

SEC v. MILLENNIUM BANK, ET AL.
April 5, 2010 Status Report and Update

SIPC Does Not Apply to Investments with Millennium

As was stated in an earlier release, investments in the Millennium Bank Ponzi scheme are not eligible for any recovery from the Securities Investor Protection Corporation (“SIPC”). As a member-funded organization, the SIPC only permits members to participate in its emergency fund. Because none of the Defendant entities were members of the SIPC, access to the emergency fund is not available to investors in the Defendant entities. Further, none of the investments offered by any of the Defendants were registered with the United States Securities and Exchange Commission (“SEC”) under the Securities Act of 1933, an additional prerequisite for participation in the emergency fund. Because neither of these conditions are present here, the SIPC is not available to provide any relief to the investors.

Tax Treatment of Theft Losses

Some investors have asked if the Receiver will issue any guidance regarding the tax treatment of investor losses resulting from the Millennium Ponzi scheme. The Receiver is not a proper party to provide any opinion on how individual investors should treat any losses sustained under the Ponzi scheme. At this time, the Receiver is not in a position to opine regarding the reasonable prospect of recovery of funds invested with any of the defendant entities, if any. The Receiver recommends that investors consult with their own tax professionals to determine the proper treatment of losses based on each investor’s specific circumstances. The Receiver would note that the Internal Revenue Service’s Revenue Ruling 2009-9 and Revenue Procedure 2009-20 may be informative in this matter and are viewable at http://www.irs.gov/irb/2009-14_IRB/ar07.html and http://www.irs.gov/irb/2009-14_IRB/ar11.html, respectively. As a reminder, no criminal charges have been brought by the United States Department of Justice against William Wise or any of the other defendants at this time.

Filing of Tax Returns

The Receiver is required by § 6012(b)(3) of the Internal Revenue Code and § 1.6012-3(b)(4) of the Treasury Regulations to file a tax return on behalf of the Defendant entities for which he has been appointed as Receiver. The Receiver will comply with these requirements and will timely file all necessary returns and supporting materials with the Internal Revenue Service.

Arrest of William Wise

William Wise, the chief architect and operator of the Ponzi scheme, remains out of the country and refuses to respond to the allegations against him. While neither the Receiver nor the Securities and Exchange Commission have any authority, discretion, or power regarding when Mr. Wise will be located and arrested, we continue to cooperate fully with all governmental agencies investigating Mr. Wise and the Defendant entities, including the Internal Revenue Service and the Department of Justice.

Fee Application Approved

On December 31, 2009, the United States District Court for the Northern District of Texas, Wichita Falls Division (“the Receivership Court”), approved in part and denied in part the Receiver’s Motion for Approval of Interim Fee Application and Procedures for Future Compensation of Fees and Expenses. In its Order, the Receivership Court approved a payment to the Receiver for fees incurred of \$52,752, a payment to Thompson & Knight of \$434,657.52 for services and \$36,297.42 of expenses, and \$74,519.85 in payments to various professionals for services rendered to the Receivership Estate. The Receivership Court found that these payments reflect a fair compensation to the Receiver and his representatives while simultaneously protecting the interests of the investors.

Ongoing Costs Incurred by the Receivership

The Receivership continues to incur additional costs of administering the Receivership Estate, including costs for the bank records obtained by subpoena, copying services, storage facilities, and investigators. Additionally, the Receivership Estate continues to incur expenses from the accounting firm hired by the Receiver to conduct a forensic examination of the records obtained from the seizure of the Defendants’ offices and from the subpoena requests to various financial institutions. As always, the Receiver remains conscious of incurring only those additional expenses that will bring sufficient value to the Receivership Estate to justify the expense.

Further International Investigation

Over the course of the administration of the Receivership Estate, the Receiver has followed leads regarding potential assets outside the United States that could be recovered for the benefit of the Receivership Estate. While these leads have yet to provide any significant source of assets, the Receiver will continue to pursue assets abroad based on the developments of the ongoing investigations of criminal authorities.

Receiver’s Cooperation with Various Authorities

The Receiver continues to provide full and complete information and cooperation to the Securities and Exchange Commission, the United States Department of Justice, the Federal Bureau of Investigation, the Internal Revenue Service, Canadian authorities, and other proper parties.

Pending Class Actions

There are two class action cases filed to date related to the Millennium Bank Ponzi scheme, both of which were filed against JPMorgan Chase Bank as successor-in-interest to Washington Mutual Bank (“the Bank”). In the first action, *Litson-Gruenberg v. JPMorgan Chase & Co.*, Case #: 7:09-CV-00056-O, filed in the United States District Court for the Northern District of Texas, the Plaintiff made allegations under the Bank Secrecy Act and Anti-

Money Laundering statute, as well as common law claims under California law, including (1) aiding and abetting breach of fiduciary duty; (2) aiding and abetting fraud; (3) breach of fiduciary duty; (4) constructive fraud; (5) negligence; and (6) negligence per se. Ultimately, the Court dismissed this action on December 16, 2009, for failure to sufficiently plead a claim against the Bank.

The second action, *Benson v. JPMorgan Chase Bank*, Case #: CV-09-5272, was filed in the San Francisco division of the Northern District of California. The Plaintiffs in *Benson* allege similar claims as those alleged in *Litson-Gruenberg*, including (1) aiding and abetting fraud; (2) aiding and abetting conversion; (3) aiding and abetting a breach of fiduciary duty; (4) conspiracy to commit fraud and conversion; and (5) violation of the California Business & Professions Code § 17200, involving “unlawful,” “unfair” and “fraudulent” business practices. At bottom, Plaintiff alleges that there were numerous indications of the fraud operated by the Defendants in the Receivership such that the Bank had at least constructive knowledge of the fraud. Currently, the Court held a hearing on March 17, 2010, on the Bank’s motions to dismiss and transfer venue to the Northern District of Texas, but the Court has not yet issued its decision on those matters. The Receiver will continue to monitor this case and any other proceedings related to the Millennium Bank Ponzi scheme.

Goals Directing Receiver

Throughout the Receivership, the conduct of the Receiver and his representatives has been dictated by the fact that the Receivership Estate has limited funds to accomplish the multiple goals of the Receivership. With this understanding, it has been the intent of the Receiver and his representatives to pursue only those courses of action that bring a net profit to the Receivership Estate and do not unnecessarily deplete the Receivership Estate of resources. This overarching goal will continue to influence the Receiver’s actions through the closing of the Receivership Estate.

Initial Results from Forensic Accountants

The Receiver has obtained some initial results from the forensic accountants. These results clearly demonstrate that William Wise and the other Defendants freely spent investor monies to support their lavish lifestyle. For example, based on their review through the end of February, the accountants have found that Mr. Wise and the other Defendants spent more than \$7,000,000 on charges related to the company jet, more than \$2,500,000 on cash withdrawals from ATM machines around the world, more than \$19,500,000 in credit card charges, more than \$1,000,000 on land development in the Caribbean, more than \$500,000 on wine, more than \$2,200,000 in payments to Lynn Wise, and more than \$6,400,000 in payments to William Wise.

The Receiver anticipates that when the accountants complete their analysis of the bank records and other business records, we will have a clear picture of how the proceeds of the fraud were exhausted by the Defendants.