

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

**U.S. COMMODITY FUTURES TRADING
COMMISSION,**

Plaintiff,

v.

**CAPITALSTREET FINANCIAL, LLC,
SEAN F. MESCALL,**

Defendants,

and

**GERALD T. MESCALL,
and GAINCAPITAL, INC.,**

Relief Defendants.

CASE NO. 3:09-cv-387-RJC-DCK

RECEIVER'S FIFTH REPORT

Joseph W. Grier, III, as temporary Receiver (the "Receiver") for the assets of CapitalStreet Financial, LLC ("CapitalStreet"), Sean F. Mescall (collectively, the "Defendants"), Gerald T. Mescall and Gaincapital, Inc. ("Gaincapital") (collectively, the "Relief Defendants"), files this *Receiver's Fifth Report* pursuant to this Court's *Order* entered herein on September 16, 2009 (the "Receivership Order") in response to a *Motion for an Ex Parte Statutory Restraining Order, Appointment of Receiver, An Accounting, Expedited Discovery, and an Order to Show Cause Regarding Preliminary Injunction and Other Equitable Relief* filed by the Commodity Futures Trading Commission (the "CFTC"). Pursuant to paragraph 33 of the Receivership Order, this report outlines the steps taken to (1) identify customers, (2) marshal assets, (3) determine the amount invested by each customer, (4) determine the portion of assets available to

pay back customers, and (5) estimate the time to distribute assets to customers and wind up the Receivership. The *Receiver's Fourth Report* was filed on May 27, 2010 (D.E. 54).

1. **Identification of and Contact With Customers.** The Receiver has compiled a customer list derived from information on CapitalStreet hard drives as well as calls received from customers inquiring about the status of CapitalStreet. The Receiver has identified 107 customers. The Receiver has set up a web site for posting information about the status of the receivership (www.grierlaw.com/CapitalStreet) and established an email address for inquiries from customers about the receivership status (CapitalStreetReceivership@grierlaw.com). All of the pleadings and documents referred to herein are available on this website.

2. **Marshaling of Assets.**

a. *Identification of Assets.* Attached as Exhibit A is a chart listing all assets identified by the Receiver as assets of Defendants or Relief Defendants, along with their status. As of the date of this report, the Receiver has received \$380,913.24 and disbursed \$75,368.64 and is holding the balance, \$305,544.60. A detailed listing of all receipts and disbursements of the Receiver to date, as well as the balance on hand, is attached as Exhibit B.

b. *Sale of assets.* At this time, the Receiver believes he has liquidated all tangible assets of Defendants which have value for the Receivership.

3. **Determination of Amount Invested By Each Customer.** According to the Receiver's preliminary review and an analysis by the CFTC of the books and records of CapitalStreet, it appears that the collective amount invested by CapitalStreet could be as much as \$1,945,746.21.

4. **Portion of Assets Available to Pay Back Customers.** All funds collected by the Receiver as property of the receivership estate, less the costs of administration of the

receivership and any other disbursements approved by the Court, should be available to pay back customers.

5. Distribution of Assets and Winding Up of Receivership.

a. Claims Process. On June 18, 2010 (D.E. 56) the Court entered its *Order* (the “Order”) on *Receiver’s Motion for (1) Approval of Distribution Priority Scheme, (2) Proposed Claims Verification Procedures and Bar Date, (3) Establishment of Claims Review and Approval Process, (4) Approval of Manner to Address Tax Issues and (5) Approval of Distribution Method* (“Claim Motion”). Among other relief granted, the Order approved the Notice of Claim Forms for Investors and Administrative Claimants and established that a claim deadline should be thirty days after delivery of the Claim Forms. The Order addressed the process of making claims as well as the process of claims analysis, objections and reporting. A copy of the Order can be obtained from the CapitalStreet webpage.

The Receiver delivered the Notice of Claims Process and Claim Forms to all known Investors and potential administrative claimants on June 24, 2010 and set a deadline of July 27, 2010 for making Investor and Administrative Claims. The Receiver has received many claims as of the date of this Report and has begun the process of analyzing these claims.

b. *Distribution.* The Order established that the Receivership Estate shall be distributed in the following order:

- A. To claims for expenses of the administration of the Receivership Estate, including legal and accounting fees, expenses to preserve the value of assets, and costs of realization and payment of any taxes due on property or income of property of the Receivership Estate incurred during the pendency of the Receivership (“Administrative Claims”);
- B. To return of investments to Investors; and
- C. To any General Creditors, should any assets remain in the Receivership Estate.

The Order also established that the distribution method to Investors will be the “Net Investment” method whereby Investor claims will be calculated by subtracting Investor’s Total Withdrawals from Total Investment; Investors will receive a pro rata share of the Receivership Estate, after payment of Administrative Claims and expenses, based on the Investor’s Net Investment.

The Receiver anticipates that there will be funds available, after administration of the estate, to distribute to CapitalStreet customers after the claims are settled.

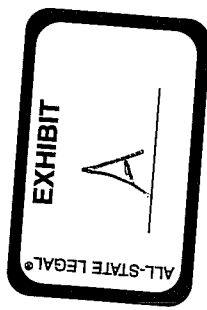
c. *Winding Up.* The Receiver anticipates that the claim filing, review and approval process will take no less than 90 additional days to complete. After the claims are settled, the Receiver will seek approval of a distribution that depletes the Receivership Assets. Upon distribution of Receivership Assets, the Receivership will be concluded.

Respectfully submitted, this 27th day of July, 2010.

/s/ Joseph W. Grier, III
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Exhibits:

- A. List of Assets
- B. Receipts & Disbursements



ASSET	TITLE/OWNER	EST. VALUE/ SOURCE OF VALUE	STATUS	TO DO/INFORMATON NEEDED
Bank of America *****813	CapitalStreet Financial		Received: \$106,128.90 on 9/21/09	
Bank of America *****786	CapitalStreet Financial		Received: \$82,913.42 on 9/21/09	
Bank of America *****971	CapitalStreet Financial		Received: \$70.00 on 9/21/09	
Peoples Bank *****843	GainCapital, Inc.		Received: \$10,254.06 on 9/22/09	
FBME Bank, Nicosia, Cypress and Debit Card	Patrick Fitzgerald Financial, Inc.	\$50,000 originally wire transferred to this overseas account	Order entered May 25, 2010 by the Federal District Court holding Sean Mescall in Civil Contempt of Court and finding that S. Mescall withdrew \$49,665.28 from this account in November, 2009 thereby violating the Preliminary Injunction; the Order refers the matter to the United States Attorney for consideration as to whether criminal proceedings are appropriate; Receiver was able to recover \$2,038.52 of this amount for the Receivership Estate	
Rolex Watch	Sean Mescall		Received: \$5,500.00 on 3/22/10	
Lawrence R. Gelber, Attorney at Law, Brooklyn, NY	Attributable to either CapitalStreet or Sean Mescall held by Gelber Office		Received: \$393.61 9/21/09	
BB&T Safe Deposit Box Denver, NC	Sean Mescall	3 gold bars, 7 silver bars 2 diamonds in box labeled "Blue Nile", \$8,400 in \$100	Received: \$117,630.44 on 3/22/10 after sale at auction	

			bills, 7 Gold American Eagle coins, assorted loose coins	Received: \$8,402.00 in cash	
House – 4605 River Hills Dr. Denver, NC 28037	Quitclaim Deed from Gerald Mescall to CapitalStreet Fin.			No Value for Receiver Estate, Receiver abandoning - Mortgage Loan Balance on two loans exceeds value of home	
Personal Property located inside of house at 4605 River Hills Dr., Denver, NC				No Value for Receiver Estate, Receiver abandoning – After considering the cost of identifying property purchased by CapitalStreet funds vs. property purchased prior to CapitalStreet as well as identifying property owned by parties other than S. or G. Mescall located at residence and cost to move, liquidate and attorneys fees, value to receivership is likely less than cost to receivership	
Bayliner, 22 ft. with trailer	Gerald Mescall		Financed through Key Bank Amt. Financed: \$25,760.00 5/26/05	No Value for Receiver Estate, Receiver abandoning - Loan balance exceeds value of boat and trailer	
Personal property located at 17505 W. Catawba Ave., Suite 130	CapitalStreet Financial, LLC			Most of contents leased and recovered by lessors after default; Received: \$423.10 in net proceeds after sale at auction	
2003 330 BMW	Sean Mescall			Received: \$11,900.00 on 4/26/10 after sale by broker	
1997 Ferrari Spider	Sean Mescall and Gerald Mescall			Received: \$30,300 on 4/26/10 after sale by broker	
Net Winner				Receiver abandoning Receiver identified one investor who took disbursements exceeding deposits in the amount of \$5000; after a due diligence search of records, and internet search the investor was unable to be located	

Itemized Categories - All Dates

9/21/2009 through 7/27/2010

7/27/2010

Date	Account	Num	Description	Memo	Tag	Clr	Amount
1/12/2010	CapitalStreet ...		NSF: Returned Item F...	Failed to transfer funds		R	-35.00
1/25/2010	CapitalStreet ...	DEP	Grier Furr & Crisp, PA	Reimburse NSF charge		R	35.00
Other Expenses							
7/13/2010	CapitalStreet ...	1010	Correction For Deposit...				-2,683.36
Professional Fees							
1/11/2010	CapitalStreet ...	1006	Grier Furr & Crisp, PA	attorneys fees		R	-2,683.36
3/10/2010	CapitalStreet ...	1008	Grier Furr & Crisp, PA	attorneys fees		R	-48,228.98
5/5/2010	CapitalStreet ...	1009	Grier Furr & Crisp, PA	attorneys fees		R	-25,543.83
7/14/2010	CapitalStreet ...	1011	Grier Furr & Crisp, PA	attorneys fees		R	-6,644.45
Sale Expense							
10/19/2009	CapitalStreet ...	1002	BB&T	safe deposit box		R	-4,389.78
1/13/2010	CapitalStreet ...	DEP	S Classic Enterprises Of ...	commission		R	-11,650.92
			Moving exp			R	-22,622.45
			Pro-rata adv.			R	-170.00
3/1/2010	CapitalStreet ...	1007	Lois Bouchard, GIA	ring appraisals		R	-331.40
3/22/2010	CapitalStreet ...	DEP	S Iron Horse Auction Co,...	Commission		R	-550.00
4/26/2010	CapitalStreet ...	DEP	S Bill Sparks Automotive	Ferrari towing, repairs & ...		R	-352.50
			Ferrari commission			R	-65.00
4/26/2010	CapitalStreet ...	DEP	S Bill Sparks Automotive	BMW sale expenses		R	-9,850.43
			BMW commission			R	-7,877.12
						R	-500.00
						R	-2,426.00
						R	-500.00
TRANSFERS							
CapitalStreet Checking							
9/30/2009	CapitalStreet ...	TXFR	Transfer Receiver Savi...			R	66,151.00
1/12/2010	CapitalStreet ...		Transfer From Savings...			R	-170,000.00
3/26/2010	CapitalStreet ...		Transfer From Checkin...			R	-25,000.00
9/24/2009	GFC Trust Ac...	TXFR	Transfer Trust Act To ...			R	100,000.00
9/30/2009	GFC Trust Ac...	TXFR	Transfer Receiver Che...			R	-25.00
CapitalStreet Savings							
9/30/2009	CapitalStreet ...		Transfer Receiver Che...			R	161,176.00
1/12/2010	CapitalStreet ...	TXFR	Transfer From Savings...			R	-265,814.99
3/26/2010	CapitalStreet ...	TXFR	Transfer From Checkin...			R	170,000.00
9/28/2009	GFC Trust Ac...	TXFR	Transfer Trust Act To ...			R	25,000.00
GFC Trust Account							
9/24/2009	CapitalStreet ...		Transfer Trust Act To ...			R	-100,000.00
9/30/2009	CapitalStreet ...		Transfer Receiver Che...			R	-360,814.99
9/28/2009	CapitalStreet ...		Transfer Trust Act To ...			R	199,663.99
						R	25.00
						R	-161,176.00
						R	360,814.99

Itemized Categories - All Dates

9/21/2009 through 7/27/2010

Date	Account	Num	Description	Memo	Tag	Clr	Amount
							305,544.60
							OVERALL TOTAL

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Defendants, and

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CASE NO. 3:09-cv-00387 (RJC-DCK)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that copies of the *Receiver's Fifth Report*, were served by CM/ECF system, electronic mail or U.S. Mail as indicated below, upon the following parties:

Investors by email

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This the 27th day of July, 2010.

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