Eric Byer (Docket No. 99), which, *inter alia*, ordered that Stevenson and Byer pay disgorgement of the amounts paid or attributable to each defendant from the proceeds of unlawful securities transactions set out in the Complaint, prejudgment interest

¹ International Fiduciary Corp., S.A. was incorporated in Virginia in July 2003. This corporation is referred to herein as “IFC Virginia”.

² Upon information and belief, International Fiduciary Corp., S.A. was also incorporated in Belize in September 2004. This corporation is referred to herein as “IFC Belize”.

thereon, and a civil money penalty assessed. A hearing to determine the amount of disgorgement for Stevenson and Byer was held on July 27, 2007 before U.S. Magistrate Judge Thomas R. Jones, Jr. On August 28, 2007, the Court entered its Final Judgment of Default Against Defendant Malcolm Cameron Boyd Stevenson (Docket No. 109) which found Stevenson liable for disgorgement in the amount of \$5,929,802, with prejudgment interest in the amount of \$199,241.35, and a civil penalty of \$100,000. On that same date, the Court also entered its Final Judgment of Default Against Defendant Daniel Eric Byer (Docket No. 110) which found Byer liable for disgorgement in the amount of \$3,122,243, with prejudgment interest in the amount of \$104,907.36, and a civil penalty in the amount of \$100,000.

5. On July 16, 2007, Defendant IFC filed its Consent in which it consented to the entry of a final judgment, which, among other things, finds IFC liable, jointly and severally, with Byer, Stevenson, and the Relief Defendants for disgorgement in the amount of \$24,037,362.95, plus prejudgment interest in the amount of \$971,109.46 (Docket No. 104). The Receiver is charged with identifying and collecting these amounts and preparing a plan to distribute such funds, along with any and all assets disgorged or paid as penalties by all other defendants and relief defendants in this case, to investor victims in the United States, Canada, and any other countries pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002, 15 U.S.C. § 7246. On July 20, 2007, the Court entered its Final Judgment as to Defendant International Fiduciary Corporation, S.A. (Docket No. 106) (the "Final Judgment").

6. Both the Amended Complaint and the Final Judgment use the defined term "IFC" to identify IFC Virginia and IFC Belize collectively; however, in the Complaint and the Appointment Order, the defined term "IFC" seemingly included only IFC Virginia. By this Motion, the Receiver seeks entry of the Amended Appointment Order which provides for a

technical and administrative correction to the Appointment Order that ensures that the scope Receiver's appointment conforms to the Amended Complaint and the Final Judgment.

ARGUMENT

A. Appointment of Receiver over IFC Belize

7. Since his appointment, the Receiver has assisted the SEC in tracing the millions of dollars located in over 190 bank accounts in the United States, Canada, and other countries (the "IFC Accounts"). The Receiver is charged with marshalling and or liquidating the IFC Accounts and other IFC assets into a more manageable number of accounts and to see that such assets are properly preserved and invested for the benefits of investors and/or other claimants. As part of this tracing and marshalling process, the Receiver has determined that IFC investor assets may be located in numerous bank accounts and locations all over the world and under the name of either IFC Virginia and/or IFC Belize.

8. Entry of the Amended Appointment Order will clarify the scope of the Receiver's appointment to ensure that it is consistent with the Amended Complaint and the Final Judgment. Specifically, the proposed Amended Appointment Order appoints the Receiver as receiver over both IFC Virginia and IFC Belize. Further, the proposed Amended Appointment Order would allow the Receiver to more completely identify and liquidate investors' assets that IFC Virginia transferred to IFC Belize, which does not have a legitimate claim to such assets.

9. Courts have routinely appointed receivers in SEC securities fraud cases to take such actions as are necessary and appropriate to preserve investors' assets against further misappropriation and dissipation, to take possession and control of assets, to liquidate assets, to determine the identity of all investors, to devise and implement plans for the distribution of ill-gotten gains back to the defrauded investors, and to take such other actions necessary or

appropriate on behalf of the investors whose interests the receiver is protecting. See, e.g., SEC v. Bowler, 427 F.2d 190, 198 (4th Cir. 1970); SEC v. Basic Energy and Affiliated Resources, Inc., 273 F.3d 657, 660 (6th Cir. 2001).

10. In order for the Receiver to effectively preserve and marshal investor funds that have been misappropriated by the Defendants, the Receiver files this Motion to ensure that the Receiver's appointment conforms with the Amended Complaint and the Final Judgment and to clarify the Receiver's appointment over both IFC Virginia and IFC Belize.

11. Entry of the Amended Appointment Order would have a minimal, if any, effect on the assets of IFC already recovered by the Receiver. The Receiver is seeking entry of the Amended Appointment Order prospectively as he begins to commence actions seeking recoveries from third parties who may have dealt solely with either IFC Virginia or IFC Belize and attempt to raise the distinction between the two in the relating litigation.

12. In addition, through his investigation into the assets of IFC, the Receiver has discovered valuable assets and/or potential recoveries located outside of the United States. The proposed Amended Appointment Order adds language which will assist the Receiver in his pursuit of such assets.

13. In summary, the proposed Amended Appointment Order is substantially the same as the Appointment Order, except for the following minor and technical amendments:

- a) Inclusion of language to expand the appointment of the Receiver over IFC Belize by the inclusion of IFC Belize in the definition of "Defendant IFC";
- b) Addition of language to expressly provide the Receiver the authority to bring actions based in law or equity in any state, federal or foreign court as necessary to discharge his duties as Receiver (Section III(p));

c) Addition of language authorizing the Receiver to seek recognition and assistance from any other court or administrative body in any other jurisdiction, including Canada (Section III(q));

d) Revision of Section XI to remove the requirement that the Receiver file a preliminary report, as such report was filed in March of 2007, and to instead provide that the Receiver may, in his discretion, supplement his Preliminary Report; and

e) Removal of language in Section XV regarding provision of access to Defendant IFC's documents to counsel for Defendant Pinkett as such provision is now unnecessary due to Defendant Pinkett's settlement in this matter.

B. Substantive Consolidation

14. The purpose of substantive consolidation is to insure the equitable treatment of all creditors. See Eastgroup Properties v. Southern Motel Assoc., Ltd., 935 F.2d 245, 248 (11th Cir. 1991). It involves the pooling of the assets and liabilities of two or more related entities and the liabilities are then satisfied from the common pool of assets created by the consolidation. See Union Savings Bank v. Augie/Restivo Baking Co. (In re Augie/Restivo Baking Co.), 860 F.2d 515, 518 (2d Cir. 1988).

15. Several tests, varying in complexity, have developed among the circuits related to substantive consolidation of entities, principally in the bankruptcy context. See e.g. Eastgroup Properties, supra; Augie/Restivo Baking Co., supra; Drabkin v. Midland-Ross Corp. (In re Auto-Train Corp.), 810 F.2d 270 (D.C. Cir. 1987); In re Vecco Constr. Indus., Inc., 4 B.R. 407 (Bankr. E.D. Va. 1980). Although there are numerous Bankruptcy Court and District Court opinions from within the Fourth Circuit on substantive consolidation, the Fourth Circuit has not addressed the

standard which should be employed in making a determination of whether to grant a motion for substantive consolidation.

16. In general, there are two basic tests by which courts have evaluated proposed substantive consolidations: (1) whether the entities had so intermingled their financial affairs that it is difficult to unravel them or is unfair to treat them as separate entities; and (2) whether the economic prejudice of continued entity separateness outweighs the economic prejudice of consolidation. See Stuart, L.L.C. v. First Mountain Vernon Indus. Loan Assoc. (In re Peramco Int'l, Inc.), 242 B.R. 313, 317 (E.D. Va. 2000), *rev'd on other grounds*, 2001 U.S. App. LEXIS 1845 (4th Cir. 2001); In re Thomas, 261 B.R. 848, 860-61 (Bankr. E.D. Va. 2001), *rev'd on other grounds*, 247 B.R. 250 (E.D. Va. 2001).

17. In addition, courts have set forth several factors to be considered when determining whether substantive consolidation should be ordered. In *In re Vecco Construction Industries, Inc.*, the United States Bankruptcy Court for the Eastern District of Virginia set forth seven factors which courts should consider when deciding a motion for substantive consolidation. 4 B.R. at 410. The factors are:

- a) The degree of difficulty in segregating and ascertaining individual assets and liabilities;
- b) The presence or absence of consolidated financial statements;
- c) The profitability of consolidation at a single physical location;
- d) The commingling of assets and business functions;
- e) The unity of interests and ownership between the various entities;
- f) The existence of parent and inter-corporate guarantees on loans; and
- g) The transfer of assets without formal observance of corporate formalities.

Id. Additionally, the *Vecco* court noted that courts could also consider whether the individual assets of the entities were so unascertainable and hopelessly obscured as to entail substantial expense in segregating such assets and liabilities that to adhere to the separate entities theory would result in an injustice to creditors. Id. at 410, 411 (citing Chemical Bank New York Trust

Co. v. Kheel, 369 F.2d 845 (2d Cir. 1966) and Soviero v. Franklin National Bank of Long Island, 328 F.2d 446 (2d Cir. 1964)).

18. The relationships, financial intertwinement, and lack of corporate formalities between IFC Virginia and IFC Belize weigh heavily in favor of substantive consolidation. The Receiver's investigations to date into the assets and liabilities of IFC has revealed (i) a clear disregard for corporate formalities between IFC Virginia and IFC Belize; (ii) a commingling of funds and business functions; (iii) the use of the same physical facilities, independent contractors, officers and directors by IFC Virginia and IFC Belize; and (iv) incomplete or inaccurate records regarding the ownership of and/or entity responsible for IFC's various assets and liabilities.

19. Both IFC Virginia and IFC Belize were used in furtherance of the Defendants' fraudulent pyramid scheme.³ Defendant Pinkett was an officer and/or director and, upon information and belief, was in charge of the day-to-day operations of both IFC Virginia and IFC Belize. Defendant Pinkett caused numerous banking and financial accounts to be opened for IFC Virginia and IFC Belize for which he had signatory authority. Defendant Pinkett caused assets to be transferred between accounts owned by IFC Virginia and IFC Belize without any recognition of corporate formalities, inter-company accounting, or other accounting standards regarding such transfers.

20. Investors in the Defendants' fraudulent scheme were primarily provided with documentation and information indicating that their money was invested with IFC Virginia in a separate account under their sole signatory authority. However, upon deposit, the money from an individual investor's separate account was transferred by Defendant Pinkett into larger pooling accounts owned by IFC. Defendant Pinkett also caused money from these pooling accounts to be


³ The Receiver does not purport to make findings of facts related to this matter, but relies upon the facts as stated in the Amended Complaint.

transferred to other accounts, including accounts owned by both IFC Virginia and IFC Belize, without recognition of corporate formalities, inter-company accounting, or other accounting standards regarding such transfers. Such transfers cause the identification and tracing of individual assets of IFC Virginia and IFC Belize to be so unascertainable and hopelessly obscured as to entail substantial expense in segregating such assets and liabilities that to adhere to the separate entities theory with respect to IFC Virginia and IFC Belize would result in an injustice to the investors.

21. Thus, substantive consolidation is warranted because the affairs of IFC Virginia and IFC Belize are so entangled that consolidation will benefit all IFC investors. Any economic prejudice that may result from the substantive consolidation greatly outweighs the economic prejudice to investors of continued entity separateness of IFC Virginia and IFC Belize. The individual assets of IFC Virginia and IFC Belize are so unascertainable and obscured that substantial expense would have to be expended by the Receiver in order to segregate such assets and liabilities that requiring such segregation would result in an injustice to investors already harmed by the Defendants' securities fraud in this matter. Substantive consolidation of the IFC entities would allow the Receiver to provide the highest possible recovery to all investors/victims of the Defendants' fraud.

WHEREFORE, for the reasons set forth above, the Receiver respectfully requests that the court enter the attached proposed Amended Order Directing Appointment of Receiver Over Defendant International Fiduciary Corp., S.A. and enter an order substantively consolidating IFC Virginia and IFC Belize for the purposes of the Receiver's appointment as set forth in the Amended Appointment Order.

Respectfully submitted this 18th day of September, 2007.



Roy M. Terry, Jr., VSB No. 17764
John C. Smith, VSB No. 44556
Elizabeth L. Gunn, VSB No. 71044
DuretteBradshaw, PLC
600 E. Main St., 20th Floor
Richmond, Virginia 23219
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Counsel for Receiver

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of September, 2007, a true copy of the foregoing motion was delivered by electronic means as indicated below.

A. David Williams, Esquire
U.S. Securities and Exchange Commission
Division of Enforcement
WilliamsDav@SEC.GOV
Assistant Chief Litigation Counsel for Securities and Exchange Commission

Larry P. Ellsworth, Esquire
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Counsel for Preston D. Pinkett, II and International Fiduciary Corp., S.A.

Daniel Eric Byer
twoedged@shaw.ca
Defendant

Malcolm C. Stevenson
midiansa1@shaw.ca
Defendant

And I hereby certify that I have mailed by first class mail, postage fully prepaid, to the parties listed below:

Terry Martin
810 E. Wiser Lake Road
Lynden, WA 98264-9671
Relief Defendant

Winchell Corporation
c/o Terry Martin
810 E. Wiser Lake Road
Lynden, WA 98264-9671
Relief Defendant

Winchell Corporation
c/o Craig Forhan
3491 Unick Road
Ferndale, WA 98248
Relief Defendant

M&M Technologies
c/o Terry Martin
810 E. Wiser Lake Road
Lynden, WA 98264-9671
Relief Defendant

M&M Technologies
6951 Hannegan Rd Ste 14
Lynden WA 98264-9058
Relief Defendant

Robert Lowery
37-21928-48 Ave
Langley BC V3A 8H1
CANADA
Relief Defendant

SZE Coast Operating Corp.
c/o Robert Lowery or Doug Loni
800-15355 24th Avenue Suite 377
Surrey BC V4P 1H5
CANADA
Relief Defendant


Roy M. Terry, Jr., Receiver

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EXHIBIT A

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investment contract offered by any of the Defendants. It is further

II.

ORDERED that Mr. Roy M. Terry, Esq., is appointed Receiver for Defendant IFC, without bond. Defendant IFC and its assets, including all assets of any entities controlled by IFC are collectively referred to herein as “the Receivership Estate.” No person holding or claiming any position of any sort with the Receiver Estate shall possess any authority to act by or on behalf of the Receivership Estate, except as authorized by the Receiver. All persons, including but not limited to the Defendants and their officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise, are enjoined from in any way interfering with the operation of the Receivership or in any way disturbing the assets of Receivership Estate and from filing or prosecuting any actions or proceedings which involve the Receiver or which affect the Receivership Estate, specifically including any proceeding initiated pursuant to the United States Bankruptcy Code, except with the prior permission of this Court. It is further

III.

ORDERED that The Receiver shall have and possess all powers and rights to administer and manage the Receivership Estate, including, but not limited to the power and authority:

- (a) to take custody, control and possession of all records, assets, funds, property premises and other materials of any kind in the possession of or under the direct or

1 As defined in the First Amended Complaint in this matter, International Fiduciary Corp., S.A. is a Virginia corporation with offices in Arlington, Virginia. IFC is also incorporated in Belize and has offices in Miami, Florida and Washington, D.C. IFC was incorporated in Virginia in July 2003. Upon information and belief, IFC was incorporated in Belize in September 2004.

indirect control of the Receivership Estate and, until further order of this Court;

(b) to manage, control, operate and maintain the Receivership Estate, to use income, earnings, rents and profits of the Receivership Estate, with full power to sue for, collect, recover, receive and take into possession all goods, chattels, rights, credits, monies, effects, lands, books and records of accounts and other documents, data and materials;

(c) to conduct any business operations of Defendant IFC and any entities Defendant IFC controls, including the collection of rents or continuation and termination or any employment arrangement and all other aspects of any active business operation;

(d) to make such ordinary and necessary payments, distributions, and disbursements as he deems advisable or proper for the marshaling, maintenance or preservation of the Receivership Estate;

(e) to sell, rent, lease or otherwise hypothecate or dispose of the assets of the Receivership Estate;

(f) to contact and negotiate with any creditors of Defendant IFC for the purpose of compromising or settling any claim, including the surrender of assets to secured creditors;

(g) to receive and collect any and all sums of money due or owing to Defendant IFC whether the same are now due or shall hereafter become due and payable, and is authorized to incur such expenses and make such disbursements as are necessary and

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proper for the collection, preservation, maintenance, administration and operation of the Receivership Estate;

(h) to renew, cancel, terminate, or otherwise adjust any pending lease agreements to which Defendant IFC is a party;

(i) to institute, defend, compromise or adjust such actions or proceedings in state or federal courts now pending and hereafter instituted, as may in his discretion be advisable or proper for the protection and administration of the Receivership Estate;

(j) to institute such actions or proceedings to impose a constructive trust, obtain possession and/or recover judgment with respect to persons or entities who received assets or funds traceable to investor monies, with all such actions filed in this Court;

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(k) to open bank accounts or other depository accounts, in the name of the Receiver on behalf of the Receivership Estate;

(l) to prepare any and all tax returns and related documents regarding the assets and operation of the Receivership Estate;

(m) to take any action which could be taken by the officers, directors, managers, members, partners, trustees or other principals of the Receivership Estate;

(n) to abandon any asset that, in the exercise of his reasonable business judgment, will not provide benefit or value to the Receivership Estate;

(o) to take such other action as may be approved by this Court;

(p) bring such legal actions based on law or equity in any state, federal, or foreign court as he deems necessary or appropriate in discharging his duties as

Receiver or on behalf of investors whose interests he is protecting; and,

(q) shall be at liberty and is hereby authorized and empowered to apply, upon such notice as they may consider necessary or desirable, to any other courts or administrative bodies in any other jurisdictions, whether in Canada or elsewhere, for orders recognizing the appointment of the Receiver by this Honorable Court and confirming the powers of the Receiver in such other jurisdictions. All courts of all other jurisdictions, the Honorable Courts of any Province of Canada in particular, are hereby respectfully requested to make such orders and provide such other assistance to the Receiver, as an officer of this Court, as they may deem necessary or appropriate in furtherance of the terms of this Order.

It is further

IV.

ORDERED that the Receiver shall be empowered, but is not required, to file a voluntary petition for relief under Title 11 of the United States Code (the Bankruptcy Code) for the Receivership Estate or any portion thereof. If a bankruptcy petition is filed, the Receiver shall become, and shall be empowered to operate the Receivership Estate as a debtor in possession, with all powers and duties provided to a debtor in possession under the Bankruptcy Code to the exclusion of any other person or entity. Without leave or further order of this Court, no person other than the Receiver is authorized to seek relief for any person or entity included within the Receivership Estate.

It is further

V.

ORDERED that with respect to the asset freeze imposed in this case, the Receiver shall be authorized, but not required, to administer, manage, and direct the marshaling, disbursement and/or transfer of monies or other assets held by third parties that are subject to the freeze. The Receiver may, in the reasonable exercise of his discretion, authorize the release, use or segregation of proceeds held by third parties. It is further

VI.

ORDERED that The Receiver shall perform an accounting of the offer and sale of investment contracts, bank deposit programs, or other securities that is outlined in the Commission's Complaint including, but not limited to, the Defendants' solicitation, receipt, disposition and use of the proceeds from such offering. It is further

VII.

ORDERED that the Defendants and their officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, who receive actual notice of this Order, shall cooperate with the Receiver and the other professionals working with him in the administration of the Receivership Estate, including, but not limited to, the immediate delivery to the Receiver of the following:

- (a) all assets and other materials of the Receivership Estate in the possession or under their control, as well as the name and contact information of any person who has knowledge of the nature or location of assets or other materials belonging to the Receivership Estate;

- (b) business records of any kind, whether in hard copy or electronic format, including e-mail files and accounts, customer files, accounting and financial records, bank records and brokerage or other depository records;
- (c) insurance policies regarding any assets or persons that are in any way affiliated with the Receivership Estate, along with other information regarding insurance coverage or the absence thereof;
- (d) computers and computer files, including e-mail files, along with all passwords for such files, that belong to or are under the control of Defendant IFC or that in any way relate to the assets or the operation of the Receivership Estate;
- (e) passwords and other identifying information regarding all computer or on-line files, banking or brokerage accounts and/or any other assets of any of Defendant IFC or under their direct or indirect control, specifically including but not limited to, passwords for internet or electronic access banking, brokerage and other on-line accounts;
- (f) keys, security cards, parking cards and other access codes for premises, vehicles, safety deposit boxes or accounts or assets under the direct or indirect control of Defendant IFC; and,
- (g) such other information related to the Receivership Estate as the Receiver and those working with him reasonably request.

It is further

VIII.

ORDERED that any bank, brokerage firm, mutual fund or other financial institution or any other person, partnership, corporation or other entity maintaining or having custody or control of: (a) any brokerage or depository accounts or other assets of the Receiver Estate; or, (b) accounts into which proceeds of the subject investment offering(s) have been deposited; or, (c) accounts or assets under the direct or indirect control of the Defendants, who receives actual notice of this Order, shall:

- (i) freeze such accounts, funds or assets;
- (ii) within five (5) business days of receipt of such notice, file with the Court and serve on the Receiver and counsel for the Commission and for the Defendants a certified statement setting forth, with respect to each such account or other assets, the balance in the account or the description of the assets as of the close of business on the date of the receipt of the notice;
- (iii) promptly cooperate with the Receiver to determine whether and to what extent any accounts, funds or other assets are actually assets or proceeds of assets of the Receiver Estate;
- (iv) provide to the Receiver records of such funds, accounts and assets and tender said funds and/or the assets to the Receiver.

To the extent that there are assets about which a determination of ownership cannot be made, they shall be turned over to the Receiver to be held in escrow pending a determination of the ownership of such assets. The Receiver is authorized to provide notice of the entry of this Order to any governmental agency, person or other entity he deems appropriate. Actual notice may be

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accomplished by delivery of a copy of this Order by hand, U.S. mail, courier service, facsimile, by e-mail or by any other reasonable means of delivery. It is further

IX.

ORDERED that the Receiver is hereby authorized to make appropriate notification to the United States Postal Service to forward delivery of any mail addressed to Defendant IFC, above, or any company or entity under the direction or control of Defendant IFC, to any Post Office box or other mail depository, to himself. Further, the Receiver is hereby authorized to open and inspect all such mail, to determine the location or identity of assets or the existence and amount of claims. It is further

X.

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ORDERED that the Receiver may investigate any matters he deems appropriate in connection with discovering additional information as it relates to the activities of the Receiver Estate. In connection with any such investigation, the Receiver is authorized to:

- (a) compel, including by subpoena, the appearance and testimony of all persons, including the Defendants (prior to and/or after the filing of responsive pleadings in this action) and the production of the originals of any records and materials, of any sort whatsoever, within the possession, custody or control of any person, though the Receiver's authority under this paragraph shall not be construed to require the waiver by any person of any validly asserted privilege; and,

(b) order consumer and credit reports that the he deems necessary and appropriate as a part of his investigation.

It is further

XI.

ORDERED that the Receiver may, in its discretion, file with this Court and serve upon the parties a supplement to its Preliminary Report (Docket No. 44) further setting out the identity, location and value of the Receivership Assets, and any liabilities pertaining thereto. In any supplement to the Preliminary Report, the Receiver shall consider and evaluate the economic viability and benefit to the Receivership Estate of continuing the development of any of the properties included within the Receivership Estate. It is further

XII.

ORDERED that absent express permission and leave by this Court, all actions by any creditors and other persons seeking money damages or other relief from the Receivership Estate and all others acting on behalf of any such creditors and other persons, including sheriffs, marshals, and all officers and deputies, and their respective attorneys, servants, agents and employees, are, until further order of this Court, hereby stayed. Further, all persons having notice of this Order, including creditors and others seeking money damages or other relief from the Receivership Estate, and all others acting on behalf of any such creditors and other persons, including sheriffs, marshals, and all officers and deputies, and their respective attorneys, servants, agents and employees, are restrained from doing anything to interfere with the Receiver performance of his duties and the administration of the Receivership Estate. Accordingly, all such persons are enjoined from filing or prosecuting

any actions or proceedings which involve the Receiver or which affect the Receivership Estate, specifically including any proceeding initiated pursuant to the United States Bankruptcy Code, except with the prior permission of this Court. Moreover, any such actions that are so authorized shall be filed in this Court. It is further

XIII.

ORDERED that the Receiver is authorized to communicate with all such persons as he deems appropriate to inform them of the status of this matter and the financial condition of the Receivership Estate. The Receiver is also hereby authorized to employ such employees, accountants, consultants, attorneys and other professionals, including employees of his own professional firm, as are necessary and proper for the administration of the Receiver Estate and the performance of his duties as set forth herein. The Receiver shall seek and obtain the approval of this Court prior to disbursement of professional fees and expenses to himself, his firm or his counsel, by presentation of a written application therefore, and after consultation with the Commission. All costs incurred by the Receiver shall be paid from the Receivership Estate. Upon notice to all parties in this case, the Receiver may submit a proposed order regarding an administrative process for the approval and payment of professional fees and expenses consistent with this provision. It is further

XIV.

ORDERED that upon the request of the Receiver, the United States Marshal's Office, in any judicial district, is hereby ordered to assist the Receiver in carrying out his duties to take possession, custody or control of, or identify the location of, any assets, records or other materials belonging to the Receivership Estate. It is further

XV.

ORDERED that the Receiver is authorized to remove any person from any premises or real estate that is owned or controlled by or that is otherwise part of the Receiver Estate. The Receiver shall keep counsel for the Commission and the Court apprised at reasonable intervals of developments concerning the operation of the receivership, and shall provide to the Commission and upon request copies of any documents under the control of the Receiver. It is further

XVI.

ORDERED that the Receiver shall promptly notify the Court and counsel for all parties of any failure or apparent failure of any Defendant to comply in any way with the terms of this Order. It is further

XVII.

ORDERED that except for an act of gross negligence or intentional misconduct, the Receiver and all persons engaged or employed by him shall not be liable for any loss or damage incurred by any person or entity by reason of any act performed or omitted to be performed by the Receiver or those engaged or employed by him in connection with the discharge of their duties and responsibilities in connection with the receivership. It is further

XVIII.

ORDERED that this Court shall retain jurisdiction of this action for all purposes. The Receiver is hereby authorized, empowered and directed to apply to this Court, with notice to the Commission and Defendants, for issuance of such other orders as may be necessary and appropriate in order to carry out the mandate of this Court. It is further

XIX.

ORDERED that this Order will remain in effect until modified by further order of this Court.

It is further

XX.

ORDERED that this Court shall retain jurisdiction of this matter for all purposes.

The Clerk is directed to forward a copy of this Order to counsel of record.

ENTERED this ____ day of _____, 2007.

Gerald Bruce Lee
UNITED STATES DISTRICT JUDGE
Alexandria, Virginia