

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES SECURITIES AND)	
EXCHANGE COMMISSION,)	
)	
Plaintiff,)	Case No. 06 C 4859
)	
)	
v.)	Hon. Robert W. Gettleman
)	
)	
AA CAPITAL PARTNERS, INC. and)	
JOHN ORECCHIO,)	
)	
Defendants.)	

**RECEIVER’S MOTION FOR COURT ORDER TO APPROVE
SALE OF ASSETS OF BRUSH MONROE PARTNERS, LP**

W. Scott Porterfield, as the Receiver (“Receiver”) for AA Capital Partners, Inc. (“AA Capital”), by his counsel, and pursuant to the authority granted him under the Order of this Court entered on September 13, 2006, as amended on September 28, 2006 (the “Receiver Order”), moves this Court for entry of an order authorizing the Receiver to consent to a sale by Brush Monroe Partners, L.P. (“Brush Monroe”) of certain investments in Xyience, Inc.

Background

In support of his Motion, the Receiver states as follows:

1. Section 214 of the Advisers Act [15 U.S.C. § 80b-14] gives this Court equitable jurisdiction over any Advisers Act violations. *See also SEC v. Blavin*, 557 F. Supp. 1304, 1316 (E.D. Mich. 1983) (“It is well established that the securities laws confer general equitable power upon district courts.”). Once the equitable jurisdiction of a district court has been properly invoked, the Court may use all of its equitable remedies to effectuate the statutory

purpose, including ordering non-injunctive relief in a variety of forms. *See J.I. Case Co. v. Borak*, 377 U.S. 426, 433 (1964).

2. Pursuant to the Advisers Act, the Securities and Exchange Commission sought and obtained the appointment of the Receiver. Under the order appointing the Receiver, the Receiver was given broad powers to investigate, safeguard and, where appropriate, liquidate the assets of AA Capital and its affiliates. *See generally*, Receivership Order, dated 9/13/06; *see also*, minute order granting Receiver's Motion for Order Confirming Receiver's Authority Over Certain Investment Funds, entered 9/28/06. Brush Monroe is an affiliate of AA Capital within the meaning of the Receivership Order.

The Brush Monroe Investment Fund

3. AA Capital formed investment funds, including Brush Monroe, for the purpose of holding investments made by AA Capital's client investors.

4. Brush Monroe is a Delaware limited partnership that is comprised of a general partner, Brush Monroe General Partners, LLC (the "General Partner"), and two limited partners. The managing members of the General Partner include two current senior employees of AA Capital. Several former employees of AA Capital remain as the other members of the General Partner.

5. The sole asset of Brush Monroe is a debt and equity investment in Xyience Incorporated ("Xyience"), a nutritional supplement and energy drink company. To date, Brush Monroe has invested approximately \$32 million in Xyience, which consists of \$10 million in secured debt and approximately \$22 million in equity.

6. Brush Monroe, and its investment in Xyience, is managed by the General Partner. In addition, AA Capital exercises significant management control over Brush Monroe pursuant to an unwritten management agreement. As Receiver for AA Capital, the Receiver,

through his legal and financial advisers and two senior employees of AA Capital who are also managing members of Brush Monroe, has managed and assessed the business of Brush Monroe and Xyience.

7. Together with the General Partner, the Receiver and his professionals have evaluated Brush Monroe's investment in Xyience. The Receiver concurs with the determination of the General Partner that the Xyience investment is highly distressed and that Xyience has an immediate need for additional capital and new senior management. Among other problems with the investment, the Receiver believes that a portion of the funds invested by Brush Monroe did not in fact go to Xyience.

8. The General Partner has advised the Receiver that it is in the best interest of the limited partners of Brush Monroe that Brush Monroe sell most of its investment in Xyience.

The Proposed Sale of Brush Monroe's Investment in Xyience

9. As proposed, Brush Monroe will sell its \$10,000,000 convertible secured note and 4,831,113 of its 7,331,113 shares in Xyience to Key Management SA (the "Purchaser") for \$9 million cash. In connection with the transaction and several other transactions, Xyience will acquire additional capital of more than \$20 million and will obtain new executive management. Brush Monroe will retain 2,500,000 common shares in the recapitalized Xyience.

10. The Receiver has reviewed the terms of Brush Monroe's proposed sale of its Xyience investment with Huron Consulting Group, his financial advisers, with the senior employees of AA Capital who also control the General Partner, and with his legal advisers. At the Receiver's direction, Huron Consulting conducted two on-site visits of Xyience and has reviewed financial reports and projections of Xyience. Huron Consulting also prepared a liquidation analysis of Brush Monroe's investment in Xyience. The Receiver has also obtained

from other third-parties, including prospective purchasers of all of the assets managed by AA Capital, information concerning the value of the Xyience investment.

11. Based on the foregoing review, the Receiver has determined that it is in the best interests of Brush Monroe and its limited partners (who are also clients of AA Capital) that the Receiver consent to the General Partner's proposed sale of Brush Monroe's interest in the Xyience investment as described herein and that the Receiver take such acts as necessary to facilitate a closing of the transaction.

WHEREFORE, the Receiver respectfully requests that the Court grant this motion and enter an Order, attached hereto as **Exhibit A**, as follows:

(i) The Receiver may take such action as he deems necessary to effect a sale of the assets of Brush Monroe as described herein, including formally consenting to the sale; and

(ii) The proceeds from the sale of the assets of Brush Monroe shall be placed in the "AA Capital Brush Monroe" account at LaSalle Bank and held subject to further order of the Court.

Dated: February 1, 2007

Respectfully submitted,

W. Scott Porterfield
Receiver for AA Capital Partners, Inc.

By: _____
William J. Barrett
One of His Attorneys

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EXHIBIT A

**UNITED STATES DISTRICT COURT
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**ORDER TO APPROVE THE SALE
OF ASSETS OF BRUSH MONROE PARTNERS, LP**

The Court, having conducted a hearing on the Receiver's Motion For an Order to Approve Sale of Assets of Brush Monroe Partners, LP ("Brush Monroe"), and for good cause shown, HEREBY ORDERS THAT the Receiver's motion is granted and:

(i) The Receiver may take such action as he deems necessary to effect a sale of the assets of Brush Monroe as described in the Motion, including formally consenting to the sale; and

(ii) The proceeds from the sale of the assets of Brush Monroe shall be placed in the "AA Capital Brush Monroe" account at LaSalle Bank and held subject to further order of the Court.

Dated: February __, 2007

Enter:

United States District Court Judge