

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

COMMODITY FUTURES TRADING
COMMISSION

Plaintiff,

v.

ALAN JAMES WATSON, MICHAEL POTTS,
and CASH FLOW FINANCIAL, LLC,

Defendants,

And

THE JEDBURGH GROUP,

Relief Defendant.

11-cv-10949-LPZ-MKM

Hon. Lawrence P. Zatkoff

**MOTION TO ESTABLISH PROCEDURE FOR NOTICE AND OPPORTUNITY TO
OBJECT TO PROPOSED INVESTOR CLAIMS PROCEDURE**

Now comes Phillip S. Stenger (“Receiver”), temporary Receiver for Cash Flow Financial, LLC (“CFF”), by and through his attorneys, Stenger & Stenger, P.C., and moves this Court to enter an order: (i) setting a date for objections to be filed to the Receiver’s *Revised Motion and Memorandum Requesting Approval of Proposed Investor Claims Procedure* (the “**Claims Procedure Motion**”); and (ii) approving the objection and notice procedures set forth below. In support of this Motion, the Receiver states as follows:

1. On March 11, 2011, by Order of this Court, Phillip S. Stenger was appointed temporary Receiver for assets of Defendants Alan James Watson, Michael Potts and Cash Flow Financial, LLC, and the assets of any affiliates or subsidiaries of any defendant, with the full powers of an equity receiver.

2. On July 27, 2012, the Receiver filed his original *Motion for Order to Set Hearing Date* (Docket No. 65) together with his original *Motion and Memorandum Requesting Approval of the Proposed Investor Claims Procedure* (Docket No. 66). On January 30, 2013, the Court entered its order denying the motions with specific instructions as to the how to re-file the motions. Accordingly, the Receiver is now re-filing the motions.

3. Contemporaneously with the filing of this motion, the Receiver filed the revised Claims Procedure Motion proposing the claims procedure whereby the claims of investors in CFF could be established.

4. The Receiver believes it is in the best interest of the estate and consistent with the notions of due process and fairness that all interested parties be given notice of the Claims Procedure Motion and an opportunity to object.

THE PROPOSED OBJECTION PROCEDURE

5. The Receiver proposes the following procedure for interested parties to employ in order to raise objections or make comments regarding the Claims Procedure Motion:

a. Objecting parties must send their objections in writing to the Court Clerk's office, United States District Court for the Eastern District of Michigan, Southern Division, 231 West Lafayette Blvd, Room 564, Detroit, MI 48226, with a copy to the Receiver (including any attachments thereto) c/o Stenger & Stenger, P.C., 2618 East Paris Ave. SE, Grand Rapids, Michigan 49546-2425;

b. Unless otherwise ordered by the Court for good cause shown, objections must be in writing and must be received by both the Court Clerk and the Receiver within forty-five (45) days from the date of entry of the proposed *Order Approving Objection Procedure* (the "**Objection Bar Date**"); and

c. Unless otherwise ordered by the Court for good cause shown, any objections not received by both the Court Clerk and the Receiver by the Objection Bar Date shall conclusively be deemed waived.

d. After the expiration of the Objection Bar Date, if no objections are received, the Court may enter the *Order Approving Investor Claims Procedure* (“**Claims Procedure Adoption Order**”).

e. If any objections are received, the Receiver will review any objections filed and file a written response. If he believes it necessary or helpful, the Receiver may request that the Court schedule a hearing on such objection(s).

PROPOSED NOTICE OF OBJECTION PROCEDURE

6. The Receiver requests that the Court enter the proposed *Order Approving Objection Procedure* attached as **Exhibit A** (the “**Objection Procedure Order**”) wherein it will start the objection period for all interested persons to submit objections to the Claims Procedure Motion. This date shall be forty-five (45) days after entry of the Objection Procedure Order in order to allow service on interested parties, publication of the notice and to provide sufficient time for investors to raise any objections they may have to the proposed claims procedure.

7. The Receiver proposes the following procedure be utilized to provide notice to all interested parties concerning the Claims Procedure Motion:

a. The Receiver shall be directed to publish once in the national edition of *USA Today* a notice substantially similar to that set forth in **Exhibit B** to this Motion (the “**Notice**”), such publication to occur not less than twenty-one (21) days prior to the Objection Bar Date. The Receiver has selected the national edition of the *USA Today* for two reasons: 1.) the cost of publication in the *USA Today* is about 30% less than that of

the *Wall Street Journal*¹; and 2.) the investors in this scheme are not financial institutions, banks or investment entities, but are instead middle class individuals who invested their own funds in this fraudulent scheme on their own behalf. It is our belief that this type of investor is more likely to read the *USA Today* rather than *The Wall Street Journal*.² Although the additional cost of *The Wall Street Journal* may well be justified in many cases, the Receiver believes this is not one of those cases. However, the Receiver recognizes that the incremental cost of *The Wall Street Journal* is not significant in the overall scheme of this estate and, therefore, if the Court, in its experience, believes *The Wall Street Journal* would be a better publication means, the Receiver would not object to using *The Wall Street Journal*.

b. The Receiver shall be directed to mail by United States First Class Mail to each Investor known to the Receiver: (i) a copy of the Objection Procedure Order; (ii) a copy of a letter from the Receiver summarizing the Proposed Investor Claims Procedure substantially similar to that set forth in **Exhibit C** to this Motion (the “**Summarizing Letter**”); and (iii) a copy of the Claims Procedure Motion including all exhibits thereto;

c. The Receiver shall be directed to post a copy of the Objection Procedure Order, the Notice, the Summarizing Letter, the Claims Procedure Motion and this Motion on the Receiver’s website (www.cffreceiver.com); and

¹ Cost of publication of the Notice (Exhibit B) in *USA Today* is estimated to be \$10,732.50 compared to cost of publication of Exhibit B in *The Wall Street Journal* which is estimated to be \$14,529.87.

² As of 2006, the *USA Today* had a readership of 3.1 million which consisted of 65% males and 35% females, with a median age of 50, 44% of whom were college graduates, 33% were professional managerial employees with a median household income of \$89,731. (Source: *USA Today* Reader Brand Research 2006; Gfk MRI Fall 2011.) As of 2010 *The Wall Street Journal* also had a readership of approximately 3.1 million. *The Wall Street Journal*’s readership consisted of 82% males and 18% females, with a median age of 57, 79% of whom were college graduates, 80% were professional managerial employees, with an average household income of \$257,100. (Source: 2010 WSJ Subscriber Studies, 2012 Mendelsohn Affluent Survey, HHI \$100k+, March 2012 ABC Publisher’s Statement (US).)

d. Given that the Notice will be published in the national edition of *USA Today* (or *The Wall Street Journal* if the Court so directs), failure of the Receiver to mail such materials to any particular Investor, or the inability of any interested party to access the CFF Receiver's website from time to time, shall not affect the validity of notice to any investor or interested party.

WHEREFORE, the Receiver respectfully requests that the Court enter the proposed Objection Procedure Order setting the Objection Bar Date forty-five (45) days after entry of the Objection Procedure Order, approving the procedure to object to the proposed claims procedure outlined herein and approving the Notice and the Summarizing Letter and authorizing the Receiver to pay the costs of publication of the Notice.

Respectfully submitted,

STENGER & STENGER, P.C.

Attorneys for the Receiver

Dated: April 5, 2013

By: s/ Laura D. Duston
Laura D. Duston (P66541)
Business Address:
2618 East Paris Ave., S.E.
Grand Rapids, MI 49546
Telephone: (616) 940-1190
Email: laura@stengerlaw.com

CERTIFICATE OF SERVICE

Laura D. Duston, an attorney, hereby certifies that on April 5, 2013, she caused to be served a copy of the foregoing *Motion to Establish procedure for Notice and Opportunity to Object to Proposed Investor Claims Procedure* and Exhibits thereto via electronic filing on the following ECF parties:

Allison Baker Shealy
U.S. Commodity Futures Trading Commission
Division of Enforcement
1155 21st Street, N.W.
Washington, D.C. 20581
ashealy@cftc.gov

Peter A. Caplan
United States Attorney's Office
211 W. Fort Street, Suite 2001
Detroit, MI 48226-3211
peter.caplan@usdoj.gov

Harry H. Wise, III
Attorney for The Jedburgh Group
250 West 57th Street, Suite 1316
New York, NY 10107
hwislaw@aol.com

and caused to be served a copy of said Motion and Exhibits by e-mail and by First Class Mail to the following non-ECF parties:

Alan J. Watson
Inmate ID #79104-083
FCI Ashland
P.O. Box 6001
Ashland, KY 41105
Newemail4aj@gmail.com

Michael S. Potts
Pro Se Defendant
590 Centerville Road
Unit 311
Lancaster, PA 17601
Mspottsl@gmail.com
ms_potts@comcast.net

Dated: April 5, 2013

s/ Laura D. Duston
Laura D. Duston (P66541)
Attorney for Receiver Phillip S. Stenger
STENGER & STENGER PC
Business Address:
2618 East Paris Avenue, S.E.
Grand Rapids, MI 49546-2425
Telephone: (616) 940-1190
Email: laura@stengerlaw.com

Commodity Futures Trading Commission v Watson, et al.
Case No.: 11-cv-10949

EXHIBIT A
to
MOTION TO ESTABLISH PROCEDURE FOR NOTICE AND OPPORTUNITY
TO OBJECT TO PROPOSED INVESTOR CLAIMS PROCEDURE

Proposed Objection Procedure Order

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

COMMODITY FUTURES TRADING)	
COMMISSION)	
Plaintiff,)	
)	11-cv-10949-LPZ-MKM
v.)	
)	Hon. Lawrence P. Zatkoff
ALAN JAMES WATSON, MICHAEL POTTS,)	
and CASH FLOW FINANCIAL, LLC,)	
)	
Defendants,)	
And)	
)	
THE JEDBURGH GROUP,)	
)	
Relief Defendant.)	
)	

ORDER APPROVING OBJECTION PROCEDURE

Phillip S. Stenger, temporary receiver (the “**Receiver**”), by and through his counsel, Stenger & Stenger P.C., having filed his “*Motion to Establish Procedure for Notice and Opportunity to Object to Proposed Investor Claims Procedure*” (the “**Objection Procedure Motion**”), requesting an order setting an objection bar date for interested persons to submit objections to the Receiver’s “*Revised Motion and Memorandum Requesting Approval of the Proposed Investor Claims Procedure*” (the “**Claims Procedure Motion**”), and the Court having considered the Objection Procedure Motion, finds and orders as follows:

BACKGROUND

1. On March 11, 2011, by Order of this Court (the “**Receivership Order**”), Phillip S. Stenger was appointed temporary receiver for assets of Defendants Alan James Watson

(“Watson”), Michael Potts (“Potts”) and Cash Flow Financial, LLC (“CFF”), and the assets of any affiliates or subsidiaries of any defendant, with the full powers of an equity receiver.

2. The Receiver filed the Claims Procedure Motion requesting approval of the proposed investor claims procedure (the “**Proposed Investor Claims Procedure**”). The Receiver recommends that notice of the proposed adoption of the Proposed Investor Claims Procedure be given to interested parties; that an objection period be established during which those interested parties would be given an opportunity to file objections, comments and recommendations concerning the Proposed Investor Claims Procedure; that the Court set an objection bar date for all interested persons to submit their objections to the Receiver’s Proposed Investor Claims Procedure; and that following such objection period, the Court shall enter an order approving the proposed claims procedure or if appropriate upon motion by the Receiver schedule a hearing to consider any objections that may have been filed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

3. The Court adopts the Receiver’s recommendation that, before adoption of the Proposed Investor Claims Procedure: (i) interested parties should be given notice; (ii) an objection period should be established during which those interested parties are given an opportunity to file objections, comments and recommendations concerning the Proposed Investor Claims Procedure; and (iii) an objection bar date should be set forty-five (45) days following the entry of this Order on which any objections, comments and/or recommendations concerning the Proposed Investor Claims Procedure can be filed.

4. The Court finds that reasonable notice and opportunity to be heard on the adoption of the Proposed Investor Claims Procedure is provided by the provisions set forth below.

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

- A) **Objection Bar Date.** Forty-five (45) days after entry of this Order [_____, 2013] is set as the Objection Bar Date for any properly filed Claims Procedure Objections (as defined below).
- B) **Publication, Mailing and Website Posting.** The Receiver shall:
- 1) Publish once in the national edition of *USA Today* a notice substantially similar to that set forth in **Exhibit B** to the Objection Procedure Motion (the “**Notice**”), such publication to occur not less than twenty-one (21) days prior to the Objection Bar Date, as defined above;
 - 2) Mail by United States First Class Mail to those investors known to the Receiver, a copy of this Order, a copy of a letter from the Receiver summarizing the Proposed Investor Claims Procedure substantially similar to that set forth in **Exhibit C** to the Objection Procedure Motion (“**Summarizing Letter**”), and a copy of the Proposed Investor Claims Procedure; and
 - 3) Post a copy of this Order, the Notice, the Summarizing Letter, the Objection Procedure Motion, and the Claims Procedure Motion and all attached Exhibits on the Receiver’s website (www.cffreceiver.com).
 - 4) In light of the publication in the national edition of *USA Today*, the failure of any interested party to receive such materials by mail, or the inability of interested parties to access the Receiver’s website

from time to time, shall not affect the validity of the Proposed Investor Claims Procedure, as may be finally amended and adopted by this Court.

C) **Availability through Court Clerk.** A copy of this Order, the Claims Procedure Motion, the Notice and the Objection Procedure Motion shall also be filed by the Receiver with the Clerk of the Court for the United States District Court for the Eastern District of Michigan, Southern Division (the “**Court Clerk**”). The Court Clerk is hereby directed to make such documents available for inspection at the Court Clerk’s office, 231 West Lafayette Blvd, Room 564, Detroit, MI 48226, during normal business hours to any interested party who wishes to examine the same. The Court Clerk is further directed to provide a copy of such documents to any person requesting the same at such person’s cost, subject to the Court Clerk’s normal practices, procedures, and requirements concerning copying of documents.

D) **Right to Object.** Interested parties are hereby given the opportunity to file written objections, comments, or recommendations concerning the Proposed Investor Claims Procedure (“**Claims Procedure Objections**”); provided that, to be considered by this Court, such Claims Procedure Objections must be sent to the Court Clerk by written submission only, to the Court Clerk’s office at United States District Court for the Eastern District of Michigan, Southern Division, 231 West Lafayette Blvd, Room 564, Detroit, MI 48226, with a copy to the Receiver (including any

attachments thereto) c/o Stenger & Stenger, P.C., 2618 East Paris Ave., SE, Grand Rapids, Michigan 49546-2425 or by e-mail at cffreceiver@stengerlaw.com so as to be received by both the Court Clerk and the Receiver **on or before the Objection Bar Date**. Any Claims Procedure Objections not received by both the Court Clerk and the Receiver by the Objection Bar Date shall conclusively be deemed waived.

E) **Expiration of Objection Bar Date.** Following the expiration of the Objection Bar Date, the Court shall:

- 1) **If no objections are filed:** The court shall adopt the Proposed Investor Claims Procedure as the final Investor Claims Procedure, subject to such revisions as this Court deems appropriate; or
- 2) **If objections are filed:** Consider such objections and upon motion of the Receiver, determine whether and when a hearing regarding any timely filed objections should be set.

F) **Amendments.** The Court reserves the right, without further notice to interested parties, to: (i) amend this Order from time to time as it sees fit and believes to be in the best interests of the Receivership; and (ii) amend the Proposed Investor Claims Procedure as it sees fit and believes to be in the best interest of the Receivership.

G) **Costs of Publication.** The Court hereby authorizes the Receiver to pay the costs of publication of the Notice as provided herein.

Dated: _____ 2013

Honorable Lawrence P. Zatkoff
United States District Court Judge
Eastern District of Michigan, Southern Division

Commodity Futures Trading Commission v Watson, et al.
Case No.: 11-cv-10949

EXHIBIT B
to
MOTION TO ESTABLISH PROCEDURE FOR NOTICE AND OPPORTUNITY
TO OBJECT TO PROPOSED INVESTOR CLAIMS PROCEDURE

Notice

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

COMMODITY FUTURES TRADING
COMMISSION

Plaintiff,

v.

Case No.: 11-cv-10949

Honorable Lawrence P. Zatkoff

ALAN J. WATSON, MICHAEL POTTS, and
CASH FLOW FINANCIAL, LLC

Defendants.

And

THE JEDBURGH GROUP,

Relief Defendants.

CLAIMS PROCEDURE NOTICE
TO ALL INVESTORS IN CASH FLOW FINANCIAL, LLC

Notice: Notice is hereby given that the court appointed Receiver in the above-referenced matter, Phillip S. Stenger, has recommended an Investor Claims Procedure for adoption by the Court. Investors and interested parties are invited to express their views, including objections to the proposed Investor Claims Procedure.

Objection Procedure: Interested parties will be given the opportunity to file written objections, comments, or recommendations concerning the proposed Investor Claims Procedure. **To be considered by the Court, any such objections, comments, or recommendations must be sent in writing to the Clerk of the United States District Court for the Eastern District of Michigan, Southern Division (hereinafter referred to as the "Court Clerk"), 231 West Lafayette Blvd, Room 564, Detroit, MI 48226, with a copy to the Receiver (including any attachments thereto) c/o Stenger & Stenger, P.C., 2618 East Paris Ave, SE, Grand Rapids, MI 49546-2425. All objections must be received by both the Court Clerk and the Receiver no later than () ("Objection Bar Date"). Any objections, comments, or recommendations not received by both the Court Clerk and the Receiver by the Objection Bar Date shall conclusively be deemed waived.**

A copy of this Notice, the Proposed Investor Claims Procedure and the Objection Procedure Order may also be obtained from the Court Clerk or downloaded from the Receiver's website, www.cffreceiver.com.

Investors are strongly urged to carefully study this Notice and the proposed Investor Claims Procedure and to consult with their attorneys or other advisors to understand their rights and obligations under the proposed Investor Claims Procedure to determine if they should object to the proposed Investor Claims Procedure.

Commodity Futures Trading Commission v Watson, et al.
Case No.: 11-cv-10949

EXHIBIT C
to
MOTION TO ESTABLISH PROCEDURE FOR NOTICE AND OPPORTUNITY
TO OBJECT TO PROPOSED INVESTOR CLAIMS PROCEDURE

Summarizing Letter

SUMMARIZING LETTER

To: Cash Flow Financial, LLC Investors

Re: *Commodity Futures Trading Commission v Alan J. Watson, et al.*
United States District Court, Eastern District of Michigan, Southern Division
Case No. 11-10949

TO INVESTORS IN THE CASH FLOW FINANCIAL, LLC RECEIVERSHIP CONCERNING THE "PROPOSED INVESTOR CLAIMS PROCEDURE" FOR DISTRIBUTIONS FROM THE RECEIVERSHIP ESTATE

You are encouraged to carefully study this summary and accompanying documents for details concerning the Proposed Investor Claims Procedure and your right to object to the Proposed Investor Claims Procedure, and to consult with your own attorney or other advisors concerning your rights and obligations thereunder.

On _____, 2013, the Court-appointed Receiver, Phillip S. Stenger (the "Receiver") filed his *Revised Motion and Memorandum Requesting Approval of the Investor Claims Procedure* ("**Claims Procedure Motion**") requesting approval of the *Proposed Investor Claims Procedure*, along with his *Motion to Establish Procedure for Notice and Opportunity to Object to Proposed Investor Claims Procedure* ("**Objection Procedure Motion**") with the United States District Court of the Eastern District of Michigan, Southern Division (the "**Court**"). On _____, the Court entered an *Order Approving Objection Procedure* ("**Objection Procedure Order**") which set an Objection Bar Date of _____.

The purpose of this summary is to notify investors and interested parties of their right to express their views, including objections, to the Proposed Investor Claims Procedure recommended for adoption. **To be considered by the Court, any objections must be sent in writing to the Clerk of the United States District Court for the Eastern District of Michigan, Southern Division ("Court Clerk"), 231 West Lafayette Blvd, Room 564, Detroit, Michigan 48226, with a copy to the Receiver, c/o Stenger & Stenger, P.C. 2618 East Paris Ave, SE, Grand Rapids, Michigan 48546. All objections must be received by both the Court Clerk and the Receiver on or before the Objection Bar Date of _____. Objections which are not properly and timely made are waived.**

The following is a summary of the provisions of the Proposed Investor Claims Procedure. The Proposed Investor Claims Procedure, Claims Procedure Motion, and the accompanying exhibits are also available from the Court Clerk, Eastern District of Michigan, 231 West Lafayette Blvd, Room 564, Detroit, Michigan 48226 or by accessing the Receiver's website at www.cffreceiver.com. Again, you are encouraged to carefully study the Proposed Investor Claims Procedure and to consult with your own advisors regarding your rights and obligations under the Proposed Investor Claims Procedure.

SUMMARY OF PROPOSED INVESTOR CLAIMS PROCEDURE

- (1) **Mailing to Known Investors.** Within thirty (30) days following the Court's entry of the Claims Procedure Adoption Order, the Receiver shall mail or cause to be mailed the Claims Packet to all Investors known to the Receiver by United States First

Class Mail. The Claims Packet includes: (i) a Statement of Claim Form which sets forth each Investor's Adjusted Net Investment Claim ("ANIC"); (ii) the Investor Claims Procedure; and (iii) a copy of this Summarizing Letter. Any purported Claimant who does not receive a Claims Packet may request one by contacting the Receiver, Phillip S. Stenger, at Stenger & Stenger, PC, 2618 East Paris Ave SE, Grand Rapids, MI 49546, (877) 512-2483, (800) 429-5805 (fax), cffreceiver@stengerlaw.com (email).

(2) **Publication and Posting on Website.** Within ten (10) days following the entry of the Claims Procedure Adoption Order, the Receiver shall post a copy of the Investor Claims Procedure and the Claims Procedure Adoption Order, including all Exhibits, on the Receiver's website, www.cffreceiver.com, and shall publish a copy of the Claims Procedure Notice once in the national edition of *USA Today* or *The Wall Street Journal*. The Receiver shall also promptly provide a Claims Packet to any requesting Investor.

(3) **Agreeing Investors.** Investors who agree with the Receiver's calculation of their ANIC, as set forth in the Statement of Claim Form, must sign, complete and return their Statement of Claim Form on or before the Claims Bar Date of _____ indicating therein that they agree with the ANIC as determined by the Receiver in order to preserve their claim. All Investors must also provide the Receiver with updated contact or address information, if necessary, with their Statement of Claim Form. Unless waived by the Receiver in his sole discretion for good cause shown, any agreeing Investor that does not file a properly completed and signed Statement of Claim Form with the Receiver on or before the Claims Bar Date shall be forever barred from participating in the Receivership. Investors shall bear the burden of ensuring that their Statement of Claim Form and accompanying documentation have been properly and timely received by the Receiver as evidenced by a letter of confirmation from the Receiver.

(4) **Disagreeing Investors.** On or before the Claims Bar Date of _____, any Investor who disagrees with the ANIC as set forth in the Statement of Claim Form must file with the Receiver a properly completed Statement of Claim Form reflecting such Investor's disagreement with the ANIC together with the Investor's claimed ANIC amount and all supporting documentation in order to preserve their claim. Unless waived by the Receiver in his sole discretion for good cause shown, any disagreeing Investor or purported Investor that does not file a properly completed and documented Statement of Claim Form with the Receiver on or before the Claims Bar Date shall be forever barred from disputing the ANIC shown on the Statement of Claim Form. Investors shall bear the burden of ensuring that their Statement of Claim Form and accompanying documentation have been properly and timely received by the Receiver as evidenced by a letter of confirmation from the Receiver.

(5) **Review of Requests for Redetermination.** An Investor's return of a disagreeing Statement of Claim Form by the Claims Bar Date will be treated as a Request for Redetermination of the ANIC. The Receiver will review each Request for Redetermination and accompanying documentation to determine the validity of such Request. The Receiver will then mail by United States First Class Mail a Final Determination Notice to each Investor Claimant filing a Request for Redetermination setting forth the Receiver's conclusions concerning such Request for Redetermination. The Receiver will also have the right to refer the Request for Redetermination of any Investor Claimant to the Court for final adjudication.

(6) **Right to Request Adjudication.** Any Investor Claimant dissatisfied with the Receiver's Final Determination Notice may request adjudication of their Request for Redetermination from the Court by filing a Request for Adjudication with the Receiver and the Court within the timeframe as set forth in the Investor Claims Procedure. A failure to timely request adjudication will waive the Investor Claimant's right to object to the Final Determination Notice.

(7) **Resolution by Magistrate Judge.** If an Investor Claimant files a Request for Adjudication or the Receiver requests that a claim be referred to the Court, the matter will be referred to a Magistrate Judge. The Magistrate Judge may make a final determination based upon the written submissions or may set the matter for hearing. The Investor Claimant shall have the burden of proof in any adjudication.

(8) **Validity.** No Investor or Investor Claimant who has failed to timely file an appropriate Request for Redetermination or Request for Adjudication shall be permitted to object to the barring or treatment of their Investor Claim on the basis that the Receiver failed to properly mail, or that the Investor failed to receive, a Claims Packet or Final Determination Notice, or that such documents were not properly recorded as received by the Receiver or the Court Clerk. The burden of notifying the Receiver of an Investor's current address and other contact information shall be upon the Investor.

(9) **Excluded Party(ies).** ECMs and Marketers who received in excess of \$5,000 in compensation for the sale of CFF investments are excluded from receiving any distribution and those who received less than \$5,000 in compensation for the sale of CFF investments will have their ANIC and distribution reduced by 50%.

Definitions

- A. **"ANIC"** (Adjusted Net Investor Claim) is the total amount of investment made in CFF by an Investor, less all payments received, whether as principal, interest, commissions, loans, etc. from whatever source derived, including but not limited to, CFF, Watson, Potts, ECMs, other marketers, Trade, LLC, etc. Investors who have zero or negative ANICs will not be entitled to participate in a distribution. In calculating ANICs for Investors with multiple investments, the Receiver shall net positive and negative ANICs to arrive at one combined ANIC for each investor.
- B. **"CFTC Action"** shall mean *Commodity Futures Trading Commission v. Alan James Watson, Michael Potts, and Cash Flow Financial, LLC*, United States District Court, Eastern District of Michigan, Southern Division, Case No.: 11-cv-10949-LPZ-MKM.
- C. **"Claims Bar Date"** is the date by which an Investor must file a properly completed Statement of Claim Form with the Receiver in order to have a claim in the estate. Any claims filed after this date shall be barred, except for good cause shown at the discretion of the Receiver. The Claims Bar Date is ninety (90) days after entry of the Claims Procedure Adoption Order, or _____, 2013.
- D. **"Claims Procedure Adoption Order"** is the Court's Order adopting the Investor Claims Procedure and providing for implementation thereof.

- E. **"Court"** is the United States District Court for the Eastern District of Michigan, Southern Division, 526 Water Street, Port Huron, MI 48060.
- F. **"Court Clerk"** is the United States District Court for the Eastern District of Michigan, Southern Division, 231 West Lafayette Blvd, Room 564, Detroit, MI 48226.
- G. **"ECM"** shall mean Executive Club Member or any other marketer of CFF who marketed or promoted CFF for reward, either individually, or through an entity in which the individual has or had a financial interest.
- H. **"Excluded Party(ies)"** shall mean Watson, Potts, ECMs, Marketers and the Jedburgh Group, but does not include an Insubstantial Marketer.
- I. **"Final Determination Notice"** is the notice sent by the Receiver stating the Receiver's final determination concerning an Investor Claimant's Request for Redetermination.
- J. **"Insubstantial Marketers"** shall mean an ECM or other Marketer who received less than \$5,000 in marketing compensation from CFF, Watson, Potts and/or another ECM or other Marketer. The Insubstantial Marketer's ANIC, as finally determined, shall be reduced by 50% for purposes of calculating their share of the distribution from the estate.
- K. **"Investor"** is a natural person or entity that invested in Cash Flow Financial, LLC.
- L. **"Investor Claimant"** is an Investor or purported Investor that has timely filed an appropriate Statement of Claim Form as prescribed in the Investor Claims Procedure.
- M. **"Investor Claims Procedure"** is the procedure established by the Court through which Investors and purported Investors may file claims with the Receiver for distributions from the estate and secure a determination of same.
- N. **"Marketer"** is an individual who marketed or promoted CFF for reward or otherwise received compensation for the sale of CFF investments, either individually, or through an entity in which the individual has or had a financial interest.
- O. **"Request for Adjudication"** is an Investor Claimant's request to the Court Clerk asking for an adjudication of the Receiver's Final Determination.
- P. **"Request for Redetermination"** shall mean a disagreeing Investor's return of the Statement of Claim Form together with any necessary supporting documentation, requesting that the Receiver re-determine the Investor's ANIC.
- Q. **"Statement of Claim Form"** is the statement initially prepared by the Receiver calculating the Investor's ANIC.