Jeffrey J. Liotta
414-978-5545
jliotta@whdlaw.com

November 10, 2009

The Honorable William C. Griesbach
United States District Judge
United States District Court
Eastern District of Wisconsin
125 South Jefferson Street
P.O. Box 22490
Green Bay, WI 54305-2490

VIA CM/ECF

Re: Securities and Exchange Commission v. Wealth Management LLC et al
Eastern District Court No. 09-CV-506

Dear Judge Griesbach:

This letter brief is being submitted on behalf of the Brian and Marianne Bender Joint Revocable Trust, Brian Bender IRA and Brian W Bender Personal Revocable trust (collectively, "Bender") to further explain the legal and factual basis of their objection (Docket # 92 and 93) to the Receiver's Proposed Plan of Distribution.

1. State Law Rights. At the hearing on November 4, 2009, the Receiver boldly asserted the unprecedented position that her appointment invalidates Bender's state law and other choate rights, the Operating Agreement and the contractual rights created by The Confidential Private Offering Memorandum. Bender respectfully requests that this Court decline to create this new federal common law doctrine for three principal reasons.

First, as provided by 28 U.S.C. § 959(b), the Receiver manages and operates the property according to the laws of the state where the property is located. See also Waag v. Hamm, 10 F. Supp 2d 1191, 1193 (D. Colo. 1998); Midwest Sav. Ass'n v. Riversbend Assocs P'shp, 724 F. Supp. 661-62 (D. Minn. 1989); Borock v. City of New York, 268 F.2d 412 (2d Cir. 1959)(the City of New York could properly impose real estate taxes on property in possession of the receiver even though the receiver was acting on behalf of the United States). Applicable law provides that upon making a withdrawal request, the member or partner making the request assumes creditor status. *See* Wis. Stat. §§183.0606 and 179.56. Pursuant to section 183.0905(2)

of the Wisconsin Statutes, Bender is entitled to receive a distribution prior to the interests of members who chose to continue their investment in the Funds.

Second, the Operating Agreement for the Gryphon Fund provides that the managing member had the option of segregating the investment or creating an account payable. Similar provisions exist in the other Operating Agreements or Partnership Agreements. In Bender's case, the latter option was elected, creating a contract right in favor of Bender.

Finally, the U.S. Supreme Court has long recognized that claims accorded legal priority by statute must be honored by a court of equity. Wiswall v.Sampson, 55 U.S. 52, 66 (1852). See also SEC v. Enterprise Trust Co., 559 F.3d 649, 653 (7th Cir. 2009) ("[t]he absolute priority rule in bankruptcy means that one class of creditors may be paid in full before junior creditors get anything; a similar approach might have been appropriate here. But none of the custodial investors has appealed").

2. The February 2008 Letter Restricting Future Redemptions Does Not Apply to Recognized 2007 Redemptions. The Receiver argues that Wealth Management did not honor the applicable agreements because some investors, after a February 15, 2008 letter was issued restricting redemptions to 2%, received more than the 2% referenced in the letter.[1] Since Wealth Management allegedly did not follow the 2% cap referenced in this letter, the Receiver argues that the Court should not feel obligated to follow the contract provisions. These arguments by the Receiver are also without merit.

First, it should be noted that a group of individuals, including Bender, made their redemption requests, in full, in 2007, and they were recognized as creditors, effective December 31, 2007, *before* the alleged February correspondence was issued. Choate rights exist for those redeeming individuals, and there is no evidence in the record that the February correspondence was intended to apply to the first tranche of redemptions that were recognized in December 2007. Second, the applicable agreements provide limited windows for redemption requests to be made and the documents establish different *classes* of redeeming members/partners, varying by calendar quarter. *See, e.g.,* Gryphon page 8 Sec. 5.1 providing that requests are only effective at the end of a calendar quarter after notice is given; and Sec. 5.3.2, and Sec. 5.3.3. Similar provisions also exist in the other agreements as well.

It should be readily apparent to the Receiver and others that prior members or partners in the first group would receive redemption payments first, before payments would be made to other members or partners who made their redemption requests *at a subsequent point in time* and

[1] Bender has not been able to locate any such letter in his file and Bender does not concede that this letter was ever sent to Bender or to any other person whose redemption requests were recognized effective 12-31-07.

became effective in a *different* calendar quarter. The Receiver's view that redemption requests all had to be paid in full at the same time would render as surplusage the governing provisions in the documents that recognized redemption requests would only be honored effective at the end of a particular calendar quarter.

3. Honoring A Contract and Following Statutes Is Not Inequitable. The Receiver essentially asks this Court to ignore the applicable statutes and contractual provisions because it is somehow "unfair" to divide the proceeds realized from the dissolution and winding up of the Funds. Everyday on the securities market, investors buy and sell securities. Some have the foresight to "buy low and sell high" in a given company, others are less fortunate and "buy high and sell at a loss" or, as happened here, hold on too long before the company loses substantial value. Bender made a business decision in the last quarter of 2007 to withdraw from Gryphon and Quetzal, which was recognized and became effective on December 31, 2007, and subsequently followed up with a redemption request in full for his IRA holdings of Palisades effective March 30, 2008. The statutes provide that Bender is a creditor at the point he withdrew, and the applicable contract provisions and subsequent correspondence and tax reporting all confirm Bender's status.

While it is possible that withdrawing members will receive a greater distribution than those members who chose not to withdraw, that result is no different than what happens daily in security markets and is not inequitable. The creditors, like Bender, who made the decision to sell, should be able to obtain the benefit of their statutory and contract creditor rights and should be allowed to keep the financial benefits of their decisions. The Receiver's argument that there was "no upside" for the investors who did not make redemption requests impermissibly uses the benefit of hindsight and fails to recognize that with any or all investments, an investor must make a daily decision to buy, hold or sell.

Taking the Receiver's rationale to its logical conclusion, those investors who decided to sell their stock in General Motors shortly before the bankruptcy filing (or before credit markets seized up) should be required to share the capital loss with those investors who made the decision to "buy and hold," since we now know with the benefit of hindsight that there was no "upside" to holding on to GM stock. Thus, there is no principle of fairness or inequity at play; rather, this is nothing more than the application of straightforward laws to the workings of the capital markets -- capital losses are to be borne by those who made the decision to continue to be owners, and the loss is not to be spread out on *prior owners* who sold their stake, and assumed creditor status under applicable statutory or contractual law.

4. Subordination. Bender incorporates herein by reference the discussion in the Wilson letter brief regarding Bankruptcy Code Section 510(b) and subordination.

Very truly yours,

/s/ Jeffrey J. Liotta

Jeffrey J. Liotta

c: All counsel and parties per ECF Service List

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