



Wellington Bank and Trust, Ltd., Wellington Capital Holdings, Ltd., Inc., Wellington Capital Holdings, Ltd., Wellington International Investments, Inc., Wellington First International Investments, Inc., and all subsequently numbered Wellington International Investments, Inc. entities, Defendants and Alpha Advantage II, Inc., Eleven-Eighty-Five, LP, Relief Defendants (the "Wellington Companies"), states:

1. The undersigned was appointed as the Examiner in this cause on February 27, 2001 pursuant to the *Order of Permanent Injunction and Other Equitable Relief* (the "First Order") entered by this Court on that date.
2. On March 21, 2001, the Court approved an *Agreed Order Appointing Receiver for Eleven-Eighty Five, LP.* ("1185") which was consented to by 1185 (the "Second Order"). The Second Order established a receivership over two assets of 1185, namely a residence located at 746 Stonehill Run, Cincinnati, Ohio [occupied by Defendant John E. Brinker, Jr. (hereafter sometimes referred to as "Brinker") and his immediate family], and 1185's offices at the Eastgate Professional Office Park located at 4360 Ferguson Drive, Cincinnati, Ohio.
3. On March 28, 2001, the Court approved the parties' *Agreed Order appointing Receiver for All Assets and Interests of Relief Defendant Eleven-Eighty Five, LP.* (The "Third Order") The Third Order required 1185 to provide the Receiver with an initial listing of its assets and interests by April 9, 2001, and a complete listing no later than April 18, 2001.
4. Finally, the Court approved an *Agreed Order Appointing Receiver Over All Entity Defendants and Relief Defendant Alpha Advantage, II., Inc.* on April 30, 2001 (the "Fourth Order")
5. In light of the fact that the Receiver has also served as the Examiner,

references hereafter to actions taken by the 'Receiver' shall also include, where appropriate, actions taken by the 'Examiner' since, in many instances, they are indistinguishable and serve a dual purpose, especially in the area of information and record gathering.

6. The orders which appointed the Receiver directed him to file with the Court an inventory and appraisal of all property and assets in his possession or in the possession of others (the "Inventory Report"), within sixty (60) days of his appointment as Receiver.
7. The orders appointing the Receiver directed that thirty (30) days after the filing of the Inventory Report and thereafter, quarterly, the receiver should file reports of his acts and transactions (the "Activity Reports") in his official capacity as Receiver.
8. Given the overlap in duties of the Examiner and the Receiver in these proceedings, the Receiver believes that the reports filed in his capacity as Examiner serve to largely provide the information ordered to be filed by the Court in these proceedings. Each of the Examiners Reports are incorporated herein by reference as if set forth in full hereafter (*H.I.*).

### **BACKGROUND**

9. The First Order also directs financial institutions to freeze all bank accounts of the Defendants and the individual defendants, namely John E. Brinker, Jr. ("Brinker") and Gary J. Bentz ("Bentz") (referred to jointly hereafter as the "Individual Defendants") in this action.
10. The same order, enjoined and restrained the Defendants and the Individual Defendants from:

*“transferring selling, assigning, pledging dissipating, concealing or otherwise disposing of in any manner, any funds, assets, accounts, or other property belonging to Defendants or Relief Defendants or in their possession, custody or control, wherever located.”*

11. Since no judgment has been entered in these proceedings against the Individual Defendants, the Receiver is not presently serving as a Receiver over any of the Individual Defendants.
12. Given the evidence amassed by the Receiver since his appointment, the Receiver deems it likely that all of the assets of the Individual Defendants will become a part of this Receivership either as the proceeds of a succession of fraudulent conveyances or as the result of execution upon a judgment entered in these proceedings against the Individual Defendants<sup>1</sup>.
13. Upon his appointment, the Receiver began to locate and take possession of the assets of the Wellington Companies and assess their liabilities. To assist him in this endeavor he engaged, the law firm of Kroger Gardis & Regas, L.L.P., the accounting firm of Birk, Gross, Bell and Coulter, P.C. (the “Accountants”), and, as local counsel in Cincinnati, Ohio, the law firm of Ulmer & Berne, L.L.P. (“Local Counsel”).
14. The Accountants for the Receiver have spent many hours attempting to piece together records that will assist the Receiver in locating the assets of the Wellington Companies and determine their liabilities. A report of the accountants detailing some of their activities was attached to the *Examiner’s Final Report* filed with this court on September 27, 2001.

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<sup>1</sup> To some extent this has already occurred. For example, the court has made a finding that John Brinker acquired furnishings in his home with proceeds of the Wellington Companies and authorized the sale of those assets. See *Order Approving Receiver’s Motion for Authority to Sell Personal Property of the Estate* entered in this cause on January 16, 2002.

15. As more fully discussed later in this report, the Receiver has previously made application to the court to take possession of or liquidate various assets of the Wellington Companies.
16. The Receiver, his counsel and other agents have taken depositions and conducted interviews of a number of former Wellington Companies' employees and subpoenaed records of numerous banks and other brokerage firms, financial institutions, and businesses. The Receiver has personally responded to the calls and other communications of numerous investors in and creditors of the Wellington Companies.

#### **NOTICE OF THE RECEIVERSHIP**

17. The proceedings filed by the SEC against the Wellington Companies were well-publicized in central and southern Indiana, northern Kentucky and western Ohio, the areas in which most of the investors and creditors reside.
18. Due to the large number of creditors and the time required to compile information about the creditors, their claims and the collection and liquidation of assets, the Receiver initially established a website at [www.wellingtonbankinfo.com](http://www.wellingtonbankinfo.com).
19. The Wellington Receivership website contains copies of all pleadings filed in these proceedings, a listing of miscellaneous information which includes depositions taken by the Receiver in the search for assets; information about Wellington assets and liabilities; copies of many subpoenas issued to banks, individuals and other institutions; and other information which is added to the site as the Receivership progresses.

20. The Receiver and his agents have spent many hours compiling the names and addresses of those whom they believe are investors and general creditors of the Wellington Companies, as well as attempting to determine the amounts of their claims.
21. Following his appointment, the Receiver took possession of the mail of the Wellington Companies and caused their mailing addresses to be transferred to a post office box under his control. As a consequence of these actions, the Receiver believes that during the ensuing fourteen months since his appointment, he has been able to accumulate billings from the vast majority of creditors who would typically be described as 'trade creditors'.
22. The Receiver also believes that he has accumulated a fairly accurate listing of all of the investors in the Wellington Companies. The estimated number of investors is 710.
23. A mass mailing to all possible investors of the Wellington Companies was made on March 15, 2001 giving notice of the First Order appointing an examiner and requesting investment information in the form of questionnaires that were to be completed and returned. A copy of the mailing is attached hereto as Exhibit "A".
24. Reviewing the questionnaires from the investors that responded to the Examiner's request for information, disclosed that the total amount of reported investments was approximately \$20,500,000, of which approximately \$10,000,000 was reported to have been solicited by Bentz.
25. A second mailing was sent to the same investors on July 25, 2001, explaining the case and the responsibilities of the Examiner. The letter was also to notify the investors of the Wellington Receivership web site. A copy

of this mailing is attached hereto as Exhibit "B".

26. The Accountants for the Receiver have worked with the IRS Taxpayer Advocate's office to develop information for investors on how losses incurred in the Ponzi Scheme operated by the Wellington Companies might be treated for tax purposes. Although this information is not (and has been expressly disclaimed from being) tax advice, nevertheless, it has significant value to investors since treatment of losses for tax purposes is a complex matter. The Receiver sent this information along with a cover letter informing the investors of the current status of the Receivership and the *Examiner's Final Report* to the investors of the Wellington Companies on April 4, 2002. A copy of this mailing is attached hereto as Exhibit "C".
27. A mailing was sent to all of the known trade creditors on April 5, 2002 informing them that it was presently unlikely that the Receivership would have the ability to pay any of their claims. A copy of the letter is attached hereto as Exhibit "D".
28. Based upon the facts presently known to the Receiver, the assets of the Receivership may not be sufficient to pay the costs of administration as more fully described hereinafter.
29. Typically, a claims filing process would be initiated in a receivership pursuant to a request from the Receiver to establish a claims filing bar date, fix the manner for giving notice to claimants and approve the form for the filing of claims. The Receiver has not yet requested the Court to fix a deadline for the filing of claims in this Receivership since he believes it likely there may be no funds available to pay unsecured creditor claims. Unfortunately, the claims filing process unfairly implies to the unsophisticated creditor who may not bother to carefully read the entire content of mailings, that some payment

may be forthcoming. In light of the rules of this district stating that receiverships shall be conducted “...in accordance with the practice in the administration of estates in bankruptcy...”<sup>2</sup>, the Receiver recommends that no claims filing process be initiated at this time since the practice in bankruptcy cases in this district is not to solicit the filing of claims in cases until there is a likelihood that funds will be available for payment to general unsecured creditors.

30. In the course of examining the records of the Wellington Companies, the Receiver has compiled a list of 19 names representing entities that have been used by the principals of the Wellington Companies to either receive investor funds, or as a means of diverting funds out of the Wellington Companies. A copy of the compilation of such names is attached as Exhibit “E”. None of the entities is an active business entity.
31. The Court has ordered that all of the assets and liabilities of the entities listed on Exhibit “E” are to be consolidated for the administration of the Receivership, by the *Order for Consolidation of Entities*, entered by the Court on April 24, 2002.

### **ASSET COLLECTION**

32. As described in the *Examiners Final Report*, large amounts of investor funds were used in numerous thinly-capitalized investments in real estate for the benefit of Brinker, Bentz, their families, and their friends. Following a personal inspection of the properties and a lien search, the Receiver determined that in most cases no equity existed, or that the costs of realizing any minimal equity would be prohibitive. Many of the properties identified

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<sup>2</sup> USDC Southern District of Indiana, L.R. 66.1 (e).

below are, or were, in foreclosure at the time of the initial investigation. As such, the properties may no longer be in the possession of the persons identified below. Where applicable, comment concerning other relevant circumstances is provided.

Location	Person in Possession
4150 Mt. Carmel Tobasco Road, #586F, Cincinnati, OH 45255	Melinda Murphy, Mr. Brinker's daughter, and her husband and son
4287 Wellington Drive, Cincinnati, OH 45254	Julieann Brinker (John Brinker's daughter)
13606 Meeker Road, Mt. Orab, OH 45154	Danny W. Hudson (Carol Brinker's son)
441 Morman Road, Hamilton, OH 45215	Matt Powers (former employee)
4593 Brittwood Lane, Batavia, OH	Donald W. Quales (former employee)
3344 Woodford Road, Cincinnati, Ohio 45213	Jennifer Myers (former employee)
1822 Duck Creek Road, Cincinnati, Ohio 45207	Gary Bentz
2184 Clara Street, Cincinnati, Ohio 45214-1539	Garry J. Bentz and Beverly M. Bentz
11961 Fallcreek Lane, Loveland, Ohio 45140	Gary J. and Beverly M. Bentz
746 Stonehill Road, Cincinnati, OH 45245	John Andres (contract purchase by 1185)
3566 Legendary Run, Cincinnati, OH 45245	Stephen J & Sharon L Westerkamp

⇒ *Woodford Road Home*

33. 1185 held a second mortgage on this property. When Myers elected to sell the home, the Receiver asserted an interest in the sale proceeds. The Receiver and Ms. Myers reached an agreement whereby the Receivership estate was paid \$11,789.19 of the sale proceeds, and the agreement was

approved by this court in August, 2001.

⇒ *Bentz Properties*

34. Gary Bentz owned 1822 Duck Creek Road and 2184 Clara Street free and clear of liens until the day before this court froze his assets. On February 26, 2001, he closed on mortgage loans on the two properties. See discussion of Bentz contempt proceedings, *infra* at para. 47. This effectively wiped out any equity in the properties. The two properties were later sold to their land contract purchasers, who were neither investors in Wellington nor Wellington employees. The sales were scrutinized by the Receiver and the SEC, and were approved by this court.

⇒ *Stonehill Run Home*

35. Details concerning the vast sums of money paid by Brinker for this property are set forth in the *Examiner's Final Report*. Since that time, Brinker and his family were ordered to vacate the residence, which was later sold at Sheriff's sale pursuant to Ohio state court litigation brought by the land contract vendor. Due to prior, perfected secured interests against the residence, superior to that of the Receiver, the sale did not result in any payment to the receivership estate.

⇒ *Stonehill Run Furnishings*

36. In May of 2001, the Receiver personally inspected Brinker's 746 Stonehill Run residence, and made a detailed inventory of its furniture and furnishings (collectively, "Furnishings"). Subsequent attempts to cause Brinker and his family to vacate the residence were unsuccessful; the Receiver eventually sought and obtained a court order directing Brinker and his family to vacate

the residence. The order also directed that Brinker not remove the Furnishings, and ordered Brinker to account for any removed Furnishings.

37. The Receiver subsequently compiled appraisals of the Furnishings, and sought court authority to sell them to John Andres for the full appraised value of \$45,000.00. The court approved the proposed sale on January 16, 2002, and the transaction was consummated shortly thereafter.

⇒ *Julieann Brinker's Boat*

38. Among other notable transfers was approximately \$72,000.00 utilized to purchase a boat for Julieann Brinker. The Brinkers initially refused to surrender the boat, which caused the Receiver to file a turnover motion<sup>3</sup>. The matter was eventually resolved by the submission of an Agreed Entry. Subject to the terms and conditions of this court's order authorizing the Receiver to sell the boat, the boat has been sold by Captain's Cove Marina-West, in Cincinnati, Ohio for approximately \$45,000.00.

⇒ *Automobiles and Other Vehicles*

39. John Brinker and Gary Bentz appear to have received almost all of their income from the Wellington Companies during 1999 and 2000. They enjoyed substantial credit as a consequence of the funds their businesses controlled. This credit was utilized to purchase a variety of automobiles in their personal names as well as those of the Wellington Companies<sup>4</sup>, but most of the

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<sup>3</sup> This type of obdurate behavior by the Brinkers characterized many aspects of these proceedings, and caused the estate to bear otherwise unnecessary attorneys' fees.

<sup>4</sup> The First Order freezing the Defendant's assets was entered on February 27, 2001 and it was the product of negotiations between counsel for the SEC and the counsel for Brinker and Bentz. Despite knowing the order freezing his assets was imminent, Bentz leased a new

payments were made by the Wellington Companies. Most of the vehicles identified in the *Examiner's Final Report* were in payment default with various financiers and most were the subject of repossession proceedings at that time and are likely no longer owned or possessed as described therein.

40. Virtually all of the automobiles were leased or purchased with little or no down payment. With the exception of the 1986 Mercury Capri (which has no lien) the Receiver has determined that all of the vehicles owned by the Wellington Companies were encumbered beyond their value. Despite a demand for its turnover, Mr. Brinker continued to drive the Mercury Capri and wrecked it. It was stored at the Brinker home until its foreclosure sale. Because it was highly customized and more than 15 years old, there is no ready market for its resale and the expenses of repair (if repairs can be effected) do not appear to justify its retention in the Receivership estate.

#### **FUNDS DISBURSED TO BRINKER OR BENTZ OR FOR THEIR BENEFIT**

41. The Accountant's Report (attached to the *Examiner's Final Report* as Exhibit "4") identifies two million eight hundred nineteen thousand, six hundred thirteen dollars and fifty-four cents (\$2,819,613.54) that was received by the Individual Defendants.
42. Despite the size of the total transfers traced to Brinker, Bentz and their family members, the Receiver believes this figure to be much higher.<sup>5</sup> For example, many of the five million dollars of charges identified as 'Miscellaneous' by the

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2001 Lincoln LS on February 15, 2001 and a new 2001 Honda Civic on February 24, 2001.

<sup>5</sup> The poor condition of the Wellington Companies records has inhibited efforts to trace many transactions.

