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9 **UNITED STATES DISTRICT COURT**
 10 **CENTRAL DISTRICT OF CALIFORNIA**
 11 **WESTERN DIVISION - LOS ANGELES**

12 SECURITIES AND EXCHANGE
 COMMISSION,

13 Plaintiff,

14 v.

15 CHARLES P. COPELAND,
 16 COPELAND WEALTH
 MANAGEMENT, A FINANCIAL
 17 ADVISORY CORPORATION, and
 COPELAND WEALTH
 18 MANAGEMENT, A REAL ESTATE
 CORPORATION,

19 Defendants.
 20

Case No. 11-08607-R-DTB

**RECEIVER'S PRELIMINARY
 REPORT AND REQUEST FOR
 ORDER (A) CLARIFYING SCOPE
 OF THE RECEIVERSHIP, AND
 (B) AIDING ADMINISTRATION OF
 THE RECEIVERSHIP**

Date: December 19, 2011
 Time: 10:00 a.m.
 Ctrm: 8, 2nd Floor
 Judge: Hon. Manuel L. Real

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1 Thomas C. Hebrank ("Receiver"), the Court-appointed permanent receiver for
2 Copeland Wealth Management, a Financial Advisory Corporation ("CWM"),
3 Copeland Wealth Management, a Real Estate Corporation ("Copeland Realty"), and
4 their subsidiaries and affiliates (collectively, the "Receivership Entities"), hereby
5 submits his Preliminary Report and Request for Order (A) Clarifying Scope of the
6 Receivership, and (B) Aiding Administration of the Receivership ("Report"). As
7 required by Local Rule 66-7, notice of this Report has been provided to all known
8 creditors of the Receivership Entities.

9 This Report provides the Court and all interested parties with the status of the
10 Receiver's activities to date. The Receiver and his counsel have interviewed and
11 gathered information from many people and reviewed many records over the initial
12 25-day period. The volume of material and information acquired, the shortness of
13 time, the complexity of the matters analyzed and the need for additional
14 information, verification and analysis requires that this Report be considered
15 preliminary; the Receiver may need to materially modify its contents after further
16 analysis and consideration. Furthermore, the Court has not yet determined the
17 probative value of the information contained in this Report nor determined the
18 admissibility of such information in any future proceeding.

19 I. INTRODUCTION

20 This Report describes the Receiver's activities during the first 25 days of the
21 receivership. In addition, attached as Exhibit A and discussed is a summary of the
22 cash activity in receivership bank accounts from the Receiver's appointment through
23 November 18, 2011. The Receiver's recommendations based on his investigation
24 thus far are also provided below.

25 Additionally, the Receiver seeks an order clarifying the scope of the
26 receivership and confirming that the 23 limited partnerships listed in the
27 Commission's Complaint and used as investment vehicles for CWM clients (the
28 "Limited Partnerships") are "affiliates" under the Judgment, and therefore are

1 included in the receivership. The Securities and Exchange Commission
2 ("Commission") supports the request to clarify that the 23 limited partnerships listed
3 in the Complaint are included in the receivership. The Limited Partnerships (which
4 are in the form of Private Equity, Fixed Income and Real Estate Funds) were formed
5 and managed by CWM and Copeland Realty. The balance sheets for the
6 Receivership Entities reflect that, in the aggregate, CWM, Copeland Realty and the
7 Limited Partnerships owe one another approximately \$16.4 million on account of
8 intercompany loans, have invested approximately \$3.1 million in one another, and
9 are owed approximately \$6.5 million on account of loans to limited partners, CWM
10 clients, Charles Copeland and other related parties. As discussed further below,
11 excluding the Limited Partnerships from the receivership estate would
12 (a) undermine the Receiver and the Court's ability to achieve an equitable
13 distribution of assets, (b) exacerbate the losses of investors and creditors, and
14 (c) substantially increase administrative expenses of the receivership.

15 The Receiver also recommends and requests certain relief he believes will aid
16 in the administration of the receivership estate and help reduce administrative
17 expenses. Copeland Realty's business is essentially to manage the eight commercial
18 properties owned by the Real Estate Funds. In order to manage the properties until
19 they can be sold, the Receiver requests authority to execute, amend and terminate
20 leases pertaining to the properties. In addition, the Receiver requests authority to
21 engage real estate brokers and appraisers to assist in efforts to market and sell the
22 properties. All sales and broker commissions will remain subject to Court approval.
23 When the Receiver agrees on the terms of a sale with a buyer, the Receiver will file
24 a motion for approval of the sale, and will simultaneously request approval of the
25 applicable broker's commission.

26 The Receiver seeks this relief because he expects leasing transactions and
27 broker/appraiser engagements to occur frequently during his management and
28 marketing of the eight properties. Seeking Court approval in each instance would

1 involve considerable administrative expense. Of course, if the Court prefers that the
2 Receiver seek approval in each instance, he will do so.

3 Finally, Local Rule 66-5 requires that a temporary receiver file a schedule of
4 known creditors, including their names, addresses and claim amounts within 5 days
5 after appointment of a permanent receiver. It is not clear if this rule applies here,
6 where the Receiver was appointed on a permanent basis in the first instance. To the
7 extent it applies, the Receiver requests relief from the rule, and an additional 60 days
8 to assemble a comprehensive list of investors and creditors who potentially have
9 claims against the receivership estate. In order to preserve the privacy of individual
10 investors and creditors, and consistent with Local Rule 79-5.4, the Receiver requests
11 that he not be required to state their home addresses on the schedule that is filed.

12 The Receiver believes that the relief requested herein will allow the Receiver
13 and the Court to achieve an equitable distribution of receivership assets, while
14 minimizing administrative expenses.

15 **II. PROCEDURAL BACKGROUND**

16 On October 18, 2011, the Securities and Exchange Commission
17 ("Commission") filed its Complaint for Violations of The Federal Securities Laws
18 ("Complaint"), together with the Consent of Defendants Copeland, CWM and
19 Copeland Realty ("Consent"), and the Proposed Judgment of Permanent Injunction
20 and Other Relief. Docket Nos. 1 and 2. On October 25, 2011, the Court entered the
21 Judgment of Permanent Injunction and Other Relief as to Defendants Copeland,
22 CWM and Copeland Realty, appointing the Receiver as permanent receiver for
23 CWM, Copeland Realty, and their subsidiaries and affiliates ("Judgment"). Docket
24 No. 3.

25 **A. The Complaint**

26 Among other things, the Complaint alleges that Copeland, CWM and
27 Copeland Realty committed fraud (a) in the offer and sale of limited partnership
28 interests (investment contracts) in 23 limited partnerships managed by CWM and

1 Copeland Realty (the Private Equity Funds, Fixed Income Funds and Real Estate
2 Funds), and (b) while acting as an investment advisor. Specifically, the Complaint
3 alleges that, in violation of the Fixed Income Fund limited partnership agreements,
4 more than \$18.6 million was loaned from the Fixed Income Funds to (1) Copeland
5 Realty, (2) Real Estate Funds managed by Copeland Realty, (3) accounting clients
6 of related non-party The Copeland Group, a Consulting and Accountancy
7 Corporation ("Copeland Accountancy"), (4) companies in which the Private Equity
8 Funds held interests, (5) other Fixed Income Funds, and (6) Copeland family
9 members. Complaint, ¶¶ 17-19. The Complaint also alleges that the "loans from
10 the Fixed Income Funds to the Real Estate Funds allowed the Real Estate Funds to
11 pay their operational expenses as well as continue their distribution payments,
12 essentially a Ponzi-like scheme in which new investor funds were paid to existing
13 clients." Complaint, ¶ 20.

14 The Commission further alleges that Copeland misrepresented to clients that
15 the Fixed Income Funds were "guaranteed" and that, in violation of the Real Estate
16 Fund limited partnership agreements, Copeland Realty (a) caused the Real Estate
17 Funds to loan approximately \$1.8 million to other Real Estate Funds, and
18 approximately \$500,000 to clients of Copeland Accountancy and CWM,
19 (b) transferred approximately \$5.7 million from the Real Estate Funds to CWM,
20 which was used to trade put options, and (c) paid itself approximately \$2.4 million
21 in commissions and other compensation in connection with the purchase and sale of
22 real estate. Complaint, ¶¶ 21-25.

23 The Consent of Defendants Copeland, CWM and Copeland Realty neither
24 admits or denies the allegations in the Complaint, but consents to entry of the
25 Judgment, leaving the issue of the amount of disgorgement and civil penalties to be
26 determined at a later date upon motion by the Commission.

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1 **B. The Judgment**

2 The Judgment, among other things, authorizes, empowers and directs the
3 Receiver to:

4 (a) "take custody, control, possession and charge... of all funds,
5 assets" of the Receivership Entities;

6 (b) "to have control of, and to be add as the sole authorized signatory
7 for, all accounts" of the Receivership Entities;

8 (c) "to conduct such investigation and discovery as may be necessary
9 to locate, account for and recover all of the assets of or managed by"
10 the Receivership Entities, "and to engage and employ attorneys,
11 accountants and other persons to assist in such investigation and
12 discovery";

13 (d) "to take such action as is necessary and appropriate to preserve
14 and... prevent the dissipation, concealment or disposition of any
15 assets of or managed by" the Receivership Entities;

16 (e) "to make an accounting, as soon as practicable, to this Court and
17 the Commission";

18 (f) "to make such payments and disbursements from the funds and
19 assets... as may be necessary and advisable in discharging his or her
20 duties as permanent receiver";

21 (g) "to employ attorneys, accountants and others to investigate and,
22 where appropriate, to institute, pursue, and prosecute all claims and
23 causes of action";

24 (h) "to have access to, monitor, and redirect all mail";

25 (i) "to operate and control the content of information posted on any
26 Internet web site maintained" by the Receivership Entities; and

27 (j) "to exercise all lawful powers" of the Receivership Entities "and
28 their officers, directors, employees".

1 Judgment, Part V.

2 The Judgment also restrains and enjoins all persons seeking relief of any kind
3 against the Receivership Entities from (a) "commencing, prosecuting, continuing or
4 enforcing any suit or proceeding", (b) "using self-help or executing or issuing or
5 causing the execution or issuance of any court attachment, subpoena, replevin,
6 execution or other process for the purpose of impounding or taking possession of or
7 enforcing a lien upon any property or property interests" of the CWM or Copeland
8 Realty; and (c) "doing any act or thing whatsoever to interfere with taking control,
9 possession or management by the permanent receiver appointed hereunder of the
10 property and assets" of CWM and Copeland Realty, "or in any way to interfere with
11 or harass the permanent receiver or his or her attorneys, accountants, employees or
12 agents or to interfere in any manner with the discharge of the permanent receiver's
13 duties and responsibilities hereunder." Judgment, Part VIII.

14 **III. THE RECEIVER'S ACTIVITIES TO DATE**

15 Since his appointment on October 25, 2011, the Receiver has secured the
16 offices of the Receivership Entities, met with and interviewed their employees,
17 caused himself to be added as the sole authorized signatory for their bank and
18 brokerage accounts, gathered and reviewed their financial statements, and caused all
19 data on their computer servers and hard drives to be imaged and preserved. As
20 required under 28 U.S.C. § 754, the Receiver has caused the Complaint and
21 Judgment to be filed in the six judicial districts (not including this district) in which
22 the Receivership Entities own property. The Receiver has also caused the
23 Complaint and Judgment to be recorded in the real property records for each county
24 in which the Receivership Entities own Property. The Receivership Entities' mail
25 has been forwarded to the Receiver's office.

26 The Receivership Entities shared a website with Copeland Accountancy, an
27 entity not part of the receivership. The Receiver has instructed Copeland and
28 Copeland Accountancy to remove all references to the Receivership Entities from

1 the website. In addition, the Receiver established a new page on his website
2 dedicated to this receivership: www.ethreadvisors.com (go to the tab labeled
3 "Cases" and click on SEC v. Copeland Wealth Management). As discussed below,
4 the Receiver has mailed a letter to all limited partners and CWM clients with
5 information about the case and directing them to his website for future updates.

6 **A. Elevage Sale Transaction**

7 Prior to filing of the Commission's Complaint, CWM entered into a
8 transaction to sell its financial advisory business to Elevage Partners, LLC, an
9 investment adviser registered with the State of California ("Elevage"). The assets to
10 be transferred to Elevage are investment management agreements ("IMAs") with
11 clients of CWM, under which CWM manages client accounts maintained at Charles
12 Schwab and TD Ameritrade, and receives a quarterly commission.

13 Upon his appointment, the Receiver reviewed and analyzed the terms of the
14 Asset Purchase Agreement ("Agreement") with Elevage. The Receiver determined
15 that certain terms of the Agreement needed to be amended. The parties executed a
16 First Amendment to the Agreement. The Commission then raised a concern with
17 the Agreement, and the parties executed a Second Amendment to address that
18 concern. On November 7, 2011, the Receiver applied for approval of the
19 Agreement, as amended, on an ex parte basis. Docket No. 4. On November 18,
20 2011, the Court entered the requested order and the sale closed. Docket No. 10.

21 **B. Palms Springs Condominium**

22 On April 19, 2011, Copeland Realty acquired residential real property located
23 at 222 N. Calle El Segundo #528, Palm Springs, California 92262 (the "Property").
24 Starting on September 1, 2011, Copeland Realty marketed the Property with the
25 assistance of a broker. On October 5, 2011, Copeland Realty signed a purchase
26 agreement with Glenn R. Ducat. The purchase price is \$75,000.

27 Upon his appointment, the Receiver discussed the proposed sale with the
28 broker and reviewed the purchase agreement. The Receiver determined that an

1 addendum to the purchase agreement was necessary to, among other things, make
2 the sale subject to Court approval. The addendum was signed on November 17,
3 2011. The Receiver filed his motion for approval of the sale on November 18, 2011.
4 The sale motion is set to be heard concurrently with this Report on December 19,
5 2011.

6 **C. Pending Litigation**

7 Certain of the Receivership Entities, including CWM, Copeland Realty,
8 Copeland Properties Six, L.P., Copeland Properties Twelve, L.P. and Copeland
9 Private Equity Two, L.P., are parties in one or more pending lawsuits. The Receiver
10 has given notice of the Judgment to the other parties in these actions, and has begun
11 the process of gathering and reviewing files, and evaluating the claims and defenses
12 asserted in the cases.

13 **1. Copeland Properties 18 Bankruptcy**

14 Copeland Properties 18, L.P. ("CP 18") owns a commercial property located
15 in Greensboro, North Carolina. The property is leased by Garden Ridge, L.P. The
16 monthly rent under the lease is approximately \$79,000.

17 In November 2010, the loan on the property matured and CP 18 was unable to
18 refinance or pay off the loan. The principal balance of the loan is approximately
19 \$5.7 million. The monthly interest on the loan is approximately \$38,000. Due to
20 the default, the lender exercised its assignment of rents under the loan documents
21 and initiated foreclosure proceedings.

22 CP 18 listed the property for sale on LoopNet, the leading internet database of
23 commercial property listings. In June 2011, CP 18 and a potential buyer entered
24 into a Purchase and Sale Agreement ("PSA") for the property. The original
25 purchase price under the PSA was \$9.5 million. The PSA was subsequently
26 amended four times and the purchase price reduced to \$9 million.

27 CP 18 was unable to complete the sale transaction prior to foreclosure by the
28 lender. Under North Carolina law, there is a 10-day upset bid period after a

1 foreclosure sale occurs. Title to the property does not change hands until the upset
2 bid period has run. During the upset bid period, on September 23, 2011, CP 18 filed
3 a petition under chapter 11 of the Bankruptcy Code in the Middle District of North
4 Carolina. The goal of the bankruptcy case was to allow the sale transaction to be
5 completed, thereby preserving the equity in the property.

6 CP 18 engaged the Greensboro, North Carolina law firm of Higgins Benjamin
7 Eagles & Adams, PLLC ("Higgins Benjamin") to represent it in the bankruptcy
8 case. CP 18's employment of Higgins Benjamin was approved by the bankruptcy
9 court. CP 18 and the lender entered into an interim cash collateral stipulation under
10 which it was agreed that the rents from Garden Ridge would be paid directly to
11 CP 18, and CP 18 would timely pay the monthly interest accruing on the loan. The
12 interim cash collateral stipulation was approved by the bankruptcy court. CP 18
13 moved the bankruptcy court for approval of the PSA, as amended, and also
14 requested an order assuming and assigning the lease with Garden Ridge to the
15 buyer. These motions were pending when the Receiver was appointed.

16 Also pending was a Reinstatement and Fifth Amendment to the PSA
17 proposed by the buyer ("Fifth Amendment"). The PSA had terminated on
18 October 21, 2011, when the inspection period expired. The proposed Fifth
19 Amendment reinstated the PSA, but further reduced the purchase price to
20 \$8.9 million.

21 The Receiver promptly advised the bankruptcy court, Higgins Benjamin, the
22 buyer, the lender, the North Carolina Bankruptcy Administrator's Office
23 ("NCBAO"), and all CP 18 creditors of his appointment. The Receiver discussed
24 the history and status of the case and the contemplated sale with Higgins Benjamin
25 and the NCBAO. The Receiver had several calls with the NCBAO about its stated
26 intention to seek appointment of a chapter 11 trustee for CP 18. The Receiver
27 explained that appointment of a chapter 11 trustee would be inconsistent with this
28 Court's order putting the Receiver in control of CP 18, and it would result in an

1 additional layer of administrative expense in the form of chapter 11 trustee fees and
2 costs. To date, the NCBAO has not sought appointment of a chapter 11 trustee.

3 The Receiver obtained an appraisal of the property from an appraiser located
4 in Greensboro. The appraiser estimates the value of the property as \$9.1 million.
5 Although the \$8.9 million price under the proposed Fifth Amendment is lower than
6 the appraiser's estimate, the Receiver determined that the expenses of starting the
7 sale process over with a new buyer and a new broker would significantly reduce the
8 benefit of a \$9.1 million price, if such a price could be obtained. Moreover, the
9 property had been exposed to the market for some time via the listing on LoopNet.
10 Accordingly, the Receiver decided to go forward at \$8.9 million, but revised certain
11 terms of the proposed Fifth Amendment, including that the PSA is subject to
12 approval by this Court. The buyer responded that it would accept the Receiver's
13 changes, but due to the additional delay and costs it had incurred, as well as a
14 requirement from its lender that additional cash be put down, it needed to further
15 reduce the purchase price to \$8.6 million. The Receiver did not accept the further
16 price reduction. The Receiver and the buyer continue to negotiate, but the Receiver
17 anticipates that either an agreement will be reached or negotiations will terminate in
18 the next few days. If an agreement is reached, the Receiver will promptly seek
19 Court approval of the sale terms and authority to move forward with the motions
20 pending in the bankruptcy court.

21 **D. Communications with CWM clients, Limited Partners, Tenants**
22 **and Creditors**

23 On November 3, 2011, the Receiver sent a letter to CWM clients advising
24 them (a) of his appointment, (b) of his intention to seek Court approval of the
25 Elevage sale transaction, (c) that he would instruct Charles Schwab and TD
26 Ameritrade to make transactions on their behalf, but would not be providing
27 investment advice, and (d) that at their direction, he would facilitate the transfer of
28 their investment accounts to a different registered investment adviser of their

1 choosing. On November 8, 2011, the Receiver sent a letter to the limited partners of
2 the Limited Partnerships advising them (a) of his appointment as permanent
3 receiver, and (b) that no distributions would be made until so directed by the Court.
4 Both letters direct readers to the Receiver's website for further updates, and are
5 posted on the Receiver's website. The Receiver has given notice of his appointment
6 to lenders, tenants and vendors of the Real Estate Funds' commercial properties, and
7 to other creditors and interested parties as they are identified.

8 **IV. CASH ACTIVITY IN RECEIVERSHIP ACCOUNTS**

9 Attached as Exhibit A is a summary of the cash activity in receivership bank
10 accounts from the Receiver's appointment through November 18, 2011. The total
11 cash balance across all accounts as of November 18, 2011 was \$719,320.43.

12 **V. ARGUMENT**

13 "The power of a district court to impose a receivership or grant other forms of
14 ancillary relief does not in the first instance depend on a statutory grant of power
15 from the securities laws. Rather, the authority derives from the inherent power of a
16 court of equity to fashion effective relief." *SEC v. Wencke*, 622 F.2d 1363, 1369
17 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly
18 and efficient administration of the estate by the district court for the benefit of
19 creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir 1986). As the appointment
20 of a receiver is authorized by the broad equitable powers of the court, any
21 distribution of assets must also be done equitably and fairly. *See S.E.C. v. Elliot*,
22 953 F.2d 1560, 1569 (11th Cir. 1992).

23 District courts have the broad power of a court of equity to determine the
24 appropriate action in the administration and supervision of an equity receivership.
25 *See SEC v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005). The Ninth
26 Circuit explained:

27 A district court's power to supervise an equity receivership
28 and to determine the appropriate action to be taken in the
administration of the receivership is extremely broad. The
district court has broad powers and wide discretion to

1 determine the appropriate relief in an equity receivership.
2 The basis for this broad deference to the district court's
3 supervisory role in equity receiverships arises out of the
4 fact that most receiverships involve multiple parties and
5 complex transactions. A district court's decision
6 concerning the supervision of an equitable receivership is
7 reviewed for abuse of discretion.

8 *Id.* (citations omitted); *see also Commodities Futures Trading Comm'n. v. Topworth*
9 *Int'l, Ltd.*, 205 F.3d 1107, 1115 (9th Cir. 1999) ("This court affords 'broad deference'
10 to the court's supervisory role, and 'we generally uphold reasonable procedures
11 instituted by the district court that serve th[e] purpose' of orderly and efficient
12 administration of the receivership for the benefit of creditors."). Accordingly, the
13 Court has broad equitable powers and discretion in the administration of the
14 receivership estate.

15 **A. The Limited Partnerships**

16 The Judgment appoints the Receiver as permanent receiver for CWM,
17 Copeland Realty, and their subsidiaries and affiliates. Black's Law Dictionary
18 defines "affiliate" as "a corporation that is related to another corporation by
19 shareholdings or other means of control."

20 The Limited Partnerships were established by CWM and Copeland Realty as
21 investment vehicles for the clients of CWM and Copeland Accountancy. CWM has
22 an ownership interest in and manages the two Private Equity Funds as their general
23 partner. Copeland Realty has an ownership interest in and manages each of the
24 Fixed Income and Real Estate Funds as their general partner. The Limited
25 Partnerships have no employees, and were run by same people out of the same
26 offices as CWM and Copeland Realty. Accordingly, the Limited Partnerships are
27 sufficiently closely related to CWM and Copeland Realty to be considered affiliates.

28 Moreover, many millions of dollars were transferred between and among
CWM, Copeland Realty and the Limited Partnerships as investments and loans.
When completed, the Receiver's accounting will reflect these transfers in detail. For
now, attached hereto as Exhibit B is a summary reflecting the intercompany/related

1 party loans and investments for each entity as reflected on the balance sheets
2 maintained by the Receivership Entities and Copeland Accountancy. As noted
3 above, these statements reflect that, in the aggregate, CWM, Copeland Realty and
4 the Limited Partnerships owe one another approximately \$16.4 million on account
5 of intercompany loans, have invested approximately \$3.1 million in one another,
6 and are owed approximately \$6.5 million on account of loans to limited partners,
7 CWM clients, Charles Copeland and other related parties. .

8 Excluding the Limited Partnerships from the receivership would undermine
9 the fundamental purpose of equity receivership and the Commission's primary goal
10 in seeking the Receiver's appointment – the preservation, protection, and
11 distribution of assets to investors and creditors on an equitable basis. This
12 fundamental purpose is best served through one collective proceeding in which the
13 Court has jurisdiction and control over all assets, can determine which investors and
14 creditors have valid claims, and can further determine the most equitable manner of
15 distributing assets among them.

16 The likely effect of excluding the Limited Partnerships would be that the
17 Limited Partnerships that have valuable assets would, by vote of the limited
18 partners, terminate Copeland Realty as the general partner, thereby removing the
19 Limited Partnership from this proceeding and the Court's jurisdiction, and forcing
20 the Receiver to file separate actions to recover amounts the Limited Partnership
21 owes to CWM, Copeland Realty and other Limited Partnerships. The Receiver
22 would have to seek injunctive relief preventing the Limiting Partnerships from
23 making distributions to limited partners until such time as the Receiver completes
24 his accounting and determines the amounts owed to CWM, Copeland Realty and
25 other Limited Partnerships. This multiplicity of legal proceedings would consume
26 limited receivership estate resources, exacerbating the losses of investors and
27 creditors. It is also possible that distributions to limited partners might be made
28 before the Receiver could obtain orders enjoining such distributions. This

1 underscores the importance of clarifying the inclusion of the Limited Partnerships in
2 the receivership, and keeping all assets under the Court's jurisdiction in one
3 collective proceeding.

4 Even if the Limited Partnerships did not terminate Copeland Realty as general
5 partner and remove themselves from this proceeding, the Receiver would be
6 required to obtain a majority of limited partner votes before Limited Partnership
7 assets could be sold. The interests of limited partners may well be at odds with
8 those of other Receivership Entities to which the Limited Partnerships owe money.
9 Moreover, many of the limited partners have interests in more than one Limited
10 Partnership. The limited partners of a particular Limited Partnership may disagree
11 amongst themselves on a proposed sale, depending on the effect the relevant
12 transaction might have on their other interests (i.e. whether the sale would generate
13 enough cash to pay off a loan from another Limited Partnership). Because there are
14 limited assets to distribute in this case, these types of conflicts are likely to arise,
15 complicating the administration of the case, and consuming limited receivership
16 estate resources.

17 The Receiver has a duty to maximize the value of receivership estate assets.
18 He will submit proposed sales to the Court for approval, limited partners will
19 receive notice and will have the opportunity to be heard, and the Court can decide
20 whether to approve the sale. This is the most equitable, orderly and efficient manner
21 to handle sales of assets.

22 It should be noted that the Receiver simply seeks a clarification of the
23 Judgment in the form of confirmation that the Limited Partnerships are included in
24 the receivership. The Receiver is not asking the Court to determine, nor would it be
25 appropriate to determine at this stage, whether assets of the Limited Partnerships
26 should be distributed in accordance with the terms of each Limited Partnership
27 Agreement or in some other manner. This determination will be based in large part
28 on the Receiver's accounting. Once the accounting is completed, the Receiver will

1 file it with the Court and propose a plan for distributing assets to investors and
2 creditors. All investors and creditors will receive notice and will have the
3 opportunity to be heard at that time. The relief requested herein simply preserves
4 the assets under the Court's jurisdiction such that the Court can determine how best
5 to distribute them later in the proceeding.

6 **B. Authority to Enter Into Leasing Transactions and Engage Brokers**

7 As a means of minimizing administrative expenses, and in order to efficiently
8 manage the commercial properties owned by the Real Estate Funds, the Receiver
9 recommends and requests that he be authorized to execute, amend and terminate
10 leases pertaining to the properties, and to engage real estate brokers and appraisers
11 to assist in efforts to market and sell the properties. All sales and broker
12 commissions will remain subject to Court approval. When the Receiver agrees on
13 the terms of a sale with a buyer, the Receiver will file a motion for approval of the
14 sale, and will simultaneously request approval of the relevant broker's commission.
15 The Receiver requests authority to pay appraisers the relatively small fees charged
16 for an appraisal (generally between \$2,500 and \$7,500). The Receiver will use his
17 experience in real estate transactions and business judgment in selecting qualified
18 appraisers with reasonable rates.

19 The Receiver seeks this relief because he expects leasing transactions and
20 broker/appraiser engagements to occur frequently during his management of the
21 eight commercial properties. Seeking Court approval in each instance would
22 involve considerable administrative expense. Of course, if the Court prefers that the
23 Receiver seek approval in each instance, he will do so.

24 **C. Schedule of Known Creditors under Local Rule 66-5**

25 Local Rule 66-5 requires that a temporary receiver file a schedule of known
26 creditors, including their names, addresses and claim amounts within 5 days after
27 appointment of a permanent receiver. It is not clear if this rule applies here, where
28 the Receiver was appointed on a permanent basis in the first instance. To the extent

1 the rule applies, the Receiver requests an additional 60 days to assemble a
2 comprehensive list of investors and creditors who potentially have claims against
3 the receivership estate. In order to preserve the privacy of individual investors and
4 creditors, and consistent with Local Rule 79-5.4, the Receiver requests that he not be
5 required to list their home addresses on the schedule when it is filed.

6 **VI. RECEIVER'S RECOMMENDATIONS**

7 Based on his investigation to date, the Receiver recommends the following
8 with respect to the receivership:

9 1) That the receivership continue pursuant to the Judgment and further orders
10 of the Court;

11 2) That, in order to maximize the recovery for the receivership estate from
12 the eight commercial properties, the Receiver (a) evaluate the properties, including
13 their value, revenue from tenants, loan obligations and operating costs, (b) manage
14 the properties, (c) at the appropriate time, market them for sale, and (d) enter into
15 sale transactions subject to approval by the Court;

16 3) That, as necessary and appropriate, the Receiver conduct a forensic
17 accounting pursuant to Part V.E. of the Judgment;

18 4) That the Receiver, with the assistance of counsel, investigate and pursue
19 collection of loans and other causes of action against third parties who borrowed
20 funds or otherwise owe money to the Receivership Entities;

21 5) That, once the schedule of investors and creditors has been filed pursuant
22 to Local Rule 66-5, the Receiver formulate and seek Court approval of procedures
23 for the administration of claims, including (a) providing notice to investors and
24 creditors, (b) receiving, reviewing, analyzing, and where appropriate, objecting to
25 investor and creditor claims, and (c) resolution of claim disputes by the Court; and

26 6) That the Receiver file reports with the Court approximately every 60 days
27 to keep the Court, the Commission and interested parties apprised of his activities.
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