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CLERK U.S. DISTRICT COURT  
UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION  
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JAN 23 2002  
U.S. DISTRICT COURT

~~DISTRICT OF UTAH~~  
SECURITIES AND EXCHANGE COMMISSION.

Plaintiff: \_\_\_\_\_  
DEPUTY CLERK

v.

Civil No. 2:02CV 0039C

**STIPULATED  
ORDER APPOINTING  
RECEIVER**

MERRILL SCOTT & ASSOCIATES, LTD.  
MERRILL SCOTT & ASSOCIATES, INC.  
PHOENIX OVERSEAS ADVISERS, LTD.  
GIBRALTAR PERMANENTE ASSURANCE, LTD.  
PATRICK M. BRODY  
DAVID E. ROSS II, and  
MICHAEL G. LICOPANTIS  
Defendants,

WHEREAS this matter came before the Court upon motion of the Plaintiff Securities and Exchange Commission ("Commission") to appoint a receiver for the purpose of marshalling and preserving assets in the above-captioned action; and

WHEREAS the Commission and defendants Patrick M. Brody ("Brody"), Merrill Scott & Associates, Ltd., Merrill Scott & Associates, Inc., and Phoenix Overseas Advisers, Ltd. (collectively, "Merrill Scott") have stipulated to an extension of the Temporary Restraining Order, Asset Freeze, and Prohibiting Destruction of Documents and Other Relief; and

WHEREAS the Commission and defendants Patrick M. Brody, Merrill Scott & Associates, Ltd., Merrill Scott & Associates, Inc., and Phoenix Overseas Advisers, Ltd. have stipulated to the appointment of a receiver in a Stipulation filed herewith;

WHEREAS most of the employees, officers, directors and other agents of Merrill Scott have left the employ of Merrill Scott; and

WHEREAS the assets that have been frozen are in danger of having their value reduced by the passage of time, and it is appropriate that the assets be marshaled and an accounting

provided to the Court; and

WHEREAS, this Court has jurisdiction over the subject matter of this action and over each of the Defendants, and venue properly lies in this district.

**NOW THEREFORE:**

**I.**

**IT IS ORDERED** that, pending the determination of the Commission's action on the merits, or such other time as the Court may order, David K. Broadbent TC be appointed Receiver ("the Receiver") of the Defendants Merrill Scott & Associates, Ltd., Merrill Scott & Associates, Inc., and Phoenix Overseas Advisers, Ltd., and all subsidiaries and affiliated entities (collectively "Merrill Scott"). The Receiver shall take control of Merrill Scott's funds, assets and property wherever situated, with the powers set forth herein, including powers over all funds, assets, premises (whether owned, leased, occupied, or otherwise controlled), choses in action, books, records, and other property belonging to or in the possession of or control of Merrill Scott, and the Receiver is hereby authorized, empowered, and directed:

a. to have access to, to marshal and take control of all funds, assets, premises (whether owned, leased, occupied or otherwise controlled), choses in action, papers, books, records in whatever media, and other property, wherever located, belonging to, in the custody, control or possession of Merrill Scott, with full power to take such steps as he deems necessary to secure such premises, funds and property;

b. to have control of, and to close, transfer or otherwise take possession of all accounts, securities, funds, or other assets of, or in the name of Merrill Scott at any bank, brokerage firm or financial institution which has possession, custody or control of any assets or funds of Merrill Scott, or of any assets deposited by customers or clients with

Merrill Scott, or into an account in the name of Merrill Scott, or held in trust or deposited with Merrill Scott or its agents or trustees, wherever situated;

c. to take such action as is necessary and appropriate to preserve and take control of, and to prevent the dissipation, concealment, or disposition of any assets in the possession, custody, name, or control of Merrill Scott;

d. to hold in his possession, custody and control all assets, securities, monies and property, together with all profits, dividends, interest or other income attributable thereto, of whatever kind deposited by Merrill Scott, with Merrill Scott, or into an account in the name of Merrill Scott, pending further order of this Court;

e. to make or authorize such payments and disbursements from the funds and assets under his control pursuant to this Order, and to incur, or authorize the incurrence of, such expenses and make, or authorize the making of, such agreements as may be reasonable, necessary and advisable in discharging his duties as Receiver;

f. to engage and employ persons in his discretion to assist him in carrying out his duties and responsibilities hereunder, including, but not limited to, accountants, attorneys, securities traders, registered representatives, financial or business advisers, liquidating agents, real estate agents, forensic experts, brokers, traders or auctioneers. Specifically, the Receiver shall be authorized to retain, at his discretion, former employees, officers and directors of Merrill Scott, including, but not limited to, Patrick M. Brody;

g. to take possession, have access to, and to review all mail or any other communication, in any form, of Merrill Scott or of its agents, officers and directors;

h. to take any action which he deems to be necessary and appropriate in order to cause Merrill Scott to file a bankruptcy petition under any chapter of Title 11 of the

United States Code, including the execution of all necessary corporate resolutions or directions. The Defendants or any other person affiliated with Merrill Scott or purporting to act on behalf of Merrill Scott may not file a bankruptcy petition under any chapter of Title 11 of the United States Code on behalf of Merrill Scott or under any analogous law of any other jurisdiction. In the event that a Bankruptcy petition is filed on behalf of Merrill Scott, the bankruptcy reference shall be withdrawn with regard to payment of fees and expenses of the Receiver, his attorneys, accountants, consultants and any other person or entity hired to assist the Receiver in the execution of his duties pursuant to this Order, and this Court shall retain jurisdiction over the payment of such fees and expenses;

i. to make demand, file or otherwise handle any claim under any insurance policy held by or issued on behalf of Merrill Scott, its officers, directors, agents, employees, trustees or other persons affiliated with Merrill Scott and to take any and all appropriate steps in connection with such policies.

## II.

**IT IS FURTHER ORDERED** that, in connection with the appointment of the Receiver provided for above:

a. Merrill Scott and all officers, agents, servants, employees, attorneys-in-fact, shareholders, consultants, accountants, advisers, counsel and other persons, and Defendants in this action, who are in custody, possession, or control of any customer or client information, assets, books, records, or other property belonging to or in the custody or control of Merrill Scott shall forthwith give access to and control of such property to the Receiver, and shall forthwith grant to the Receiver, or such other person whom the

Receiver may designate, authorization to be the signatory as to all accounts at banks, brokerage firms or financial institutions which have possession, custody or control of any assets or funds in the name of or for the benefit of Merrill Scott.

b. The Receiver is authorized, empowered, and directed without further leave of the Court, to liquidate and convert into money all of the assets, property, estate, effects and interests of every nature held in his possession and control pursuant to this Order, by selling, conveying, and disposing of the property, either at public or private sale, on terms and in the manner the Receiver deems most beneficial to the persons or parties entitled to the proceeds, and with due regard to the realization of their true and proper value and to deposit such proceeds into a trust account, pending further order of the Court.

c. The Receiver is authorized to invest any and all money or proceeds in his possession and control in United States Treasury instruments or in a money market account that invests solely in United States Treasury instruments.

d. All banks, brokerage firms, financial institutions, and other business entities which have possession, custody or control of any assets, funds or accounts in the name of or for the benefit of Merrill Scott shall cooperate expeditiously in the transfer of funds, other assets and accounts to the Receiver or at the direction of the Receiver.

e. All banks, brokers, dealers, depositories or any other financial institutions shall not liquidate, transfer, sell, convey or otherwise transfer any assets, securities, funds, or accounts in the name of or for the benefit of Merrill Scott except upon instructions from the Receiver or his designees.

f. The Receiver shall have the authority to issue subpoenas for documents and testimony consistent with the Federal Rules of Civil Procedure.

g. Defendants and their respective officers, agents, servants, employees, and attorneys-in-fact, consultants, accountants, advisers and counsel cooperate with and assist the Receiver, including, if deemed necessary by the Receiver, by appearing for deposition testimony and producing documents, and shall take no action, directly or indirectly, to hinder, obstruct, or otherwise interfere with the Receiver in the conduct of his duties or to interfere in any manner, directly or indirectly, with the custody, possession, management, or control by the Receiver of the funds, assets, premises, and choses in action described above.

h. The Receiver shall not return to Merrill Scott customers any securities or other assets deposited with Merrill Scott or into an account in the name of Merrill Scott or any dividends, interest, or other income or profits earned thereon or the proceeds from the sale of any securities or assets without further Order of this Court.

i. The costs, fees and expenses of the Receiver incurred in connection with the performance of his duties described herein, including the costs and expenses of those persons who may be engaged or employed by the Receiver to assist him in carrying out his duties and obligations hereunder shall be paid out of the proceeds or other assets of Merrill Scott, or any and all assets under the control of the Receiver pursuant to this Order. All applications for costs, fees and expenses for services rendered in connection with the Receiver shall be made by application setting forth in reasonable detail the nature of the services and shall be heard by the Court.

j. No bond shall be required in connection with the appointment of the Receiver. The Receiver and all other persons who may be engaged or employed by the Receiver to assist him in carrying out his duties and obligations hereunder shall not be

liable for any act or omission of the Receiver or such person, respectively, or any of their partners, employees, or agents, unless it shall be proven that the Receiver or such other person acted or omitted to act willfully and in bad faith. This provision shall apply to claims based on conduct of the Receiver and all other persons who may be engaged or employed by the Receiver hereunder during the term of the appointment by this Court, even if such claims are filed after the termination of any such appointment.

### III.

**IT IS FURTHER ORDERED** that, pending the determination of the Commission's action on the merits, representatives of the Receiver are authorized to have continuing access to inspect or copy any or all of the corporate books and records and other documents of Merrill Scott, including records relating to any accounts maintained by or in the name of Merrill Scott at a broker, dealer, financial institution, depository institution or any other entity, or of accounts maintained on behalf of Merrill Scott's customers or clients that have transferred, transmitted or otherwise delivered any securities, monies, or property of any kind, to Merrill Scott, and continuing access to inspect Merrill Scott funds, property and assets, including customer or client accounts, wherever they may be located.

### IV.

**IT IS FURTHER ORDERED** that, in addition to the powers, duties and responsibilities as set forth herein, the Receiver shall be authorized, empowered and directed to investigate, prosecute, defend, intervene in or otherwise participate in, compromise, and adjust actions in any state, federal or foreign court or proceeding of any kind as may in his sole discretion be advisable or proper to recover or conserve funds, assets and property of Merrill Scott.

V.

IT IS FURTHER ORDERED that Merrill Scott and its officers, directors, employees, agents and counsel shall transfer to the Receiver, as and when directed by him, any and all funds, property, documents or records of Merrill Scott, in whatever form, that may be in their possession, custody or control; and that any signatories on any and all Merrill Scott accounts at banks, brokerage firms or financial institutions which have possession, custody or control of any assets or funds in the name of or for the benefit of Merrill Scott, shall forthwith take all steps necessary to relinquish their signatory authority as to said accounts including, but not limited to, accounts containing securities or other assets that Merrill Scott's customers have transferred, transmitted or otherwise delivered to Merrill Scott.

VI.

IT IS FURTHER ORDERED that this Order shall remain in effect and shall supplement all prior Orders of this Court until further Order of this Court. The Court shall retain jurisdiction of this matter for all purposes.

Dated this 23 day of January, 2002.

Jena Campbell  
UNITED STATES DISTRICT JUDGE

I hereby certify that the enclosed document is a true and correct copy of the original on file in this office.

ATTEST: MARCUS S. THOMAS  
Clerk, U.S. District Court  
District of Columbia

By: [Signature]  
Date: 1/23/02