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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

PLAINTIFF,

v.

AMERICAN PENSION SERVICES, INC., a
Utah Corporation and CURTIS L. DeYOUNG,
an individual,

DEFENDANTS.

**PRELIMINARY REPORT OF
RECEIVER**

Case No.: 2:14-CV-00309

Judge Robert J. Shelby

Diane Thompson, court-appointed Receiver for Defendants American Pension Services, Inc. and Curtis L. DeYoung and related entities, by and through her counsel of record Ballard Spahr LLP hereby submits this Preliminary Report of Receiver as of May 12, 2014.

PRELIMINARY REPORT OF RECEIVER

1. INTRODUCTION

On April 24, 2014, the Court appointed Diane Thompson as receiver of American Pension Services, Inc., together with any related entities owned, controlled, and/or under common control by or through American Pension Services, Inc. (collectively “APS”), and all assets of Curtis DeYoung (“DeYoung”) (collectively “Receivership Defendants”) pursuant to the Order Appointing Receiver, Freezing Assets, and Other Relief (“Receiver/Freeze Order”).

The Court has further found that the appointment of the Receiver is necessary to “marshal[] and preserv[e] all assets of APS and DeYoung (assets of APS and DeYoung, collectively “Receivership Assets”) as well as the assets of any other entities that: (a) are attributable to funds derived from investors or clients of the Defendants; (b) are held in constructive trust for the Defendants; (c) were fraudulently transferred by the Defendants; and/or (d) may otherwise be includable as assets of the estates of the Defendants (collectively, the “Recoverable Assets”). (Receiver/Freeze Order at 2.)

The Receiver has, with the approval of the Court, engaged Ballard Spahr LLP (“Ballard”) as legal counsel to the Receiver, Piercy, Bowler, Taylor & Kern (“PBT&K”) as forensic accountants, and Precision Discovery, Inc. as forensic IT specialists. (*Id.* at 23, ¶63.)

During the *ex parte* hearing before the Honorable Robert J. Shelby, the Court requested the Receiver to provide a preliminary report outlining the steps that have been taken to date and the strategy she envisions going forward. This Preliminary Report is submitted pursuant to this request.

2. DIRECTIONS TO RECEIVER.

The Receiver/Freeze Order provides detailed authorizations, directions, and instructions to the Receiver, detailed in Appendix A.

3. SUMMARY OF ACTIVITIES.

APS offered third-party administrative services to over 5,700 self-directed individual retirement plans for investors throughout the country. Although the Receiver is still in the process of identifying all of the assets managed by the Defendants, the Receivership Estate appears to be comprised of investments, real property, cash, business furniture and equipment, and related personal assets.

Initial Actions to Identify, Seize and Secure Assets and Maintain Operations.

Upon her appointment, the Receiver's first priority was to identify, seize and secure the Receivership Assets of both APS and DeYoung. On the morning of April 25, 2014, the Receiver, with the assistance of the U.S. Marshal's office and a team of lawyers, forensic accountants and forensic IT specialists, took physical possession of APS's corporate office and all business operations being undertaken at 12600 South 4168 West, Riverton, Utah (the "Premises"). The Receiver immediately suspended all of APS's business operations for the purpose of taking a detailed inventory of assets located on the Premises, including identifying all known financial institutions with which the Defendants conducted business.

The Premises from which APS operated its business is leased from First Utah Bank and is approximately 5,200 square feet. First Utah Bank owns the building and operates a branch on the ground floor. The space includes individual offices for: DeYoung; his wife, Michelle DeYoung, who was the head of operations; Lamont Smith, who was the on-site accountant;

Judson Pitts, who was employed as in-house counsel and shared an office with Dean Becker, who was the paralegal. Jim Allfrey, who heads APS's 401K operations and his assistant Megan Cloward, also share an individual office. In addition to the executives, APS operated with a staff of ten (10) employees who work from cubicles and handle customer service, accounting and/or marketing functions. Information technology functions are handled through an independent contractor.

Upon the Receiver's arrival at the APS office, neither DeYoung, Michelle DeYoung or Jim Allfrey (President of APS 401K) were present as they were at a conference in Orlando, Florida. The accountant Lamont Smith and paralegal Dean Becker were also not present. All present employees were assembled in a conference room and advised of the nature of the case and the role of the Receiver. All were thereafter interviewed in groups and individually. The employees completed a brief questionnaire, returned all company property, and were then excused. All employees were cooperative and responded to all inquiries. Several key personnel, including the office manager, remained for further de-briefing.

The only upper level personnel present was Mr. Pitts, APS's in-house counsel. The Receiver and Dan Benjamin (of Ballard Spahr who serves as counsel to the Receiver) met with Mr. Pitts, who informed the Receiver that DeYoung was in Orlando, Florida. After providing DeYoung's cell phone number, the Receiver called and spoke to DeYoung on a speaker phone in the presence of Mr. Pitts. The call lasted approximately four minutes, during which the Receiver informed DeYoung of the appointment of the Receiver and asked for his email address so the Receiver could send him a copy of the Temporary Restraining Order ("TRO") and Receiver/Freeze Order. DeYoung only provided his APS email address despite the Receiver's

request for a personal email address. During the Receiver's conversation with DeYoung, he was informed that: (a) all of APS's assets were frozen; (b) his personal assets were frozen; (c) he should preserve all documents, electronic records; and (d) the risks of taking action in contravention of the Receiver/Freeze Order. When asked, DeYoung indicated that there were no documents or electronic files being stored offsite from the APS business premises. Copies of the TRO and Receiver/Freeze Order were then forwarded to DeYoung via his APS email within ten minutes of completing the call. The conversation with DeYoung proved significant for several reasons:

First, there was a small window of time after the Receiver spoke with DeYoung when he could access his email on a smart phone or tablet. At approximately 12:48 p.m., DeYoung took that opportunity to delete emails. The forensic IT specialists discovered that within minutes after speaking with DeYoung, he deleted in excess of 200 emails from his APS email account.

Second, the Receiver learned that on Sunday April 27, 2014, the DeYoungs' next-door neighbors observed an approximately thirty (30) foot long covered trailer backup to the sidewalk facing the front door of the DeYoungs' residence at 12231 South 1950 East, Draper, Utah 84020 (the "DeYoung Residence"). The neighbors observed DeYoung standing outside the DeYoung Residence and it appeared to them that he was loading items into the trailer. By 7:00 p.m. the truck and trailer had left the DeYoung Residence, and the next day, Monday April 28, 2014, the DeYoung Residence appeared to be unoccupied.

Third, contrary to DeYoung's representations to the Receiver that there are no offsite storage units, several APS employees have informed the Receiver's team that they were aware of an off-site storage facility used by DeYoung for APS files and documents, but did not know where the storage facility was located. The Receiver's attempts to ascertain the location of the off-site storage unit, (which include reviewing records for any bills or invoices, asking every APS employee about the storage unit and attempting to contact Mr. DeYoung by phone and email) have proven unsuccessful. DeYoung appears to be the only individual with knowledge of its location and he has not made any contact with the Receiver despite several attempts to reach him.

Fourth, on May 7, 2014, the Receiver was informed that a cargo trailer was being stored on the premises of a third-party, Austin Heywood (who was renting a home located in Sandy, Utah), which had been placed at the property at the request of DeYoung. Apparently, DeYoung had arranged to have Heywood take possession of the cargo trailer and not to disclose its whereabouts. During an encounter with Sandy City Police officers, on May 7, 2014, DeYoung denied he was under any court order to permit the seizure of his property. The contents of the trailer include several vintage Coke machines and a 1917 Ford vehicle. DeYoung offered to sell the contents of the trailer to a third-party for \$6,000.00. (A copy of the Sandy City police report is attached hereto as Exhibit 1.) The trailer was delivered without any explanation or prior notice to the parking lot at APS on Friday May 9, 2014. It was delivered without any keys or way to access it. DeYoung's counsel advised DeYoung was out of town and would provide access when he returned.

Fifth, the Receiver discovered that DeYoung, with the assistance of his wife Michelle DeYoung and Dean Becker, had approximately \$200,000 withdrawn from four Zions First National Bank accounts, which funds (with the exception of \$16,922.00) were deposited into three newly opened bank accounts at Brighton Bank, which have now been frozen.

On April 28, 2014, the Receiver, accompanied by the U.S. Marshal's office and members of her team, attempted to gain entry to the DeYoung Residence for the purpose of imaging all computers and electronic devices and to take an inventory of all assets and documents located within the residence. Arriving at approximately 8:45 a.m., the DeYoung Residence appeared unoccupied and no one answered the door. Because the U.S. Marshal's office was unwilling to enter the premises without an order from the Court, the Receiver filed an Emergency Ex Parte Motion for Writ of Entry, which was entered by Magistrate Judge Pead on May 1, 2014.

On May 2, 2014, after obtaining a Writ of Entry, the Receiver's team attempted to enter the DeYoung residence a second time. DeYoung again did not answer the door nor did he answer phone calls to all known cell numbers. Per the Writ of Entry, a locksmith obtained entry into the DeYoung Residence. A detailed inventory and video recording was taken of the DeYoung Residence. No computers or electronic devices of any kind other than a seemingly unused cell phone were located within the home. The only automobile in the garage was a vehicle believed to be owned by DeYoung's daughters. As noted above, it was during this visit that a neighbor informed the Receiver's team that DeYoung had a thirty foot trailer in his driveway on Sunday, April 27. The neighbor also stated that DeYoung had in the past two

months stopped driving his regular vehicle (a newer truck) and had instead been driving a much older vehicle.

Although served with a copy of the Receiver/Freeze Order, the DeYongs have failed and refused to cooperate with the Receiver as required by the Order.

Notices of Asset Freeze/Receivership Order

Beginning at approximately 11:00 a.m. on April 25, 2014, the Receiver's team and SEC staff, sent notices to all known financial institution and brokerage firms with whom APS and DeYoung maintained accounts. To date, the Receiver has identified a total of eighteen (18) financial institutions and brokerage firms that maintain accounts containing assets subject to freeze under the Receivership Order, including but not limited to the following: First Utah Bank, Brighton Bank, Bank of American Fork, JP Morgan Chase Bank, Holladay Bank & Trust, Capital One 360, Zions National Bank, Alpine Securities and Fidelity Investments (the "Banks"). The Banks have confirmed that all known accounts have been frozen in accordance with the Receiver/Freeze Order.

Tangible Assets Located in Safe Deposit Boxes

With assistance of management of First Utah Bank, the Receiver was also able to secure safe deposit boxes maintained by APS that hold hard assets (primarily foreign currency, gold or silver) of its clients. A physical inventory of these assets has been performed and reconciliation to client accounts is currently being performed. The Receiver is reconciling those hard assets with client accounts and is reviewing the custodial agreement between APS and First Utah Bank to better understand the relationship between the parties.

Communications with APS Clients

After securing the premises and completing a basic review of the business, the Receiver took steps to ensure compliance with the Receiver/Freeze Order. All operations were suspended and the Receiver immediately activated a website, www.apsreceiver.com, which serves as a vehicle to communicate with clients and consumer debtors. APS clients were also provided with an email address info@apsreceiver.com to communicate with the Receiver. On the website, the Receiver immediately posted a brief description of the receivership. After the case was unsealed, an email blast was sent to 5,003 of APS clients with an email on record with APS directing them to the website. This email also provided clients with the info@apsreceiver.com email address. Substantive court filings are regularly being posted on the website, including the unsealed Complaint, Motion for TRO, Order Appointing Receiver and Freezing Assets, Temporary Restraining Order and Order Appointing Receiver, as well as the SEC's Press Release. The Receiver also posted a list with responses to Frequently Asked Questions ("FAQs"), which the Receiver's team strives to update frequently with answers to the most common questions received. In an effort to provide APS clients with informational access to their accounts, the APS website has also been re-launched with limited access, and links to www.apsreceiver.com, which allow APS clients to review their accounts. The client accounts are based on information as of April 25, 2014, at the time the Receiver took possession of APS. APS clients have been informed that account information may not be accurate because it has not yet been reconciled or verified by the Receiver. APS clients have been informed that account information may not be accurate because it has not yet been reconciled or verified by the Receiver.

The Receiver is striving to respond to each email and telephone inquiry received. The Receiver has personally contacted dozens of APS clients who have left messages via her work email address and phone number. As of April 30, 2014, clients were able call the APS office to speak to the Receiver, representative of the Receiver and/or an APS employee regarding their accounts and questions they have regarding the operations of APS.

In the coming weeks, the Receiver and her staff intend to communicate with representatives (lawyers/agents) representing all levels and types of APS clients with the possibility of establishing an advisory council to facilitate forming a proposed operational plan in a collective and collaborative manner that addresses the immediate and long-term concerns associated with APS's business.

Forensic Computer and Accountant Activities on Day One

The retained forensic IT specialists (Precision Discovery) immediately disabled the APS website and internet access from the office and set about the process of obtaining mirror image of the servers and all computers on site, a process which was completed on Sunday, April 26, 2014.

During the initial on-scene phase of the Receiver's appointment, Precision Discovery, completed the following: (a) the identification, documentation and forensically preservation of American Pension Services business Electronically Stored Information ("ESI"); (b) conducted interviews of business employees to assist in transition to the Receiver and to support preservation of ESI data; (c) conducted searches for ESI external sources and provided on-scene review capabilities to assist Receiver; (d) locate and coordinate with third-party computer system administrators; (e) report actions for Receiver and Court review; (f) cull ESI user data for

documents, spreadsheets, accounting, emails, and database files to assist the transition of business to the receiver; and (g) produce materials to Receiver in a reviewable format. Precision Discovery maintains original forensic copies of the data to assist in any further court needs. Forensic case files will be initiated to further assist the Receiver and the Court with the *Advanced Investigation & Review* portion of the project plan. (See Spreadsheet List of Digital Data, attached as Exhibit 2.)

The retained forensic accountants (Piercy, Bower, Taylor & Kern (“PBT&K”)) immediately began reviewing the books and records of APS, including the electronic accounting information and all other available financial records in order to reconstruct the financial operational structure. APS accounting functions appeared to be highly segmented with specific designations for transfers, distributions, real estate, new accounts, processing fair market value forms, accounts payable, and accounts receivable. However, PBT&K determined that there was a lack of internal control at certain levels of the operation. The most glaring weakness of the accounting system was that prior to 2009, none of the employees were charged with performing a reconciliation to verify that the cash balance in the Master Trust Account matched the combined cash balance of the investor accounts. This allowed cash to be extracted from the Master Trust Account without detection by the employees since the employees only dealt with their individual segmented duties and responsibilities.

APS has used an outdated software system which was designed and implemented in the early 1980’s. This system, which is cumbersome and inflexible, has limited the accountants’ ability to analyze accounting data with the desired scope and information. Moreover, the software system is so limited in its capabilities, that only one individual may generate reports at a

time, making review of the electronic documents a challenge. PBTK has recently completed the process of downloading the data from the old computer system into a usable format which contains the complete transactional history of APS for the past 32 years of its operations. This database contains over 1 million records for approximately 14,000 investors who have invested with APS since its inception. From this database, PBTK will be able to access data and run reports which will allow detailed analysis of the historic operations of the business.

Pending Litigation and Rule 754 Filings

The Receiver has communicated with and put all attorneys representing APS in pending litigation on notice of the TRO and Receiver/Freeze Order. The Receiver, as necessary, has filed motions with appropriate courts requesting a stay of all proceedings until further order of this Court.

In accordance with 28 U.S.C. §754, the Receiver has filed notices in the United States District Court in more than 50 districts and 30 states based on the discovery of real property located within such districts.

Potential Insurance Coverage

The Receiver is reviewing applicable APS insurance policies to determine whether there is a potential claim for officer fraud/wrong doing. At the Receiver's request, insurance coverage counsel is analyzing all relevant insurance policies issued to American Pension Services Inc. to determine whether any claims may be made under any of those policies. The Receiver expects that analysis to conclude within the next several days, at which time demands will be made against any relevant carriers. Among other policies, counsel is analyzing a "Crimeshield Advanced" policy issued by the Hartford with limits of \$1 million and a "Chubb PROE&O"

errors and omissions policy issued by Federal Insurance Company with limits of \$1 million. The Receiver will comment on the results of the insurance policy review in the next report to the Court.

Current Activities of Receiver

The Receiver's preliminary investigation has uncovered that APS and sister company American Pension 401K Services ("APS 401K") jointly administer and are custodian of more than 5,700 retirement accounts with aggregate assets of approximately \$382,000,000. These assets are a mix of cash and investments, both of which may be reported on statements and accounting reports with inflated values that may need to be adjusted. APS maintains a commingled master account at First Utah Bank (the "APS Master Trust Account") which had a balance of approximately \$26,067,698 as of April 25, 2014. APS also maintained an operating account with First Utah Bank, which had a balance of approximately \$149,420 as of April 25, 2014 that is used to cover day-to-day operating expenses. APS 401K maintains 60 bank accounts at First Utah Bank with a combined balance of \$3,651,517.00 as of April 25, 2014.

The Receiver is continuing to inventory the Receivership Assets. It appears as though the DeYongs do not have significant assets; however we are continuing to investigate their assets and liabilities. On May 2, 2014, based upon a Writ of Entry, the Receiver's review of the DeYoung Residence revealed fairly standard furniture and personal property expected in one's residence. It also appears that both APS and DeYoung own assets, including real property through a labyrinth of shell companies and family trusts. The Receiver is only beginning to identify these assets and continues to explore leads on other potential assets.

Beginning Tuesday, April 29, the Receiver invited six staff members to return to APS to assist the receiver team in resuming operations to service APS clients' daily needs. This has allowed the Receiver to gain institutional knowledge from the employees, and allows for a cost-efficient means of operating the business. Processing of all incoming payments and a review of existing scheduled monthly distributions are being handled on a case-by-case basis. Presently, the Receiver is not permitting any new distributions. A follow up interview of the office manager and interviews of employees not present on the date of our entry (except for DeYoung, his wife and daughters) were completed during the week of April 28. All employees were cooperative.

Upon taking possession, the Receiver confirmed that all hard copy documents in APS's offices at the time of arrival were secure, except as to records stored off-site, which we have been unable to locate and secure. It was also observed that the drawers in both DeYoung's and Michelle DeYoung's offices were noticeably empty. It appeared hard copy documents were removed and/or destroyed prior to our arrival. Both APS staff and third parties observed DeYoung carrying several storage boxes out of the office recently. The Receiver has asked First Utah Bank for the surveillance camera footage of the building elevators to substantiate these observations and to better understand what records DeYoung removed from the premises. The office manager had a box next to her desk containing files of APS clients who invested with APS, which we have secured. The cleaning staff informed us that starting in April 2014 they were asked not to clean the offices on Wednesday nights. They said that individuals were present and observed removing materials from the office. Although they were informed APS

was holding a seminar on Wednesday nights, Mr. Dean Becker testified that seminars were not conducted at APS's office.

We have undertaken a preliminary review of APS's employee emails and have not uncovered any malicious activity on their part. We will continue to review employee emails for additional information regarding the operations of APS. Emails sent to Judson Pitts, Michelle DeYoung, Curtis DeYoung, Lamont Smith, and Dean Becker are being forwarded to members of the Receiver's team for further review and consideration.

Members of the Receiver's team met with the Utah Department of Financial Institutions to notify it of the appointment of the Receiver and gave a synopsis of the allegations and our understanding of the account set-up.

APS Operations

The Receiver has opened an operating bank account at First Utah Bank through which day-to-day expenses will be paid in the ordinary course of business and pursuant to the Receiver/Freeze Order. The Receiver has also opened a banking account at Zions Bank, in case it is needed. The Receiver is preparing an operating budget to report costs and assess cost savings measures. The Receiver has cut operating costs and expenses of APS significantly. The Receiver has terminated employees, including DeYoung, his wife Michelle and his daughters, which reduces employee salaries substantially, including DeYoung and his wife's monthly salary of \$40,000.00. We have also ceased all advertising and canceled all subscriptions.

The business operations are run through two separate corporate entities. American Pension Services, Inc. services assets held in Individual Retirement Accounts ("IRA's"), Simplified Employee Pension Plans ("SEP's"), Health Savings Accounts ("HSA's"), Coverdell

Education Savings Accounts (“Coverdell ESA’s”) and Family Trusts. In contrast, American Pension 401k Services, Inc. specifically services 401k accounts.

Current Understanding of APS Clients and Types of Accounts

APS is the administrator of 5,715 client accounts, which are broken down as follows:

5,080 are self directed IRAs,

304 are 401ks,

211 are SEPs,

72 are HSAs,

43 are Coverdell ESAs, and

5 are family trusts.

With respect to APS, Inc., as of April 25, 2014, there were a total of 5,411 accounts with approximately \$366 million in total assets. In general, clients transfer funds to APS which are deposited into the APS Master Trust Account. The investor funds are then self-directed by the investor through a Buy Direction Letter signed by the investor to a specific investment. These funds are paid from the Master Trust Account. Any income earned from the investment is deposited to the Master Trust Account, and all expenses paid out related to the preservation or maintenance of the investment are paid, with authorization from a Bill Pay Direction Letter signed by the investor, from the Master Trust Account. Finally, when an investment is liquidated, the funds are deposited to the Master Trust Account, and then re-directed to other investments or in some cases distributed to the investor, only at the direction of the investor. In addition, for account holders who are currently 59 ½ or older, may be taking regular monthly,

quarterly or annual distributions from their accounts. These are also paid from the Master Trust Account.

In rare instances, investments are rolled directly into or out of the investor's account without cash traveling through the Master Trust Account. However, employees of APS, Inc. have stated that this is rarely done.

Attached as Exhibit 3 is a chart which illustrates the flow of funds for investors in APS, Inc. As can be seen in Exhibit 3, incoming funds from all sources flow to the commingled Master Trust Account either directly or through a sweep of funds from the Wire Account. In turn, all funds disbursed flow from the Master Trust Account to the Master Trust Disbursal Account and out to third parties or back to investors in the form of distributions.

APS 401K is a separate legal entity through which all self-directed 401K assets are managed. APS 401K is much smaller than APS with only 365 plan participants and total assets of approximately \$40,000,000. It appears to operate with separate employees, separate bank accounts and a separate computer system.

APS 401K manages two types of accounts. The first type of account consists only of the self-directed portion of larger fully administered ERISA plans in which MG Trust is the plan administrator and Expert Plans is the plan's record keeper. Each of these entities are independent of DeYoung and APS. Since APS 401K only deals with a small subset of the assets in larger 401K plan, APS 401K must reconcile and report to MG Trust and Expert Plans and maintain segregated bank accounts for each plan.

The second type of 401K account which APS 401K deals with are self-employed 401K plans in which only the business owners and spouses are participants. These plans are not

ERISA qualified plans since there are no employee participants. For these accounts, there is one Master 401K Trust Account where all of the combined funds for these accounts are commingled.

Six APS employees have been asked to return to APS's office to assist in the daily operations to preserve IRA assets. The Receiver and her staff vetted these employees and reasonably believe that they had no involvement in the illegal activities and/or misappropriation of funds by DeYoung. With their assistance, the Receiver is processing incoming payments and currently making property maintenance fees and other necessary expenses for APS clients (i.e. HOA fees, etc.).

The Receiver is evaluating the possibility of reinstating monthly distributions. Before doing so, however, we are evaluating the economic impact the discovery of the \$24 million short fall in the APS Master Trust Account has on the ability to make distributions. The Receiver will need to determine whether there is adequate cash in each client's account to make such a distribution. Based on the shortfall, the APS client accounts may have upwards of a fifty percent (50%) shortfall in cash deposits than previously believed. We are not processing any new or additional distributions at this time.

The Receiver's goal is to keep the business running smoothly and to maintain payments to preserve assets so as to not cause harm to APS clients. The most frequent transaction requests we receive from clients are: to complete a pending purchase or sale; to make payments—such as tax or loan payments—to maintain an asset, such as real property; to maintain scheduled, period distributions; to transfer assets to a third-party administrator; to execute currency conversions (foreign currency into U.S. dollars); and to complete secured loan investments in exchange for cash.

Another potential consideration is the future sale of the company. On that score, we have been contacted by numerous similarly situated companies to APS who are interested in acquiring APS clients and assisting with operations. We are having a dialogue with those companies for future possibilities, if in the best interest of APS clients.

Financial Information Regarding APS and DeYoung

At the present time, the Receiver has determined the following with regards to APS's financial condition and expenses:

Within the APS client accounting system, a journal entry was made on October 19, 2009 reducing the cash balance in the APS Master Trust Account by \$24,998,422.65. It is believed that this journal entry was made to account for various losses which had previously been incurred through that date, and the journal entry was necessary to cover the discrepancy in cash. It was confirmed that the bank account at First Utah Bank has a deficit of approximately \$24,604,999, when compared to the cash reflected by APS' client account statements. The amount of this journal entry appears to confirm the missing cash which was determined through the SEC investigation of APS. The accounting reports which reflected this write down of cash could only be accessed by DeYoung, and was unavailable to all other employees.

Based on PBTk's analysis of the financial books and records, they have determined that APS (exclusive of the 401k's which are separately administered client accounts), as of April 25, 2014, should have had a total of approximately \$366 million in cash and investments. However, as previously discussed, PBTk has determined that the cash balance was approximately \$24.6 million short of the combined balance which was reflected in the customer account statements as of that date.

At the present time, PBTK has undertaken an inventory of all non-cash investments and a reconciliation to client account statements to determine if there are any other discrepancies or shortfalls which may exist and the client accounts which may be affected. These non-cash investments have been found to include foreign currency, precious metals, real estate, promissory notes, deeds of trust, stocks, bonds, and fractional interests in LLC's and other investments. In some cases, these assets are difficult to assess the existence and value of the investment.

In addition, PBTK is also performing a detailed analysis of the historic operations of APS to determine the cause and timing of the cash shortfall which has been found to exist. It is through this process that the Receiver will be able to ascertain information on the parties responsible for the loss, potential recoveries which may exist, and additional information which may be helpful in determining a fair and equitable means for distribution of the loss amongst investors.

PBTK is also reviewing the financial books and records of APS, DeYoung and his related entities to assist with identification of all recoverable assets and potential causes of action against third parties.

Finally, PBTK is performing a separate analysis of the operations of APS 401k to determine if similar issues exist with the management of the 401k accounts and its related assets. It should be noted that APS 401k operated under a much stricter regulatory environment and third party scrutiny, and therefore, the lack of controls which were found to exist with APS have not been found with APS 401k.

Strategy of Receiver Going Forward

A significant challenge for the Receiver is to determine if and under what circumstances the APS business can operate lawfully and profitably on an on-going basis. Preliminarily, it appears as though some if not all of APS's business is operational. Specifically, the Receiver's preliminary review indicates that American Pension Services 401K operates independent of APS even though it is located within the same premises. The American Pension Services 401K business is much smaller than APS operations and capable of being operated independent of APS. The Receiver is still in the process of determining whether APS's self-directed IRA business will be able to operate on an on-going basis.

In analyzing the APS business going forward, it is critical to entirely segregate the business of APS from the Receivership Defendants. The fundamental goal of the Receiver is to minimize the harm caused by the misappropriation of investor funds. There are conflicting interests at play that will be evaluated before a final plan is developed and presented to the Court for consideration. Having seized APS and its related bank accounts on April 25, 2014, the Receiver is capable of taking a single snapshot in time from which to document the losses attributable to DeYoung's wrongful conduct. Because of the commingled account used by APS, however, it will be difficult to determine with any certainty how to allocate the losses across the 5,400 APS clients. The Receiver plans to recoup all known Receivership Assets and determine how to allocate the \$24 million loss to the APS Master Trust Account across the entire spectrum of the APS clients in a fair and equitable manner. A summary of plan account balances reveals that the majority of the APS clients' individual retirement plans hold assets of less than \$50,000.00, although there are a significant number of APS clients with plan asset in excess of

\$100,000. (Attached hereto as Exhibit 4 is a Summary of Plan Account Balances which provides a breakdown of the stratification of client account balances with APS.) To this end, the Receiver is considering selecting a few representatives of the various APS clients to discuss this matter and hopefully reach consensus.

In the meantime, the Receiver intends to continue providing services to APS's clients in the same manner as was being offered prior to entry of the Receiver/Freeze Asset Order. The Receiver is capable of segregating APS's business on a Pre-Seizure and a Post-Seizure basis. Pursuant to Paragraph 3.A and 3.B. of the Receiver/Freeze Order, the Receiver is authorized to use her discretion in making ongoing periodic distribution payments to self-directed plans of APS clients and to other investors who likewise have funds that have been frozen. She also intends to authorize the implementation of clients' instructions as to reallocating assets within an account to new and additional investments and away from existing investments, provided such instructions comply with the controlling laws. To this end, the Receiver will be filing motions with the Court to authorize certain types of transactions as directed and/or required by law.

For example, the types of transactions the Receiver may be inclined to approve (1) must have ample cash or other assets in the client's account to allow the Receiver to complete the transaction while leaving sufficient cash or other assets in the account to cover any potential loss which may be distributed to APS clients, (2) the cash balances in the Master Trust Account must be sufficient to allow the Receiver to complete the transactions without reducing liquidity to unreasonable levels, and (3) the client must be current on payment of all management fees owed to APS. In addition, the Receiver is considering permitting the following types of transactions on a case by case basis:

Payment of ordinary and necessary expenses to maintain and preserve assets i.e. HOA fees, property taxes, utility bills, repairs and maintenance.

Liquidation of investments and reinvestment into other assets within an APS client's IRA, i.e. liquidation of real estate and reinvestment in stocks.

New incoming cash deposited to APS and invested in other investments i.e. new account holder or investment of additional funds to client accounts and directed to be invested.

Regularly scheduled monthly, quarterly or semi-annual distributions to clients.

Required minimum distributions to clients over 70.5 years of age to comply with IRS guidelines.

By taking this approach, the Receiver intends to closely track all such transactions on a going forward basis while concurrently pursuing the Receivership Defendants to recover the misappropriated monies from the APS Master Trust Account. To that end, the Receiver intends to pursue all available means to find ways to recover the short fall caused by DeYoung's misappropriation of over \$24 million from the APS Master Trust Account. This will include securing all Receivership Assets and, to the extent necessary, liquidating said assets so that the proceeds may be used to reduce the loss from the misappropriated funds.

As required by the Receiver/Asset Freeze Order, the Receiver intends to file a more detailed report following the first quarter.

DATED this 12th day of May 2014.

/s/ Mark R. Gaylord, Esq._____

Mark R. Gaylord, Esq.

Melanie J. Vartabedian, Esq.

BALLARD SPAHR LLP

Attorneys for Court-appointed Receiver

APPENDIX A

1. The Receiver shall have all powers, authorities, rights and privileges heretofore possessed by the officers, directors, managers and general and limited partners of the entity Receivership Defendants under applicable state and federal law, by the governing charters, by-laws, articles and/or agreements in addition to all powers and authority of a receiver at equity, and all powers conferred upon a receiver by the provisions of 28 U.S.C. §§ 754, 959 and 1692, and Fed.R.Civ.P. 66. (Receiver/Freeze Order ¶ 4.) The powers are articulated in more detail in ¶ 7 of the Receiver/Freeze Order.

2. The Receiver shall use reasonable efforts to determine the nature, location and value of all property interests of the Receivership Defendants, including, but not limited to, monies, funds, securities, credits, effects, goods, chattels, lands, premises, leases, claims, rights and other assets, together with all rents, profits, dividends, interest or other income attributable thereto, of whatever kind, which the Receivership Defendants own, possess, have a beneficial interest in, or control directly or indirectly ("Receivership Property" or, collectively, the "Receivership Estates"); (*Id.* ¶7.A.)

3. The Receiver is authorized to take immediate possession of all assets, bank accounts or other financial accounts, books and records and all other documents or instruments relating to the Receivership Defendants. (*Id.* ¶7.B, 18.)

4. The Receiver is authorized to take immediate possession of all personal property of the Receivership Defendants, wherever located. (*Id.* ¶ 21.)

5. The Receiver is authorized to take immediate possession of all real property of the Receivership Defendants, wherever located. (*Id.* ¶ 22.)

6. The Receiver may continue to make ongoing periodic distribution payments, as deemed necessary by the Receiver, to self-directed plans of APS clients and to other investors who likewise have funds that have been frozen by the Receiver/Freeze Order. (*Id.* ¶ 3.A.)

7. The Receiver may authorize the implementation of clients' instructions as to reallocating assets within an account to new or additional investments and away from existing investments. (*Id.* ¶ 3.B.)

8. The Receiver may, without further Order of this Court, transfer, compromise, or otherwise dispose of any Receivership Property, other than real estate, in the ordinary course of business, on terms and in the manner the Receiver deems most beneficial to the Receivership Estate, and with due regard to the realization of the true and proper value of such Receivership Property. (*Id.* ¶ 41.)

9. The Receiver is authorized to locate, list for sale or lease, engage a broker for sale or lease, cause the sale or lease, and take all necessary and reasonable actions to cause the sale or lease of all real property in the Receivership Estates, either at public or private sale, on terms and in the manner the Receiver deems most beneficial to the Receivership Estate, and with due regard to the realization of the true and proper value of such real property. (*Id.* ¶ 42.)

10. The Receiver is authorized to take all actions to manage, maintain, and/or wind down business operations of the Receivership Estates, including making legally required payments to creditors, employees, and agents of the Receivership Estates and communicating with vendors, investors, governmental and regulatory authorities, and others, as appropriate. (*Id.* ¶ 44.)

11. The Receiver is authorized, empowered and directed to investigate, prosecute, defend, intervene in or otherwise participate in, compromise, and/or adjust actions in any state, federal or foreign court or proceeding of any kind as may in her discretion, and in consultation with SEC counsel, be advisable or proper to recover and/or conserve Receivership Property. (*Id.* ¶ 46.)

12. The Receiver is authorized, empowered and directed to investigate the manner in which the financial and business affairs of the Receivership Defendants were conducted and (after obtaining leave of this Court) to institute such actions and legal proceedings, for the benefit and on behalf of the Receivership Estate, as the Receiver deems necessary and appropriate; the Receiver may seek, among other legal and equitable relief, the imposition of constructive trusts, disgorgement of profits, asset turnover, avoidance of fraudulent transfers, rescission and restitution, collection of debts, and such other relief from this Court as may be necessary to enforce this Order. (*Id.* ¶ 47.)