

**IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF OKLAHOMA**

Commodity Futures Trading Commission,

Plaintiff,

vs.

**Mark S. Trimble, and
Phidippides Capital Management LLC,**

Defendants, and

Phidippides Capital LP,

Relief Defendant.

CIV-09-154-D

Judge Timothy D. DeGiusti

ORDER APPOINTING TEMPORARY EQUITY RECEIVER

This matter coming before the Court upon the agreed motion of the Plaintiff Commodity Futures Trading Commission (“CFTC” or “Commission”) and Defendants Mark S. Trimble and Phidippides Capital Management LLC (collectively “Defendants”), the Court having read the PLAINTIFF’S AGREED MOTION FOR APPOINTMENT OF RECEIVER (#12), the MEMORANDUM IN SUPPORT OF PLAINTIFF’S MOTION FOR APPOINTMENT OF A RECEIVER (#13), the Declaration of Thomas Bloom (#13-2) and exhibits thereto, and DEFENDANT’S RESPONSE TO COURT ORDER (#16);

THE COURT FINDS:

1. The Court has jurisdiction over the subject matter under Section 6c of the Commodity Exchange Act, as amended (“Act”), 7 U.S.C. § 13a-1 (2006).

2. Section 6c of the Act, 7 U.S.C. § 13a-1, also permits this Court to appoint a temporary receiver.

3. It appears that there is good cause to believe that Defendants have engaged, are engaging in and are about to engage in violations of Section 4b(a)(2) of the Act, as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the “CFTC Reauthorization Act of 2008” (“CRA”)), §§ 13101-13204, 122 Stat. 1651 (effective June 18, 2008), to be codified at 7 U.S.C. § 6b(a)(1); Section 4o(1) of the Act, 7 U.S.C. § 6o(1), and Commission Regulation 4.20(c), 17 C.F.R. § 4.20(c) (2008). It also appears that Relief Defendant Phidippides Capital LP (“Relief Defendant”) received funds as a result of Defendants’ fraudulent conduct.

4. It also appears that this is a proper case to appoint a temporary equity receiver, in that appointment of a temporary equity receiver is necessary to preserve and maximize the value of the Defendants’ and Relief Defendant’s assets and the Temporary Equity Receivership Estate.

IT IS HEREBY ORDERED THAT:

C. David Rhoades is appointed as temporary equity receiver (“Receiver”), for the Defendants and Relief Defendant and their affiliates and subsidiaries, and all funds, properties, premises, accounts and other assets directly or indirectly owned, beneficially or otherwise, by the Defendants and Relief Defendant, individually or collectively, including, but not limited to, investors’ funds, for the purpose of marshalling, preserving,

accounting for and liquidating the assets that are subject to this Order and directing, monitoring and supervising Defendants and Relief Defendant's activities in accordance with the provisions of this Order set forth below.

IT IS FURTHER ORDERED that the Receiver shall be the agent of this Court in acting as Receiver under this Order.

I.
Powers of Receiver

IT IS FURTHER ORDERED that the Receiver is directed and authorized to accomplish the following:

- A. Take exclusive custody, control, and possession of all funds, property, and other assets in the possession of, or under the control of the Defendants and Relief Defendant wherever situated that the Receiver has a reasonable basis to believe are related to this action, and as consistent with the Consent Order of Preliminary Injunction (#11) entered March 3, 2009. The Receiver will also take exclusive custody, control, and possession of all customer funds and property and other assets traceable to customers in the possession of, or under the control of Defendants and Relief Defendant. "Assets" means any legal or equitable interest in, right to, or claim to, any real or personal property, including but not limited to chattels, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, mail or other deliveries, inventory, checks, notes, accounts, credits, receivables, lines of credit, contracts, insurance policies, and all cash, wherever located;
- B. The Receiver is authorized to have all Defendants and Relief Defendant's mail that is sent to 785 W. Covell, Suite 125 E., Edmond, OK 73003 or any other business address of Defendants and Relief Defendant that comes to the attention of the Receiver, delivered to the Receiver. The Receiver will then screen and take possession of any mail that the Receiver has a reasonable basis to believe pertains or relates to Defendants' business activities that are the subject of the Complaint. Mail that the Receiver does not have a reasonable basis to believe relates to the Defendants' business activities that is the subject of the Complaint will be forwarded to the addressee;

- C. The Receiver shall have full power to sue for, collect, receive and take possession of all goods, chattels, rights, credits, moneys, effects, land, leases, books, records, work papers, and records of accounts, including computer-maintained information and digital data and other papers and documents of Defendants, including documents related to customers or clients whose interests are now held by or under the direction, possession, custody or control of the Defendants;
- D. The Receiver is authorized to enter and inspect the business premises of the Defendants including but not limited to premises located at 785 W. Covell, Suite 125 E., Edmond, OK 73003 and any and all other business premises under the control of Defendants with reasonable notice and take possession of any documents or other property related to this matter;
- E. Preserve, hold and manage all receivership assets, and perform all acts necessary to preserve the value of those assets, in order to prevent any loss, damage or injury to customers or clients;
- F. Prevent the withdrawal or misapplication of funds entrusted to the Defendants and Relief Defendant, and otherwise protect the interests of customers or clients;
- G. Collect all money owed to the Defendants and Relief Defendant;
- H. Initiate, defend, compromise, adjust, intervene in, dispose of, or become a party to any actions or proceedings in state, federal or foreign jurisdictions necessary to preserve or increase the assets of the Defendants and Relief Defendant or to carry out the Receiver's duties pursuant to this Order;
- I. Choose, engage and employ attorneys, accountants, appraisers, and other independent contractors and technical specialists, as the Receiver deems advisable or necessary in the performance of duties and responsibilities upon obtaining leave of this Court and thereafter, only upon further order of this Court;
- J. Have issued subpoenas to obtain documents and records pertaining to the receivership, and conduct discovery in this action on behalf of the receivership estate;
- K. Upon notice to customers, initiate a claims verification procedure to gather and review the facts concerning the customers' participation with the Defendants, receive and verify claims of customers, identify the beneficial owners of any

- claim, propose a distribution plan, and receive and process objections thereto. The Receiver shall have the authority to negotiate claim disputes, and to file motions with the Court to approve a compromise of any claim or to seek resolution of any disputed claim. The Receiver shall apply to the Court for prior approval of any distribution of funds to customers;
- L. Exercise discretion to make application to the Court for instructions or guidance, or approval of an act by the Receiver concerning assets valued at less than \$250,000; for assets valued at \$250,000 or more, the Receiver shall seek Court instructions, guidance or approval;
 - M. Open one or more bank accounts as designated depositories for funds of the Defendants and Relief Defendant. The Receiver shall deposit all funds of the Defendants and Relief Defendant in such designated accounts and shall make all payments and disbursements from the receivership estate from such accounts;
 - N. Make payments and disbursements from the receivership estate that are necessary or advisable for carrying out the directions of, or exercising the authority granted by, this Order. The Receiver shall apply to the Court for prior approval of any payment of any debt or obligation incurred by the Defendants and Relief Defendant prior to the date of entry of this Order, except for payments that the Receiver deems necessary or advisable to secure assets of the Defendants and Relief Defendant; and
 - O. Close out all commodities futures and securities positions, or other outstanding positions and/or hold such assets without further court order.

II.

Delivery to Receiver

IT IS FURTHER ORDERED that, upon service of this Order upon them, Defendants, Relief Defendant and any other person or entity served with a copy of this order shall, immediately or within such time as permitted by the Receiver in writing, deliver over to the Receiver:

- A. Possession and custody of all funds and all other assets, belonging to customers or commodity pool participants as described in the complaint;

- B. Possession and custody of documents of the Defendants and Relief Defendant, not previously produced to the CFTC, including but not limited to, all books and records of accounts, all financial and accounting records, balance sheets, income statements, bank records (including monthly statements, canceled checks, records of wire transfers, and check registers), client lists, title documents and other papers;
- C. Possession and custody of all precious metals, other commodities, funds and other assets belonging to members of the public now held by the Defendants and Relief Defendant;
- D. All keys, computer passwords, entry codes, PIN numbers and combinations to locks necessary to gain or to secure access to any of the assets or documents of the Defendants and Relief Defendant, including but not limited to, access to the Defendants' and Relief Defendant's business premises, means of communication, accounts, computer systems, or other property; and
- E. Information identifying the accounts, employees, properties or other assets or obligations of the Defendants and Relief Defendant.
- F. Subject to Trimble's appropriate assertion of the Fifth Amendment privilege against self-incrimination, and any other appropriate assertion of any other privilege or right, Defendants and Relief Defendant shall deliver over to the Receiver a complete and accurate accounting for the period January 1, 2004 to the date of such accounting of all funds received by Defendants and Relief Defendant from members of the public, all accounts in financial institutions into which customer funds were directly or indirectly deposited and all funds owed to customers. Such accounting shall be completed and delivered to the receiver within 30 days of this Order.

III.

Cooperation with Receiver

IT IS FURTHER ORDERED that the Defendants, Relief Defendant and all other persons or entities served with a copy of this Order shall cooperate fully with and assist the Receiver in the performance of his duties subject to Defendants' appropriate assertion of the Fifth Amendment privilege against self-incrimination, and any other appropriate

assertion of any other privilege or right. This cooperation and assistance shall include, but not be limited to, providing any information to the Receiver that the Receiver deems necessary to exercising the authority and discharging the responsibilities of the Receiver under this Order; providing any password required to access any computer or electronic files in any medium; and advising all persons who owe money to the Defendants and Relief Defendant that all debts should be paid directly to the Receiver.

IV.
Stay

IT IS FURTHER ORDERED that, except by leave of the Court, during the pendency of the receivership ordered herein, the Defendants and Relief Defendant, and all other persons and entities be and hereby are stayed from taking any action to establish or enforce any claim, right or interest for, against, on behalf of, or in the name of the Defendants and Relief Defendant, the Receiver, receivership assets, or the Receiver's duly authorized agents acting in their capacities as such, including but not limited to, the following actions:

- A. Commencing, prosecuting, litigating or enforcing any civil suit, except that actions may be filed to toll any applicable statute of limitations;
- B. Accelerating the due date of any obligation or claimed obligation, enforcing any lien upon, or taking or attempting to take possession of, or retaining possession of, property of the Defendants or Relief Defendant or any property claimed by the Defendants or Relief Defendant, or attempting to foreclose, forfeit, alter or terminate any of the Defendants' or Relief Defendant's interests in property, whether such acts are part of a judicial proceeding or otherwise;

- C. Using self-help or executing or issuing, or causing the execution or issuance of any court attachment, subpoena, replevin, execution or other process for the purpose of impounding or taking possession of or interfering with, or creating or enforcing a lien upon any property, wherever located, owned by or in the possession of the Defendants or Relief Defendant, or the Receiver or any agent of the Receiver; and
- D. Doing any act or thing to interfere with the Receiver taking control, possession or management of the property subject to the receivership, or to in any way interfere with the Receiver or the duties of the Receiver, or to interfere with the exclusive jurisdiction of this Court over the property and assets of the Defendants and Relief Defendant. This Paragraph does not stay the commencement or continuation of an action or proceeding by a governmental or regulatory unit, such as the National Futures Association (“NFA”), to enforce such governmental or regulatory unit’s police or regulatory power.

V.

Receiver’s Report to the Court and Compensation

IT IS FURTHER ORDERED that the Receiver maintain written accounts, itemizing receipts and expenditures, describing properties held or managed, and naming the depositories of receivership funds; make such written accounts and supporting documentation available to the Commission for inspection, and, within ninety (90) days of being appointed and periodically thereafter, as directed by the Court, file with the Court and serve on the parties a report summarizing efforts to marshal and collect assets, administer the receivership estate, and otherwise perform the duties mandated by this Order.

IT IS FURTHER ORDERED that the Receiver and all personnel hired by the Receiver as herein authorized, including counsel to the Receiver, are entitled to reasonable compensation for the performance of duties pursuant to this Order (not to

exceed the rates of compensation set forth in the March 10, 2009 Resume and Proposed Fee Structure of C. David Rhoades, Exhibit 1 to the agreed Motion for Appointment of Receiver [Doc. No. 12], filed herein, and as clarified during the hearing held on April 21, 2009) and for the cost of actual out-of-pocket expenses incurred by them for those services authorized by this Order that when rendered were (1) reasonably likely to benefit the receivership estate or (2) necessary to the administration of the estate. The Receiver and all personnel hired by the Receiver shall be compensated solely out of funds now held by, or in the possession or control of, or which may in the future be received by, the receivership, Defendants, and Relief Defendant and shall not be entitled to any compensation from the Commission. The Receiver shall file with the Court and serve on the parties periodic requests for the payment of such reasonable compensation, with the first such request filed no more than ninety (90) days after the date of this Order and subsequent requests filed quarterly thereafter. The requests for compensation shall itemize the time and nature of services rendered by the Receiver and all personnel hired by the Receiver. The Receiver shall not increase the hourly rates used as the bases for such fee applications without prior approval of the Court.

VI.
No Bond

IT IS FURTHER ORDERED that the Receiver is appointed without bond.

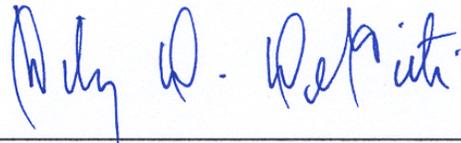
VII.
Service of Order

IT IS FURTHER ORDERED that copies of the Order may be served by any reliable means, including facsimile transmission, electronic mail or data transfer, upon any financial institution or other entity or person that may have possession, custody or control of any documents or assets of the Defendants or Relief Defendant or that may be subject to any provision of this Order.

VIII.
Court Maintains Jurisdiction

IT IS FURTHER ORDERED that this Order shall remain in full force and effect until further order of this Court, and that this Court retains jurisdiction of this matter for all purposes.

IT IS SO ORDERED this 21st day of April, 2009.



TIMOTHY D. DEGIUSTI
UNITED STATES DISTRICT JUDGE