

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

**Commodity Futures Trading  
Commission,**

Plaintiff,

vs.

**Mark S. Trimble, and**

**Phidippides Capital Management LLC,**

Defendants, and

**Phidippides Capital LP,**

Relief Defendant.

**Civil Action No: 09 CV**

**00154-D**

**Judge Timothy D. DeGiusti**

**PLAINTIFF'S AGREED MOTION FOR APPOINTMENT OF RECEIVER**

Plaintiff, Commodity Futures Trading Commission (“Commission” or “CFTC”) requests that this Court enter an Order appointing a temporary equity Receiver for Defendants Mark S. Trimble and Phidippides Capital Management LLC (“Defendants”) with authority to administer and manage the assets, business affairs, funds, choses in action and property related to the Defendants and Phidippides Capital LP, a commodity pool operated by the defendants, to marshal and safeguard all of the assets of the pool participants, and to take whatever actions are necessary for the protection of investors and for the return of investor funds to their rightful owners.

The grounds for this Motion are set forth below and in the attached Memorandum in Support.

1. On March 6, 2009, this Court issued an Order (“Preliminary Injunction Order”) granting the CFTC’s motion for preliminary injunction and asset freeze. The court found, inter alia, that Mark S. Trimble (“Trimble”) and Phidippides Capital Management LLC (“PCM”) had committed fraud and that customer assets under the control of Trimble and PCM or related persons were in jeopardy. The court also entered an asset freeze more fully described below.

2. This Court’s Preliminary Injunction Order provides, in part, Defendants are further restrained, enjoined and prohibited, until further order of the Court, from directly or indirectly:

A. Dissipating, withdrawing, transferring, removing, concealing or disposing of cash, cashiers checks, funds, assets or other property of, or within the custody, control or possession of, Defendants, including, but not limited to, all funds, personal property, money or securities held in safes, safety deposit boxes and all funds on deposit in any financial institution, bank or savings and loan account, including funds or property of investors, wherever located, whether held in the name of any Defendant or otherwise, and the assets affected by this paragraph shall include both existing assets and income and assets acquired after the effective date of this Order;

5. The injunctive provisions of this Order shall be binding on Defendants, upon any person insofar as he or she is acting in the capacity of officer, agent, servant,

employee or attorney of Defendants, and upon any person who receives actual notice of this Order by personal service, facsimile or otherwise insofar as he or she is acting in active concert or participation with Defendants.

3. Assets in this case include a house, one or more late model luxury automobiles, a membership to the Chicago Mercantile Exchange, Oklahoma Thunder season tickets, and a horse. The horse is an immediate and continuing cost to the Receivership estate and should be sold as quickly as possible to maximize the potential recovery by the defrauded investors. In addition, the car(s) and the season tickets are depreciating assets that should be liquidated as quickly as possible.

4. Appointment of a Receiver is necessary to help collect, marshal, preserve assets that are covered by the Court's order, wherever located, and to take all steps necessary to accomplish the return of the investor funds to the rightful owners.

5. The CFTC submits two proposals from Kenneth Spears and C. David Rhoades for this Court's consideration as Receiver in this matter. (See Exhibit 1, attached hereto). In the view of the CFTC's staff, either of the proposed Receivers would be qualified by virtue of their experience to be appointed by the Court as the Receiver in this matter. Mr. Rhoades has served as a Receiver in more than 30 cases and has extensive experience in forensic investigation including asset tracing and distribution of assets to creditors/victims. Mr. Spears has served as a

bankruptcy trustee and also has extensive experience tracing assets and establishing and administering distributions to creditors. Each of the proposed Receivers has the capability and experience necessary for carrying out the tasks that will be required of the Receiver and each has indicated a willingness to serve as a Receiver. In addition, as a public service, Mr. Spears has agreed to a reduced hourly billing rate if appointed as receiver. Both candidates have performed the necessary conflict of interest checks and are available to serve as receiver immediately upon appointment. Therefore, the CFTC submits the attached proposed names for consideration by this Court for appointment as Receiver in this matter.

6. In addition, Joseph Boccock, an attorney representing at least one of the Phidippides investors (the largest investor) has proposed two additional individuals for consideration by the Court as Receivers: Warren Bickford IV and David Pomeroy. They have each run conflicts checks and are available to serve as receiver immediately upon appointment. In addition, as a public service, Mr. Pomeroy has agreed to discount his hourly rate. Their resumes and fee proposals are attached.

WHEREFORE, the Commission respectfully requests that this Court appoint any of the proposed Receivers or any other suitable person as Receiver to take, marshal and liquidate assets to further protect defrauded investors.

Date: March 11, 2009

Respectfully submitted,

s/ Rosemary Hollinger

Rosemary Hollinger  
Regional Counsel  
Illinois A.R.D.C. No. 3123647  
rhollinger@cftc.gov  
(312)596-0520

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Scott R. Williamson  
Deputy Regional Counsel  
Illinois A.R.D.C. No. 6191293  
swilliamson@cftc.gov  
(312)596-0560

Commodity Futures Trading  
Commission  
525 West Monroe Street, Suite 1100  
Chicago, Illinois 60661  
(312) 596-0520 (Hollinger)  
(312) 596-0560 (Williamson)  
(312) 596-0700 (office number)  
(312) 596-0714 (facsimile)

Approved as to Form:

s/Mack Martin  
*signed by Rosemary Hollinger*  
*with permission from Mack Martin*  
Mack Martin

**Attorney for Defendant Mark S. Trimble  
Individually and in his capacity as an  
officer of Phidippides Capital Management  
and Phidippides Capital LP**