

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE

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FEB 24 2005

Commodity Futures Trading Commission,

Plaintiff,

v.

Foreign Fund a/k/a First Bank, Ron Mealing, and  
John Shirck

Defendants

Wally Dow, MW First Inc., MW First Trustees  
Inc., Wolfgang J. Fastian, Deana Whitely, and  
Star Connection Inc.

Relief Defendants.

04 CIV 3 04 0898 - ~~100010~~ U.S. DISTRICT COURT  
MID. DIST. TENN.

(Proposed) Order Appointing  
Temporary Receiver

On October 14, 2004, Plaintiff Commodity Futures Trading Commission ("Commission") filed a motion to appoint a Temporary Receiver pursuant to Section 6c of the Commodity Exchange Act ("Act"), 7 U.S.C. § 13a-1 (2002), and Rule 66 of the Federal Rules of Civil Procedure. For Good Cause Shown it is hereby Ordered Adjudged and Decreed that:

**DEFINITIONS**

For the purposes of this Order, the following definitions apply:

- "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, contracts, insurance policies, and all cash, wherever located, whether in the United States or abroad.

This document was entered on  
the docket in compliance with  
Rule 58 and/or Rule 79(a).

FRCP, on 3/9/05 By KM

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2. The term "document" is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes, but is not limited to, writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term.

3. "Defendants" means Foreign Fund aka First Bank ("Foreign Fund"), Ron Mealing ("Mealing"), and John Shirck ("Shirck") and any person who receives actual notice of this Order by personal service or otherwise insofar as he or she is acting in concert or participation with Foreign Fund, Mealing, or Shirck.

4. "Relief Defendants" means Wally Dow, MW First Inc., MW First Trustees Inc., Wolfgang J. Fastian, Deana Whitely, and Star Connection Inc. and any person who receives actual notice of this Order by personal service or otherwise insofar as he or she is acting in concert or participation with Wally Dow, MW First Inc., MW First Trustees Inc., Wolfgang J. Fastian, Deana Whitely, or Star Connection Inc.

#### **APPOINTMENT OF TEMPORARY RECEIVER**

5. Gilardi and Co., LLC, 115 Magnolia Avenue, Larkspur, CA, 415-461-0410, is appointed Temporary Receiver over all assets and other property that is subject to the Restraining Order with Asset Freeze entered by this Court on October 5, 2017, and shall be responsible for identifying Foreign Fund customers, providing notice to Foreign Fund customers, communicating with Foreign Fund customers, and, to the extent feasible, process the claims of Foreign Fund customers.

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6. The Receiver is authorized to immediately take into his custody, control, and possession all assets of the Defendants and Relief Defendants that are subject to the Freeze Order. The Receiver shall collect, take charge of, and administer these assets subject to further Order of this Court, in order to prevent irreparable loss and further damage to Foreign Fund customers.

7. The Receiver shall hold and manage all receivership assets in an account located within the jurisdiction of this Court, and established by the Receiver for the purposes of this proceeding, prepare an accounting thereof, and perform all acts necessary to preserve the value of the assets.

8. The Defendants and Relief Defendants shall fully cooperate with the Receiver and provide the Receiver upon request with access to, or copies of, all documents requested by the Receiver that concern financial assets of Foreign Fund or Foreign Fund customers subject to the Freeze Order. In order to assist the Receiver, the Defendants and Relief Defendants shall provide the Receiver with access to, or copies of, documents relating to the names, locations and identities of Foreign Fund customers, and all documents relating to these customers' accounts.

9. Unless otherwise ordered by this Court, within 30 days after the Receiver has taken possession of the receivership estate, the Receiver shall file with the Court and serve Plaintiff Commission an inventory of all assets and documents in his possession. This inventory shall also include a report as to the amounts each Relief Defendant received from Foreign Fund, an indication of the accuracy of each amount, and the amount of each Relief Defendant's assets in the Receiver's custody and control.

10. Within 6 months after the filing of the inventory, and at regular intervals of 6 months thereafter until discharged, or at such other times as the Court may direct, the Receiver

shall file with the Court and serve on Plaintiff Commission reports of his receipts and expenditures and of his acts and transactions in an official capacity. The Receiver has provided a declaration indicating that upon completion of the administration of this case, he expects a blended hourly billing rate in the range of \$75 to \$80 per hour.

11. The Receiver shall administer the receivership estate as nearly as possible in accordance with the practice of administration of estates in bankruptcy, except as otherwise ordered by the Court.

### **CLAIMS ADMINISTRATION**

12. The Receiver shall take all steps necessary to identify all Foreign Fund customers, determine the amount each customer invested, communicate with the customers, and provide Foreign Fund customers with notice of this action. The Defendants and Relief Defendants shall cooperate fully with the Receiver in carrying out his obligations pursuant to this paragraph.

13. Within 30 days of the date of this Order, the Receiver shall file with the Court and serve Plaintiff Commission a report recommending the steps the Receiver has taken to identify all Foreign Fund customers, determine the amount each customer invested, and provide those customers with notice of this action.

14. Unless otherwise ordered by this Court, within 9 months after the filing of the report described above in paragraph 15, the Receiver shall file with the Court and serve Plaintiff Commission a report describing the feasibility of properly processing customer claims. The report should describe the Receiver's ability to adequately determine the original investment amounts of each customer who would be subject to the claims process, the amount of funds available for distribution, the cost of distribution, and the approximate distribution amount for each original dollar invested. If the Receiver's opinion is that it is not feasible to properly

process customer claims, the Receiver shall make a recommendation to the Court as to the use of the remaining receivership funds, if any. The Commission shall have 60 days to object to the Receiver's recommendation and propose an alternative use of the funds.

#### **OTHER DIRECTIVES**

15. Nothing in this order shall be construed as limiting or otherwise precluding Plaintiff Commission or its designated agents from any continuing or further investigation of the Defendants and Relief Defendant, or otherwise continuing to perform their authorized duties.

16. Subject to the rights of the Defendants and Relief Defendants under the 5<sup>th</sup> Amendment, the Defendants and Relief Defendants shall be completely cooperative, forthright, and truthful with representatives of Plaintiff Commission and the Receiver with regard to any inquiries made of them regarding, assets, documents, and their obligations under this order.

17. Plaintiff Commission and the Receiver may, individually or jointly, make application to this Court to enforce the terms of this order, or in the event of any violation of any provision of this Order, seek the imposition of civil or criminal sanctions for its violations before this or any appropriate court;

18. This Court shall retain jurisdiction over this action to enforce or modify the provisions of this Order, or to entertain any suitable application or motion by the parties or the Receiver for additional relief within the jurisdiction of this Court.

**IT IS SO ORDERED.**

  
ROBERT L. ECHOLS  
UNITED STATES DISTRICT JUDGE