



and the “Holdback Account.”

Excluding earned interest and transfers between accounts, the Receiver made the following deposits into these accounts during the fourth quarter of 2016:

- \$439,315.51 into the Affiliate Payments Account from settlements with various third parties who were holding Receivership Assets or against whom the Receiver asserted claims.
- \$500,000.00 into the Affiliate Payments Account from the liquidation of real property located in Napa, California, that was forfeited by Preferred Merchants CEO Jaymes Meyer.

As of December 31, 2016, the Receivership Estate held approximately \$89 million in the Affiliate Payments Account and approximately \$1.5 million in the Holdback Account.

**b. Additional Asset Recovery**

During the fourth quarter, the Receiver Team worked with real estate professionals regarding the sale of a house in Napa, California purchased by Meyer with Receivership Assets. The sale of the Napa property closed during the fourth quarter of 2016, which resulted in a payment of \$500,000 to the Receivership.

Aside from the above activity, the Receiver Team’s additional asset recovery efforts focused on the recovery of the outstanding assets from the Payza/PaymentWorld processing relationship as described below.

**c. Foreign Accounts**

The Receiver continues to engage in litigation and additional discovery in connection with his February 11, 2016 Motion seeking to recover \$13,174,015.48 in outstanding Receivership Assets from Payza, PaymentWorld, and Victoriabank, and their affiliates, or alternatively to hold these entities in contempt for violating the Court’s Freeze Order (“Contempt

Motion”). During the fourth quarter, the Receiver obtained additional data regarding the flow of funds among Payza, PaymentWorld, and Victoriabank.

During the third quarter of 2016, the Receiver had issued subpoenas to BNY Mellon, which holds Victoriabank’s correspondent bank account, and Deutsche Bank Trust Company, which was involved in certain wire transfers as part of the Payza/PaymentWorld processing relationship. These entities produced responsive records to the Receiver during the fourth quarter of 2016, and the Receiver team has begun analyzing these records in preparation for briefing the jurisdictional issues before the Court.

Considering the timing of additional discovery, the Court ordered an extended briefing schedule regarding the jurisdictional challenge of Victoriabank. As set forth in the Order, the Receivers supplemental brief in opposition to Victoriabank’s Motion to Dismiss is due on March 24, 2017; Victoriabank’s response is due on April 7, 2017; and the hearing will be conducted during the week of May 1, 2017 if the Court has availability during that week.

In addition, as explained in the previous status report, the Receiver continues to monitor Payza’s lawsuit against PaymentWorld, PaymentWorld CEO Roman Balanko, and related affiliates (collectively “PaymentWorld Defendants”), currently pending in the Superior Court of the State of California, County of Los Angeles. During the third quarter, the California court had granted Roman Balanko’s Motion to Compel Arbitration, staying the Receiver’s claims to the outstanding Receivership Assets pending arbitration, and holding that, if Payza obtains an award against the PaymentWorld Defendants, the Court would then conduct further proceedings on the Receiver’s claims and allocate the award between Payza and the Receiver. The arbitration process is in its early stages, and the Receiver cannot estimate when future proceedings might take place regarding his interest in any award obtained by Payza in the arbitration.

## **2. Analyzing the Operations of the Receivership Entity**

### **a. Investigating the Receivership Defendant's Operations**

During the fourth quarter, the Receiver's investigation and analysis of RVG's operations was limited to analyzing correspondence and transactions between RVG and its third-party payment processors. This analysis was performed for: (1) the pursuit of Receivership Assets from financial institutions including Victoriabank, Payza, and Payment World; and (2) support for the Receiver's fraudulent transfer lawsuits and settlements.

## **3. Communicating with Affiliates and Creditors**

The Receiver communicated to Affiliates via the Receivership Website on four occasions in the fourth quarter of 2017. Each of these postings was directed to Affiliates who had submitted timely claims, but had failed to submit an OFAC Certification and the required release. In addition to the appeals the Receiver made on the Receivership Website, the Receiver also used direct email to contact the almost 40,000 Affiliates who had submitted timely claims, but had failed to submit an OFAC certification and the required release.

The Receiver Team also continued its individual communications with Affiliates via email in the last quarter of 2016. These communications addressed inquiries about asserted claims, distributions on claims (including wire transfers), the allowance of claims, and the submission of OFAC and the required release. This effort met with some success, as approximately 6,000 additional claimants provided the required documentation to have their claims allowed. Approximately 34,000 claimants failed to provide the OFAC certification and release by December 31, 2016 Court-ordered deadline, and all such remaining claims have been disallowed per Order of the Court (Doc. No. 564).

#### **4. Issues Concerning Federal Taxes**

The Receiver has no information to report on issues concerning federal taxes during the fourth quarter of 2016.

#### **5. Litigation in the SEC Enforcement Action<sup>1</sup>**

The Receiver Team engaged in extensive litigation-related activity in the dispute with Payza, PaymentWorld, and Victoriabank, as discussed above. This litigation was filed as a contempt motion in the SEC Action and is therefore referenced in this section. The Receiver's other main litigation activity occurred in pursuing claims against net winners and RVG's third-party advisors, which are discussed later in this report.

##### **B. The Receiver's Fund Accounting**

The Receiver's Standardized Fund Accounting Report ("SFAR") is attached hereto as Exhibit A.

##### **C. The Receiver's Receipts and Disbursements**

The Receiver's Schedule of Receipts and Disbursements ("Schedule") from October 1, 2016 through December 31, 2016, is attached hereto as Exhibit B. The Schedule sets forth the following receipts and disbursements:

1. Received funds of \$439,315.51 from third-party litigation settlements;<sup>2</sup>
2. Received funds totaling \$500,000 from personal asset liquidation;
3. Received income from other sources, such as interest income and return of pre-paid funds, totaling \$17,999.52;

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<sup>1</sup> The Receiver's efforts related to the recovery of fraudulently transferred funds and other damages incurred by RVG are discussed later in this Report.

<sup>2</sup> Since the inception of the Receivership and as of the end of the fourth quarter 2016, the Receiver has collected a total of \$23.76 million in litigation-related settlements with affiliates, vendors and insiders. The Receiver has agreed to approximately \$3.93 million in settlements with net winner affiliates, much of which has been collected, and the remainder of which is due to be paid in the coming months.

4. Disbursed funds from the Receiver's accounts of \$1,770,523.88 to affiliate-investors; and,
5. Disbursed additional funds from the Receiver's accounts of \$1,162,603.30. These funds were disbursed for: bank fees related to management of the Receiver's accounts; the fees previously approved for payment of FTI and MW; RVG website and database hosting; other legal services; utilities; distribution plan implementation expenses; and Court ordered disbursements to Net Winner Class Counsel and Expert.<sup>3</sup>

Between October 1, 2016 and December 31, 2016, the Receivership Estate deposited \$957,315.03 and disbursed \$2,933,127.18. The Receiver has marshaled total assets of approximately \$362.7 million during the period between August 17, 2012 and December 31, 2016, while disbursing approximately \$272.8 million during the same period.

**D. Description of All Known Non-Cash Receivership Property**

In the fourth quarter, the Receiver team worked to maintain a residential home in Clarksville, Arkansas through the engagement of local contractors. This property was surrendered to the Receiver as part of a settlement with Defendant Dawn Wright-Oliveras. The Receiver's local counsel in Arkansas continues work to remove a lien from the property's title that was filed by a general contractor who had worked on the home. In the interim, the Receiver has worked to prepare the property for sale.

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<sup>3</sup> See attached Exhibit B for further detail regarding disbursements and receipts.

**E. Description of Claims Held by the Receivership Estate**

**1. Identifying and Pursuing Fraudulently Transferred Funds Held by Net-Winner Affiliate-Investors**

**a. U.S. Net Winner Lawsuit**

During the fourth quarter, the Court granted the Receiver's Motion for Summary Judgment for the full sum requested against the named defendants in the lawsuit, and against the net winner class of more than 9,000 net winners regarding their liability. The Receiver has conferred with counsel for the net winner class and presented to the Court a proposed plan that will provide notice to the net winner class and a process to determine the amount of judgment owed to the Receivership by each of the class members. This process is expected to take several months, but the entry of summary judgment is a significant event for the receivership and claimants.<sup>4</sup>

In addition, the Receiver Team worked with collections counsel to pursue collection efforts regarding the named net winners against whom the Receiver had previously obtained default judgment. Further, the Receiver's counsel engaged in discussions with third parties regarding the collection and/or sale of potential future judgments against U.S. net winners, including the net winner class.

**b. Claims Against Foreign Net Winners**

The Receiver continued litigation against the remaining defendants in the U.S. lawsuits against Canadian, Israeli, British Virgin Islander, Norwegian, French, and Swedish defendants. The majority of these actions were stayed pending the Court's resolution of the Receiver's summary judgment motion in the U.S. net winner lawsuit. Since summary judgment was

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<sup>4</sup> The court entered an Order in January granting the Receiver's motion regarding this judgment determination process.

decided in that action, the Receiver team has prepared and filed motions for summary judgment in many of these lawsuits, with additional summary judgment motions being prepared in others.

In addition, the Receiver Team continued to pursue fraudulently transferred assets from foreign net winners against whom the Receiver has already obtained judgments.

**2. Investigating Claims against the Receivership Defendant's Third-Party Advisors and Others**

**a. *Bell v. Peak USA, LLC, et al. – need update from Irving***

In the lawsuit against Gary Bessoni and the entities he used to provide “leads” to RVG and Affiliates, the Receiver engaged in extended discussions and negotiations regarding settlement of the claims against defendant Bessoni and his entities and finalized a settlement with these defendants in the fourth quarter. The lawsuit is still in the discovery phase with respect to defendant Sam Adlerman, who received commissions on the leads the Bessoni defendants provided to RVG.

**b. *Bell v. Kaplan***

In the lawsuit against attorney Howard Kaplan, the Receiver engaged in early discovery with the Defendant, and the Court issued a Scheduling Order setting forth the dates and parameters of discovery for this case.

**c. *Bell v. USHBB et al.***

In the lawsuit against USHBB and its principals, the matter was stayed until the Court's Order on summary judgment in the U.S. net winner lawsuit. The Receiver is evaluating the next steps in proceeding with this case.

**F. Potential Creditors of the Receivership Estate**

There are no non-Affiliate pre-Receivership creditors of the Receivership Estate with a reasonable likelihood of collecting on any claims they assert against the Estate.

**G. Status of Creditor Claims Proceedings, After Such Proceedings Have Been Commenced**

On October 28, 2016, the Receiver issued checks to approximately 1,398 Affiliate claimants. The aggregate amount of this distribution was \$1,898,971.72. This distribution was calculated using the rising tide method that was previously approved by the Court and set the rising tide amount as 60% of the Affiliate's allowed claim amount. On April 27, 2016, the Court approved a motion to pay certain foreign Affiliates by wire transfer. As part of the October 28 distribution, wire transfers were sent to 11 foreign Affiliates that were eligible to receive a distribution, provided the necessary information, and elected to receive their distribution via wire. The amount of the wire distribution was \$12,170.

Approximately 34,000 Affiliates with allowable claims failed to provide an OFAC and Release by December 31, 2016, despite numerous attempts by the Receiver to contact these Affiliates. Pursuant to the Court's prior Order, those Affiliates have forfeited their claims.<sup>5</sup>

**III. CONCLUSION**

At this time, the Receiver recommends the continuation of the Receivership for the following reasons:

1. To continue the Receiver's efforts to investigate and marshal assets of the Receivership Estate;
2. To continue the Receiver's efforts to implement the claims and distribution processes in order to distribute proceeds to injured claimants;
3. To continue the Receiver's efforts to liquidate various assets of the Receivership Estate; and

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<sup>5</sup> In March, we will make a third interim partial distribution to claimants holding allowed claims, bringing distributions to those claimants to 75% of their loss amounts.

4. To carry out any other legal or appointed duties of the Receiver identified in the Receiver Orders or as the Court deems necessary.

Dated: February 14, 2017

By: /s/ Kenneth D. Bell  
Kenneth D. Bell, Esq., Receiver

and

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