

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

|                           |   |                        |
|---------------------------|---|------------------------|
| COMMODITY FUTURES TRADING | ) |                        |
| COMMISSION,               | ) |                        |
| Plaintiff,                | ) |                        |
|                           | ) |                        |
| ALAN JAMES WATSON,        | ) | Case No. 11-cv-10949   |
| MICHAEL POTTS, and        | ) | HON. MARK A. GOLDSMITH |
| CASH FLOW FINANCIAL, LLC, | ) |                        |
|                           | ) |                        |
| Defendants,               | ) |                        |
| and                       | ) |                        |
|                           | ) |                        |
| THE JEDBURGH GROUP,       | ) |                        |
|                           | ) |                        |
| Relief Defendant.         | ) |                        |
|                           | ) |                        |

**MOTION FOR ORDER RATIFYING  
APPROVED INVESTOR CLAIMANTS LIST AND  
AUTHORIZING DISTRIBUTION OF RECEIVERSHIP ASSETS**

**LOCAL RULE CERTIFICATION:** Pursuant to Local Rule 7.1(a), the undersigned counsel certifies that on November 24, 2015, counsel communicated in writing with counsel for all parties and with pro se incarcerated defendants Alan Watson and Michael Potts, explaining the nature of the relief to be sought by way of this motion and seeking concurrence in the relief. Counsel for the Commodity Futures Trading Commission and for Elizabeth Grill responded that they will not object to the motion. More than three business days have elapsed without remaining counsel or pro se incarcerated defendants expressly agreeing to the relief, orally or in writing.

**LOCAL RULE CERTIFICATION:** I, Kay Griffith Hammond, certify that this document complies with Local Rule 5.1(a), including double-spaced (except for quoted materials and footnotes); at least one-inch margins on the top, sides, and bottom; consecutive page numbering; and type size of all text and footnotes that is no smaller than 10-1/2 characters per inch (for non-proportional fonts) or 14 point (for proportional fonts). I also certify that it is the appropriate length. Local Rule 7.1(d)(3).

Phillip S. Stenger, Temporary Receiver for Cash Flow Financial, LLC (“**CFF**”), by and through his attorneys, STENGER & STENGER, P.C., submits this *Motion for Order Ratifying Approved Investor Claimants List and Authorizing Distribution of Receivership Assets* (“**Distribution Motion**”), pursuant to this Court’s *Order Approving Investor Claims Procedure* entered on February 24, 2014 (“**Claims Procedure Adoption Order**”) (Dkt. 98),<sup>1</sup> a copy of which is attached as **Exhibit A** to the Receiver’s concurrently filed *Memorandum in Support of Distribution Motion* (“**Distribution Memorandum**”), and incorporated herein by reference, and for the reasons detailed in the Distribution Memorandum, requests that this Court enter an Order:

A. Ratifying the proposed “**Approved Investor Claimants List**” attached as **Exhibit B** to the Distribution Memorandum and incorporated herein by reference, and the actions of the Receiver in compiling the Approved Investor Claimants List;

B. Authorizing the Receiver to distribute the sum of Six Million Five Hundred Thousand Dollars (**USD \$6,500,000**) (the “**Distribution Fund**”) from the Receivership to the Approved Claimants listed on Exhibit B in the ratio of their “**Adjusted Net Investor Claim**” (“**ANIC**”);

C. Ratifying the Receiver's transfer of the Receivership estate's assets to Fifth Third Bank in preparation for the distribution, and authorizing the Receiver to transfer the Distribution Fund of USD \$6.5 Million from CFF's Operating Account xxxx2620 at Fifth Third Bank to CFF's Distribution Account xxxx2638 at Fifth Third Bank for distribution to the Approved Claimants in accordance with the ANICs set forth in Exhibit B;

D. Holding that the procedures used by the Receiver in calculating ANICs, including but not limited to combining the claims of Co-Investor Claimants who purchased investments jointly, and the netting of positive and negative claims of Investor Claimants, were fair and equitable; that the claims administration process conducted by the Receiver, as set forth herein, complied with all requirements of the Claims Procedure Adoption Order and the Investor Claims Procedure; and that the procedures used by the Receiver as set forth herein and in the Claims Procedure Adoption Order and Investor Claims Procedure to provide notice to Investor Claimants of their ANICs, including posting on the Receiver's CFF Website and publication in *USA Today*, were fair and equitable and provided adequate due process to Investor Claimants;

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<sup>1</sup> All terms defined in the Claims Procedure Adoption Order (Dkt. 98), including the "**Investor Claims Procedure**" attached to that Order (Dkt. 98-3), shall have the same meaning when used herein.

E. Holding that the determinations of ANIC and Distribution Share for each Approved Claimant listed on Exhibit B constitute final and binding determinations of ANIC and Distribution Share for each Approved Claimant, and that the Approved Claimants, and each of them individually, are barred from asserting any claim against the Receiver (either personally or in his representative capacity) or his employees, agents, attorneys or accountants, or the Receivership estate, in excess thereof;

F. Holding that all claims from individuals and/or entities not specifically listed as Approved Claimants on Exhibit B, as well as all claims of those Investor Claimants or potential Investor Claimants whose claims have been rejected or determined to be zero, as listed on the “**Denied Claimants List**,” a copy of which is attached as **Exhibit C** to the Distribution Memorandum and incorporated herein by reference, are hereby forever barred and may not be asserted against the Receiver (either personally or in his representative capacity), or his employees, agents, attorneys and accountants, or the Receivership estate;

G. Ordering that the Receiver shall distribute the Distribution Amount to the Approved Claimants as provided on the Approved Claimant List (Exhibit B) after entry of the Distribution Approval Order; and further that (i) the distribution shall be mailed by *United States First Class Mail* to

the last known address of each Approved Claimant contained in the Receiver's records; (ii) the burden is on the Approved Claimant to notify the Receiver of the Approved Claimant's current address and other contact information, and to insure that the Approved Claimant's name and/or proper contact information are contained in the Receiver's records; (iii) the Receiver is under no duty or obligation to attempt to determine any Approved Claimant's current address and other contact information; and (iv) the Receiver shall implement the Positive Pay security procedures to ensure the proper negotiation of each distribution check;

H. Ordering that distribution checks which are returned or which have not been cashed within one hundred and twenty (120) calendar days from the date of mailing of such checks will be void and the right to receive such payments will terminate, subject only to the sole discretion of the Receiver, and the amounts otherwise distributable to such Approved Claimants shall be returned to the Distribution Fund and disposed of according to the Court's further instructions; and, further, the Receiver shall, in the mailing of the distribution checks, warn Approved Claimants of this potential loss of rights and the need to promptly cash their checks by including copies of an "**Investor Distribution Letter**" substantially in the form attached as **Exhibit F** to the Distribution Memorandum, which is

incorporated herein by reference, which the Court hereby approves; and, further, such Approved Claimants shall have no right to participate in future distributions, if any, shall be removed from the list of Approved Claimants, and the Receiver shall have no further duty to locate these Approved Claimants or notify them of future hearings, motions, orders or developments in the case;

I. Ordering that, because of the joint ownership of claims, the Receiver, prior to mailing the distribution checks, will mail via *United States First Class Mail* to each Co-Investor Claimant a “**Letter to Co-Investor Claimants**,” substantially in the form attached as **Exhibit G** to the Distribution Memorandum, which is incorporated herein by reference, which the Court hereby approves, advising them as to which address the checks will be mailed, and further ordering that a copy of the Investor Distribution Letter (Exhibit F), which is to be mailed with the distribution, will also be mailed to each Co-Investor Claimant so that each Co-Investor Claimant will be informed as to when the checks are mailed; provided, however, that failure of the Receiver to mail the Letter to Co-Investor Claimants or the Investor Distribution Letter to Co-Investor Claimants shall not give rise to any claim against the Receiver (individually or in his representative capacity), or his employees, agents, attorneys and accountants, or the

Receivership Estate, as these letters are meant to provide courtesy notices and do not convey substantive rights to Approved Claimants or Co-Investor Claimants;

J. Ordering that if a distribution check was made payable to a deceased claimant, or a deceased claimant's estate, and the representatives and/or family members of such deceased claimant inform the Receiver that they are unable to cash or negotiate the check, the Receiver is authorized to receive and review Small Estate Affidavits, or other such similar small estate probate documents as authorized by state law, as provided to the Receiver by representatives of the deceased claimant's estate, to: (i) determine whether such documentation is sufficient to satisfy the decedent's state requirements for reissuing the decedent's distribution check to the Affiant (the designated surviving spouse, child or other heir as identified in the Small Estate Affidavit), without further probate or other court involvement; and (ii) determine whether such documentation is sufficient for the Receiver to send future court-approved distribution amounts (if any) to the identified Affiant, without further probate or other court involvement;

K. Ordering that if the Receiver determines that the documentation is sufficient, as detailed above, the Receiver is authorized to reissue the decedent's distribution check in the name of the Affiant, and mail the

reissued distribution check to the Affiant via *United States First Class Mail* at the address provided by the Affiant, and further that: (i) the burden is on the Affiant to notify the Receiver of any updated contact information, and to insure that the Affiant's name and proper contact information are contained in the Receiver's records; (ii) the Receiver is under no duty or obligation to attempt to determine the current address and/or other contact information for any Affiant; and (iii) the Receiver shall implement the security procedures of Positive Pay;

L. Ordering that the Receiver shall only reissue a distribution check if, in addition to the requirements described above, the distribution check was made payable to a deceased claimant or a deceased claimant's estate, and the distribution check has not been cashed or negotiated;

M. Ordering that reissued distribution checks made payable to the Affiants which are returned or which have not been cashed within sixty (60) days of mailing, will be void, the right to receive such payments will terminate, subject only to the sole discretion of the Receiver, and the amounts otherwise distributable to such Affiants shall be returned to the Distribution Fund and disposed of according to the Court's further instructions; and that in the mailing of reissued distribution checks to Affiants, the Receiver shall warn Affiants of this potential loss of right and

the need to promptly cash or negotiate their checks, and further that if Affiants fail to cash the reissued distribution checks within sixty (60) days of mailing, such Affiants shall have no right to participate in future distributions (if any) and shall be removed from the Receiver's list of Approved Claimants, and the Receiver shall have no further duty to notify such Affiants of future hearings, motions, orders or developments in this case;

N. Ordering that, in order to effectuate this distribution, and subsequent distributions (if any), to the Approved Claimants, and, where applicable, the processing and distribution of reissued estate checks to Affiants in reliance on Small Estate Affidavits, as detailed in Paragraphs J through M above, the Court releases and discharges the Receiver (individually and in his representative capacity), and his employees, agents, attorneys and accountants, and all persons involved in the review, verification, calculation, tabulation, or any other aspect of the processing and distribution of checks and determination of claims filed pursuant to the Investor Claims Procedure, or involved in the review, verification, calculation, tabulation, or any other aspect of the processing and reissuance of estate checks to any Affiants based on their reliance on the Small Estate

Affidavits, or otherwise involved in the administration of the estate, from any act or omission arising out of such involvement;

O. Ordering that the CFF Receivership estate shall indemnify, defend and hold harmless the Receiver (individually and in his representative capacity), and his employees, agents, attorneys and accountants, and all persons involved in the review, verification, calculation, tabulation, or any other aspect of the processing and distribution of checks and determination of claims filed pursuant to the Investor Claims Procedure, or involved in the review, verification, calculation, tabulation, or any other aspect of the processing and reissuance of estate checks to any Affiants based on their reliance on the Small Estate Affidavits, or otherwise involved in the administration of the estate (collectively, the “**Indemnified Parties**”), from and against all actions pending or threatened, whether at law or in equity, in any forum, from liabilities, damages, losses, costs and expenses, including but not limited to, reasonable attorneys’ and other professionals’ fees and costs, arising from conduct or omission of the Indemnified Parties in connection with this case;

P. Ordering that this Distribution Motion and subsequent Order, including all Exhibits, shall be available to the public at the Clerk of the Court for the United States District Court, Eastern District of Michigan

(Southern Division) for inspection and copying at such Clerk's office during normal business hours by any interested party who wishes to examine the same; provided that the Court Clerk shall provide a copy of this Distribution Motion and subsequent Order to any person requesting same at such person's cost, subject to such Court Clerk's normal practices, procedures and requirements concerning same; and

Q. Ordering that the Receiver is further directed to post a copy of this Distribution Motion and subsequent Order, with all Exhibits attached, on the Receiver's website at [www.cffreceiver.com](http://www.cffreceiver.com).

**WHEREFORE**, the Receiver respectfully requests that the Court enter the Order requested herein.

Respectfully submitted,

**STENGER & STENGER, P.C.**  
Attorneys for the Receiver

Dated: December 7, 2015.

/s/ Kay Griffith Hammond  
Kay Griffith Hammond (P37425)  
Business Address:  
2618 East Paris Ave, S.E.  
Grand Rapids, MI 49546  
Telephone: (616) 988-2230  
Facsimile: (616) 940-1192  
Email: [kay@stengerlaw.com](mailto:kay@stengerlaw.com)

**CERTIFICATE OF SERVICE**

Kay Griffith Hammond, an attorney, hereby certifies that on December 7, 2015, she caused to be served a copy of the foregoing *Motion for Order Ratifying Approved Claimants List and Authorizing Distribution of Receivership Assets* via electronic filing on the following ECF parties:

Jason A. Mahoney  
U.S. Commodity Futures Trading Commission  
Division of Enforcement  
1155 21st Street, N.W.  
Washington, D.C. 20581  
[jmahoney@cftc.gov](mailto:jmahoney@cftc.gov)

Daniel J. Grimm  
U.S. Commodity Futures Trading Commission  
Division of Enforcement  
1155 21st Street, N.W.  
Washington, D.C. 20581  
[dgrimm@cftc.gov](mailto:dgrimm@cftc.gov)

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

Harry H. Wise, III  
Attorney for The Jedburgh Group  
250 West 57th Street, Suite 1316  
New York, NY 10107  
[hwiselaw@aol.com](mailto:hwiselaw@aol.com)

Sonya N. Goff  
Stevenson & Bullock PLC  
29200 Southfield Rd., Ste. 210  
Southfield, MI 48076  
[sgoll@sbplclaw.com](mailto:sgoll@sbplclaw.com)

Erika Lorraine Davis  
Butler Davis, PLLC  
615 Griswold, Ste. 708D  
Detroit, MI 48226  
[erika@butlerdavis.com](mailto:erika@butlerdavis.com)

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

Alan J. Watson  
Inmate ID #79104-083  
FCI Ashland  
P.O. Box 6001  
Ashland, KY 41105  
[Newemail4aj@gmail.com](mailto:Newemail4aj@gmail.com)

Michael S. Potts  
Pro Se Defendant  
590 Centerville Road  
Unit 311  
Lancaster, PA 17601  
[Mspotts1@gmail.com](mailto:Mspotts1@gmail.com)  
[ms\\_potts@comcast.net](mailto:ms_potts@comcast.net)

**STENGER & STENGER, P.C.**  
Attorneys for the Receiver

/s/ Kay Griffith Hammond  
Kay Griffith Hammond (P37425)  
Business Address:  
2618 East Paris Ave, S.E.  
Grand Rapids, MI 49546  
Telephone: (616) 940-1190  
Facsimile: (616) 940-1192  
Email: [kay@stengerlaw.com](mailto:kay@stengerlaw.com)