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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

UNITED STATES SECURITIES AND
EXCHANGE COMMISSION,

Plaintiff,

vs.

EMVEST MORTGAGE FUND, LLC,
EMVEST, INC., and MILON LYLE
BROCK,

Defendants.

CASE NO. 04cv2295 DMS (POR)

**ORDER RE: RECEIVER'S
SIXTEENTH REPORT**

On May 15, 2009, and pursuant to Court Order, the Receiver filed his Sixteenth Verified

Report ("Report"). (Doc. 455.) The Securities and Exchange Commission ("Commission") filed a statement of nonopposition, as it concurs with the Receiver's recommendations. (Doc. 458.) In its last Order regarding the Receiver's Fifteenth Verified Report, this Court ordered that it would address all issues presented by the Report on the briefs and without oral argument. (Doc. 448, at 5.)

Pursuant to Local Rule 66.1, a receiver's report must include (1) a summary of Receiver's operations; (2) an inventory of receivership assets and their appraised value; (3) a schedule of all receipts and disbursements; (4) a list of all creditors, their addresses, and claimed amounts; and (5) a petition for instructions including a recommendation as to whether the receivership should be continued. The Report provides the following:

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1 1. *Summary of Receiver's Operations*

2 The Receiver reports, that despite difficult economic conditions, Emvest Mortgage Fund,
3 LLC's ("Fund's") operations continue in a stable manner with financial controls in place and timely
4 financial reporting to the public. The Receiver continues to run the Fund on a daily basis with the
5 goals of minimizing the negative effects of the downturn of the real estate market and operating in a
6 transparent and prudent manner. Due to these conditions, the Receiver could not meet his goal of
7 liquidating the Fund's assets in an orderly manner by the 12/31/08 target date. Hasty liquidation of
8 the Fund may cause much of its assets to be lost. Although the Fund's entire portfolio remains for
9 sale, the Receiver is unable to anticipate how much time will be necessary to liquidate the Fund, given
10 the high levels of uncertainty in the marketplace. (Report, ¶1.)

11 The Receiver continues monthly discretionary distributions to the investors of up to 6%
12 annually, as well as appropriate hardship disbursements. He notes that, as the loan portfolio decreases
13 in size, the Fund's income also decreases. Thus, the regular 6% monthly cash payments are paid partly
14 from portfolio income and partly from a return on Member equity. The Receiver believes that these
15 disbursements are prudent because Members rely upon these regular monthly payments, the Fund has
16 an adequate cash reserve, and the Fund is in the process of being liquidated. (*Id.*, at ¶1.1.)

17 The Receiver also continues making emergency hardship refunds to Members pursuant to this
18 Court's March 2, 2005 and August 8, 2006 Orders. (*Id.*, at ¶1.2.) An anomalous situation has been
19 presented with regard to certain members who previously received hardship refunds. As noted, each
20 distribution now includes a return of capital. In addition, the book value of each member's investment
21 has decreased substantially to bad debt write-offs. Consequently, certain members have received
22 refunds that are greater than the current book value of their investments. Given these circumstances,
23 the Receiver has stopped making any further monthly distribution to these Fund members. The
24 Commission and the affected members concur with this new policy. (*Id.*, at ¶1.3.)

25 In addition, the Receiver reports that the Fund has benefitted from his voluntary reduction of
26 his fixed Fund management fee from \$12,500 to \$9,000. The current volatility in the market has led
27 the Receiver to spend more time managing the Fund than anticipated, yielding significant savings to
28 the Fund. (*Id.*, at ¶1.4.)

1 The Receiver reports continued progress in liquidating the Fund's loan portfolio. On
2 December 31, 2006, the portfolio principal balance was \$14,968,831. As of March 31, 2009, the
3 portfolio principal balance is \$2,383,834, plus Real Estate Owned ("REO") of \$1,787,000. Despite
4 an aggressive marketing plan, site visits and meetings with local brokers, the Receiver reports that it
5 is difficult to find qualified buyers, given the real estate market's continued uncertainty and illiquidity.
6 (*Id.*, at ¶1.5.)

7 In the Court's "Order re: Receiver's Thirteenth Report," the Court approved a "Member's
8 Equity to Buy REO" Plan, which allows members to use their current equity towards the purchase of
9 any of the Fund's Real Estate Owned (REO). The details of this plan are fully discussed in the Court's
10 Order re: the Receiver's Fifteenth Report. (*See* Doc. 448.) Although no sales have yet closed under
11 this plan, investors have shown interest and an offer is currently under evaluation. (*Id.*, at ¶1.6.)

12 In its "Order re: Receiver's Fourteenth Report," the Court approved a "Discounted Cash-Out"
13 Plan. Under this Plan, members are permitted to cash-out at 35% of their current equity, and an
14 amount not to exceed \$500,000 was allocated for discounted cash-outs. The details of this plan are
15 fully discussed in the Court's Order re: Receiver's Fourteenth Report and Order re: the Receiver's
16 Fifteenth Report. (*See* Docs. 439, 448.) To date, five members have received \$20,000 in cash-out
17 payments. (*Id.*, at ¶1.7.) Finally, the Fund distributed 2008 tax information to its members and filed
18 its own 2008 tax return in a timely fashion. (*Id.*, at ¶1.8.)

19 2. *The Fund's Financial Condition*

20 The Receiver sends periodic reports to members, and posts these reports on the Fund's website
21 (<http://emvest.info>). The Report includes the Fund's financial statements, the most recent of which
22 are included with the report as Exhibit "B." (*Id.*, at ¶2.) For the first three months of 2009, the Fund
23 recorded negative net income of \$429,196, including bad debt expenses of \$375,000. The bad debt
24 expense is an adjustment which intends to more accurately reflect the Trustee's best estimate of the
25 current market value of Fund assets. (*Id.*, at ¶2.1.) For the period ending December 31, 2008, the
26 Fund's loan portfolio is valued at \$2,383,834, with REO valued at \$1,787,000. REI is real estate that
27 was taken back the Fund due to foreclosure. The amount of REO is expected to grow as more
28 foreclosures are anticipated in the short term. (*Id.*, at ¶2.2.) As of December 31, 2008, the book value

1 of a \$10,000 original investment is \$5,798 (58% of members' original investment). This drop in
2 equity is a reflection of the bad debt write-off and "an extreme weakening of the market," during 2007
3 and 2008. Nevertheless, the Receiver represents in light of the overall turmoil in real estate and sub-
4 prime mortgage markets, the Fund is in better financial condition than many others. (*Id.*, at ¶2.3.)

5 *3. Request for Instructions*

6 The Receiver requests the Court's approval for a timeline for liquidation of the Fund. The
7 Receiver believes that a new goal of liquidation by December 31, 2009 is desirable. The Commission
8 concurs. Accordingly, the Court approves the Receiver's request, and designates the goal date of
9 December 31, 2009 for liquidation of the Fund.

10 Pursuant to Civ. L. R. 66.1, the Receiver shall file, serve, and make available on the website
11 his Sixteenth Report no later than *September 4, 2009*. The Sixteenth Report shall include a plan by
12 the Receiver setting forth how liquidation is to be accomplished by the new goal date, as well as an
13 estimate of the amounts to be received by members. Comments or objections shall be filed no later
14 than *September 18, 2009*. The matter shall be calendared for *September 25, 2009*, at *1:30 p.m.*, but
15 unless otherwise ordered, the Court will address all issues on the briefs and without oral argument.

16 **IT IS SO ORDERED.**

17 DATED: June 3, 2009



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19 HON. DANA M. SABRAW
20 United States District Judge
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