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8 THOMAS C. HEBRANK

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 APPLICATION TO
EMPLOY ALLEN MATKINS LECK
GAMBLE MALLORY & NATSIS,
LLP AS HIS GENERAL COUNSEL**

Ctrm: 8
Judge: Hon. Manuel L. Real

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 applies for an order approving his employment of Allen Matkins Leck Gamble
6 Mallory & Natsis, LLP ("Allen Matkins") as his general counsel.

7 **I. INTRODUCTION**

8 The Judgment appointing the Receiver, among other things, authorizes,
9 empowers and directs him to:

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

15 . . .

16 (g) "to employ attorneys, accountants and others to investigate and,
17 where appropriate, to institute, pursue, and prosecute all claims and
18 causes of action"

19 Docket No. 3, Judgment, Part V. Although the Judgment authorizes the Receiver to
20 employ counsel, the Receiver believes it is prudent to seek this Court's approval for
21 his employment of Allen Matkins as his counsel and the initial budget for legal
22 services. The Receiver has selected Allen Matkins due to its extensive experience in
23 equity receiverships and competitive rates, including a 10% discount on fees the
24 firm has agreed to provide in this case. If the Court has concerns regarding the
25 Receiver's choice of counsel, the hourly rates of Allen Matkins' attorneys, or other
26 aspects of Allen Matkins' engagement, the Receiver believes it is best to address
27 those concerns as soon as possible.

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II. PROCEDURAL BACKGROUND

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

Among other things, the Complaint alleges that Copeland, CWM and Copeland Realty committed fraud (a) in the offer and sale of limited partnership interests (investment contracts) in 23 limited partnerships managed by CWM and Copeland Realty (the Private Equity Funds, Fixed Income Funds and Real Estate Funds), and (b) while acting as an investment advisor. Specifically, the Complaint alleges that, in violation of the Fixed Income Fund limited partnership agreements, more than \$18.6 million was loaned from the Fixed Income Funds to (1) Copeland Realty, (2) Real Estate Funds managed by Copeland Realty, (3) accounting clients of related non-party The Copeland Group, a Consulting and Accountancy Corporation ("Copeland Accountancy"), (4) companies in which the Private Equity Funds held interests, (5) other Fixed Income Funds, and (6) Copeland family members. Complaint, ¶¶ 17-19. The Complaint also alleges that the "loans from the Fixed Income Funds to the Real Estate Funds allowed the Real Estate Funds to pay their operational expenses as well as continue their distribution payments, essentially a Ponzi-like scheme in which new investor funds were paid to existing clients." Complaint, ¶ 20.

The Commission further alleges that Copeland misrepresented to clients that the Fixed Income Funds were "guaranteed" and that, in violation of the Real Estate

1 Fund limited partnership agreements, Copeland Realty (a) caused the Real Estate
2 Funds to loan approximately \$1.8 million to other Real Estate Funds, and
3 approximately \$500,000 to clients of Copeland Accountancy and CWM,
4 (b) transferred approximately \$5.7 million from the Real Estate Funds to CWM,
5 which was used to trade put options, and (c) paid itself approximately \$2.4 million
6 in commissions and other compensation in connection with the purchase and sale of
7 real estate. Complaint, ¶¶ 21-25.

8 The Consent of Defendants Copeland, CWM and Copeland Realty neither
9 admits or denies the allegations in the Complaint, but consents to entry of the
10 Judgment, leaving the issue of the amount of disgorgement and civil penalties to be
11 determined at a later date upon motion by the Commission. The Judgment, among
12 other things, authorizes, empowers and directs the Receiver to:

- 13 (a) "take custody, control, possession and charge... of all funds,
14 assets" of the Receivership Entities;
15 (b) "to have control of, and to be add as the sole authorized signatory
16 for, all accounts" of the Receivership Entities;
17 (c) "to conduct such investigation and discovery as may be necessary
18 to locate, account for and recover all of the assets of or managed by"
19 the Receivership Entities, "and to engage and employ attorneys,
20 accountants and other persons to assist in such investigation and
21 discovery";
22 (d) "to take such action as is necessary and appropriate to preserve
23 and... prevent the dissipation, concealment or disposition of any
24 assets of or managed by" the Receivership Entities;
25 (e) "to make an accounting, as soon as practicable, to this Court and
26 the Commission";
27
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- 1 (f) "to make such payments and disbursements from the funds and
- 2 assets... as may be necessary and advisable in discharging his or her
- 3 duties as permanent receiver";
- 4 (g) "to employ attorneys, accountants and others to investigate and,
- 5 where appropriate, to institute, pursue, and prosecute all claims and
- 6 causes of action";
- 7 (h) "to have access to, monitor, and redirect all mail";
- 8 (i) "to operate and control the content of information posted on any
- 9 Internet web site maintained" by the Receivership Entities; and
- 10 (j) "to exercise all lawful powers" of the Receivership Entities "and
- 11 their officers, directors, employees".

12 Judgment, Part V.

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

25 **III. THE RECEIVER'S ENGAGEMENT OF ALLEN MATKINS**

26 Receivers in equity receiverships are charged with the following general
27 duties and tasks:
28

1 (a) To secure, take possession of, preserve and protect the assets of the
2 Receivership Entities, including to prevent the dissipating of such assets;

3 (b) To investigate the financial activities of the Receivership Entities, perform
4 a forensic accounting, and present such accounting to the Court, the Commission,
5 and interested parties;

6 (c) To investigate, and where appropriate, pursue claims and causes of action
7 against third parties;

8 (d) To receive, review and evaluate claims asserted against the receivership
9 estate;

10 (e) To formulate and propose to the Court a plan of distributing receivership
11 estate assets to those with allowed claims on an equitable basis; and

12 (f) To report to the Court, the Commission and interested parties regarding the
13 status of the Receiver's activities and the receivership estate.

14 The receivership estate includes (a) CWM, a financial advisory business with
15 approximately \$124 million in client funds under its management, (b) two Private
16 Equity Funds that CWM manages, (c) Copeland Realty, a real estate investment and
17 management business that, among other things, manages the three Fixed Income
18 Funds and eighteen Real Estate Funds, (d) three Fixed Income Funds, and
19 (e) eighteen Real Estate Funds. The Real Estate Funds own eight commercial
20 properties which all together were purchased for approximately \$70 million.

21 The Complaint alleges that the Receivership Entities raised over \$60 million
22 from the limited partners of the Private Equity, Fixed Income and Real Estate
23 Funds, and that the Fixed Income Funds made more than \$4.7 million in loans to
24 individuals and entities not part of the receivership. The financial statements for the
25 Receivership Entities reflect that CWM, Copeland Realty, the Fixed Income Funds,
26 the Private Equity Funds and the Real Estate Funds (collectively, the "Limited
27 Partnerships"), in the aggregate, owe one another approximately \$16.4 million on
28 account of intercompany loans, have invested approximately \$3.1 million in one

1 another, and are owed approximately \$6.5 million on account of loans to limited
2 partners, CWM clients, Charles Copeland and other related parties. .

3 The Receiver needs well-qualified legal counsel to assist him in, among other
4 things, (a) preserving, managing and selling assets, including but not limited to the
5 sale of CWM's financial advisory business to Elevage and the commercial real
6 properties owned or controlled by the Defendants and their affiliates; (e.g. drafting
7 purchase and sale documents), (b) addressing legal issues related to managing the
8 properties (e.g. drafting leases for the commercial properties), (c) providing legal
9 advice related to the Receiver's investigation of the Receivership Entities' financial
10 activity and potential causes of action for disgorgement against third parties,
11 including issuing subpoenas, and evaluating the strengths and weaknesses of
12 potential claims, (d) pursuing claims and causes of action, including, where
13 appropriate, through litigation, (e) providing legal advice related to investor and
14 creditor claims against the receivership estate; and (f) formulating and presenting to
15 the Court a plan for distributing receivership estate assets.

16 As addressed below, Allen Matkins is particularly well suited to this case
17 given its strengths in federal equity receiverships and real estate.

18 **A. Allen Matkins' Experience and Expertise in Equity Receiverships**

19 The Receiver selected Allen Matkins due to its substantial experience and
20 expertise in federal equity receiverships, bankruptcy, and real estate. Allen Matkins
21 has represented federal equity receivers appointed in numerous cases initiated by the
22 SEC, including, among others:

23 *SEC v. Sunwest Management, et al.*, U.S. District Court, District of Oregon.

24 Allen Matkins represented the Court-appointed Receiver in the case, commenced in
25 2009, involving \$300 million of defrauded investors in connection with a senior
26 living and real estate development company.

27 *SEC v. Medical Capital Holdings, Inc., et al.*, U.S. District Court, Central

28 District of California. Allen Matkins represents the Court-appointed Receiver in the

1 case, commenced in 2009, involving \$1.7 billion of defrauded investors in
2 connection with a company primarily involved in factoring medical receivables.

3 *SEC v. Plus Money, Inc. et al.*, U.S. District Court, Southern District of
4 California. Allen Matkins represented the Court-appointed Receiver in the case,
5 commenced in 2008, involving \$45 million of defrauded investors in connection
6 with an investment advisory firm.

7 *SEC v. Robert Louis Carver, Lincoln Funds, et al.*, U.S. District Court,
8 Central District of California. Allen Matkins represented the Court-appointed
9 Receiver in the case, commenced in 2008, involving \$24 million of defrauded
10 investors in connection with a hedge fund.

11 *SEC v. Tuco Trading, LLC*, U.S. District Court, Southern District of
12 California. Allen Matkins represented the Court-appointed Receiver in the case,
13 commenced in 2008, involving \$10 million of defrauded investors in connection
14 with an unregistered day trading firm.

15 *SEC v. Charis Johnson, Lifeclicks, LLC, 12DailyPro*, U.S. District Court,
16 Central District of California. Allen Matkins represented the Court-appointed
17 Receiver in the case, commenced in 2006, involving \$500 million of defrauded
18 investors in connection with an internet auto-surfing program.

19 *SEC v. Learn Waterhouse, et al.*, U.S. District Court, Southern District of
20 California. Allen Matkins represented the Court-appointed Receiver in the case,
21 commenced in 2004, involving \$90 million of defrauded investors in connection
22 with a prime bank investment scheme.

23 *SEC v. Capital Consultants, LLC*, U.S. District Court, District of Oregon.
24 Allen Matkins represented the Court-appointed Receiver in the case, commenced in
25 2000, involving \$922 million of defrauded investors in connection with an
26 investment advisory firm.

27 The experience gained and expertise developed by Allen Matkins through its
28 prior representations in equity receiverships will significantly reduce the number of

1 attorney hours required, and will greatly assist the Receiver in maximizing the
2 recovery from assets, and the distributions to investors and creditors.

3 **B. Conflict Checks**

4 Allen Matkins has confirmed that it has no prior relationships with any of
5 (a) the Receivership Entities, (b) Defendant Charles P. Copeland, or his sons C.
6 Lawrence Copeland and Donald Copeland, (c) The Copeland Group, A Consulting
7 and Accountancy Corporation, (d) Jeanne Minnerly, former director of CWM,
8 (e) the limited partners of the Private Equity, Fixed Income and Real Estate Funds.
9 The firm will run supplemental conflict checks as additional creditors and interested
10 parties are identified. If a conflict of interest arises, and such conflict will not be
11 waived by the applicable creditor, the Receiver will engage special counsel to
12 represent him on matters relating to that creditor. For example, if the Receiver
13 disputes the mortgage with regard to one of the commercial properties, it is possible
14 that a conflict may arise such that separate counsel would be necessary.

15 **C. Allen Matkins' Attorneys**

16 The majority of the general receivership legal work, including preparing of
17 pleadings and appearances at Court hearings, will be performed by Ted Fates,
18 Senior Counsel in the firm's Bankruptcy/Creditors' Rights ("BCR") department, with
19 supervision, as appropriate, from BCR Partner David Zaro and Litigation Partner
20 Michael Farrell, and assistance from BCR Associate Richard Dinets.

21 As noted above, the Receivership Entities own eight commercial real
22 properties which all together were purchased for approximately \$70 million. The
23 Receiver will need to manage these properties until they are sold. Allen Matkins
24 will have Brian Kintz, Senior Counsel in the firm's Real Estate department, handle
25 the majority of the leasing and sale transactional legal work.

26 On November 18, 2011, the Court approved the sale of CWM's financial
27 advisory business to Elevage. Allen Matkins' Corporate and Securities Partner
28 Debbie Hall assisted the Receiver in reviewing the Asset Purchase Agreement, and

1 in preparing the First and Second Amendments to the Agreement and other
2 documents required to be delivered at closing. At this time, the Receiver does not
3 anticipate that further substantial corporate legal work will be required. The
4 attorney biographies for David Zaro, Michael Farrell, Ted Fates, Brian Kintz and
5 Debbie Hall are attached hereto as Exhibit A.

6 Allen Matkins will staff each task as efficiently as possible, using junior
7 attorneys, paralegals, legal secretaries, word processors and other support staff as
8 much as possible to reduce attorney hours and minimize fees. The Receiver and
9 Allen Matkins will weigh the projected costs and likely benefits of all courses of
10 action before proceeding, and will keep the Court and the parties informed of their
11 activities (and the costs associated therewith) via quarterly Receiver Reports and
12 interim fee applications.

13 **D. Compensation and Reimbursement of Expenses**

14 The Receiver has negotiated a 10% discount with regard to Allen Matkins'
15 rates. The hourly rates for the attorneys and paralegals that the Receiver anticipates
16 will be involved on a regular basis are as follows:

Name	Position/Department	Hourly Rate	Discounted Hourly Rate
David Zaro	Partner/BCR	\$620	\$558
Michael Farrell	Partner/Litigation	\$590	\$531
Brian Kintz	Senior Counsel/Real Estate	\$480	\$432
Ted Fates	Senior Counsel/BCR	\$435	\$391.5
Richard Dinets	Associate/ BCR	\$305	\$274.5
John Kaup	Paralegal/Litigation	\$210	\$189

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26 The firm periodically reviews and adjusts its hourly rates for attorneys and
27 paralegals in light of their additional experience and expertise. The rates listed
28 above, however, will not be adjusted until at least July 2012. The firm will strive to

1 achieve a blended hourly rate for the receivership under \$400 per hour. The initial
 2 phase of a receivership, however, requires more time from senior attorneys than
 3 later phases. The firm anticipates that its blended hourly rate will go down steadily
 4 throughout the receivership.

5 **E. Estimated Budget for First 60 Days of the Receivership**

6 The Receiver and Allen Matkins estimate that legal fees for the receivership
 7 for the period October 25 through December 31, 2011 will be as follows:

Categories/Matters/Tasks	Fee Estimate
9 General Receivership <ul style="list-style-type: none"> 10 • Review of Complaint and Judgment 11 • Advise Receiver Regarding Scope of Receivership 12 • File Complaint and Judgment in Judicial Districts under 28 U.S.C. § 754 13 • Record Complaint and Judgment in County Real Property Records 14 • Advise Receiver Regarding Communications with Limited Partners and CWM Clients 	\$7,500-\$10,000
15 Asset Investigation <ul style="list-style-type: none"> 16 • Meetings with Charles Copeland, Lawrence Copeland and Don Copeland to Discuss Assets and Liabilities of Receivership Entities 17 • Issue Subpoenas for Necessary Documents 	\$15,000-\$20,000
18 Reporting <ul style="list-style-type: none"> 19 • Prepare and File Preliminary Receiver Report, Attend Hearing 	\$7,500-\$10,000
20 Operations & Asset Sales <ul style="list-style-type: none"> 21 • Elevage Sale Transaction, Ex Parte Application and 	\$45,000-\$55,000

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Supporting Declarations <ul style="list-style-type: none"> • CP 18 Property Sale • Palm Springs Condo Sale • Leasing Issues 	
Claims & Distributions <ul style="list-style-type: none"> • Evaluate Limited Partner Claims • Initial Advice on Distribution Plan issues 	\$1,500-\$3,000
Third Party Claims <ul style="list-style-type: none"> • Evaluate Potential Claims Against Third Parties 	\$1,500-\$3,000
Pending Litigation <ul style="list-style-type: none"> • Review and Advise Receiver Regarding CP 18 Bankruptcy Case • Review and Evaluate Pending Action Against CP 12, Give Notice of Judgment to Parties • Review and Evaluate Pending Action Against CP 6, Give Notice of Judgment to Parties • Review and Evaluate Pending Action Against CWM and Copeland Realty, Give Notice of Judgment to Parties 	\$20,000-\$25,000
Estimated Total	\$98,000-\$126,000

Of course, these figures are only estimates – actual fees will no doubt vary to some degree. It is not possible to anticipate all legal issues that will arise or the amount of attorney time each will require. Nevertheless, the estimates above provide a very general budget for legal fees for the period October 25 through December 31, 2011. As noted above, the initial phase of a receivership requires more attorney time than later phases. As with its blended hourly rate, the firm anticipates that its fees per quarter will go down steadily throughout the receivership.

1 **F. Fee Applications**

2 The Receiver and Allen Matkins will file quarterly interim fee applications to
3 advise the Court of the status of their activities, discuss any concerns the Court may
4 have, and obtain interim approval of fees and costs. Final approval of fees and costs
5 will be sought at the conclusion of the receivership.

6 **IV. ARGUMENT**

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

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

21 A district court's power to supervise an equity receivership
22 and to determine the appropriate action to be taken in the
23 administration of the receivership is extremely broad. The
24 district court has broad powers and wide discretion to
25 determine the appropriate relief in an equity receivership.
26 The basis for this broad deference to the district court's
supervisory role in equity receiverships arises out of the
fact that most receiverships involve multiple parties and
complex transactions. A district court's decision
concerning the supervision of an equitable receivership is
reviewed for abuse of discretion.

27 *Id.* (citations omitted); *see also Commodities Futures Trading Comm'n. v. Topworth*
28 *Int'l, Ltd.*, 205 F.3d 1107, 1115 (9th Cir. 1999) ("This court affords 'broad deference'

1 to the court's supervisory role, and 'we generally uphold reasonable procedures
2 instituted by the district court that serve th[e] purpose' of orderly and efficient
3 administration of the receivership for the benefit of creditors."). Accordingly, the
4 Court has broad equitable powers and discretion in the administration of the
5 receivership estate.

6 Here, the magnitude and complexity of the assets of the receivership estate,
7 the commingling of funds and volume of intercompany transfers, and the extensive
8 loans and other transfers to third parties warrant the engagement of well-qualified
9 counsel by the Receiver. The Receiver has selected Allen Matkins as his general
10 counsel due to its extensive experience in equity receiverships initiated by the
11 Commission and competitive rates. The firm has agreed to discount its fees for this
12 engagement by 10%. Moreover, the Receiver believes that Allen Matkins'
13 experience and skill will substantially reduce the number of attorney hours required,
14 and will be valuable in maximizing the recovery from receivership estate assets and
15 the amounts distributed to investors and creditors.

16 **V. CONCLUSION**

17 Based on the foregoing, the Receiver requests an order approving his
18 employment of Allen Matkins as his general counsel.

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20 Dated: November 18, 2011

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

21
22 By: /s/ Ted Fates

TED FATES
Attorneys for Receiver
THOMAS C. HEBRANK