

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.	)	
	)	

**MOTION AND MEMORANDUM REQUESTING APPROVAL OF  
PROPOSED INVESTOR CLAIMS PROCEDURE**

Phillip S. Stenger, temporary Receiver ("**Receiver**") for Cash Flow Financial, LLC by and through his attorneys, Stenger & Stenger, P.C., files this Motion and Memorandum Requesting Approval of the Proposed Investor Claims Procedure (the "**Motion**") and moves this Court to enter an order ("**Claims Procedure Adoption Order**") that will:

- (i) Approve the "**Investor Claims Procedure**", a copy of which is attached as **Exhibit A**;
- (ii) Approve the claims procedure notice which will give potential investors or creditors notice of their opportunity to file claims against the estate and will be published once in the national edition of *USA Today* ("**Claims Procedure Notice**"), a copy of which is attached as **Exhibit B**;

- (iii) Approve the proposed statement of claim form which sets forth each Investor's Adjusted Net Investor Claim, or ANIC ("**Statement of Claim Form**"), a copy of which is attached as **Exhibit C**;
- (iv) Approve a letter to Investors which summarizes the proposed Investor Claims Procedure (the "**Summarizing Letter**"), a copy of which is attached as **Exhibit D**;
- (v) Authorize and direct the Receiver to mail each Investor their Statement of Claim Form, Investor Claims Procedure and the Claims Procedure Summarizing Letter (collectively referred to as "**Claims Packet**") and to otherwise give notice as provided in the proposed Investor Claims Procedure; and
- (vi) Establish a claims bar date ("**Claims Bar Date**") which, subject to certain exceptions set forth in the Investor Claims Procedure, will be ninety (90) days after entry of the Claims Procedure Adoption Order.

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

**I.**

**BACKGROUND**

1. On March 10, 2010, the Commodity Futures Trading Commission (the "**Commission**") filed a multi-count complaint against Alan James Watson ("**Watson**"), Michael Potts ("**Potts**") and Cash Flow Financial, LLC ("**CFF**"), alleging that from November 28, 2007 through the time of filing the complaint, the defendants fraudulently solicited and accepted at least \$45 million from more than 600 individuals and entities to participate in a commodity pool to trade commodity futures contracts and securities.

2. In the CFF scheme, Watson and Potts solicited pool participants through "Executive Club Members" ("**ECMs**") who acted under Watson's and Potts' direction in

identifying and soliciting new participants and were compensated in a manner similar to a multi-level marketing program. In addition to ECMs who were compensated directly from CFF, other Marketers received compensation from a separate entity called New Life Inc. ("New Life") which was conducted by ECM Mark Miller. New Life received compensation from CFF in exchange for marketing CFF to investors. New Life would, in turn, pay a portion of the compensation it received from CFF to individuals who marketed or sold or referred CFF to others, who were called Communication Consultants or "CC", "Sub CC" or "Sr CC" (collectively referred to herein as "**Marketers**"). The Receiver is aware of the ECMs and Marketers as listed on the attached **Exhibit E**.

3. The CFF Operating Agreement stated that the CFF pool participant funds would be traded using a trading program selected by Watson and approved by a vote of two-thirds of the members; however no such approval process was ever implemented and Watson invested the money in many different, unapproved schemes, many of which turned out to be fraudulent schemes in their own right, resulting in complete loss of the investment. The pool participants believed the funds would be invested with a Florida entity specializing in commodities trading, known as "Trade, LLC". However, of the approximately \$45 million that was raised, only \$8.1 million was actually invested in Trade, LLC for commodities trading. Trade, LLC itself also turned out to be a fraudulent scheme which did not return trading profits to CFF as promised and itself is subject to lawsuits by the Securities and Exchange Commission and the Commodity Futures Trading Commission and is in receivership in Florida.<sup>1</sup> The remaining \$37 million and the approximately \$2 million received as a return on the Trade, LLC investment,<sup>2</sup> was used for fraudulent, unapproved purposes including: (i) paying approximately \$602,929 to reimburse

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<sup>1</sup> *Securities and Exchange Commission vs. Trade-LLC, et al*, United States District Court, Southern District of Florida, Case No.: 10-CV-80737; *Commodity Futures Trading Commission vs. Philip W. Milton, et al*, United States District Court, Southern District of Florida, Case No.: 10-CV-80738.

<sup>2</sup> CFF received approximately \$2,144,290.73 as a return on its investment in Trade, LLC.

individuals who had lost money in yet another illegal Ponzi scheme known as “Safevest, LLC,”<sup>3</sup> in which Watson had induced these individuals to invest;<sup>4</sup>; (ii) paying approximately \$7,810,622 to existing Investors as purported profits from their investments in classic Ponzi fashion; (iii) paying approximately \$2,619,509 in commissions to Watson, Potts and the ECMs; (iv) paying approximately \$739,522 in Watson’s and his family’s day to day living expenses; (v) investing approximately \$22,732,244 in various unapproved investments, most of which turned out to be complete losses; and (vi) providing approximately \$4,965,026 to relief defendant The Jedburg Group.

4. On or about March 11, 2011, by Order of this Court, Phillip S. Stenger was appointed temporary Receiver for the assets of Defendants Watson, Potts and CFF. The Receiver was directed and authorized to do the following: assume full control of the corporate defendants and business entities owned by defendants; take exclusive custody, control and possession of all the funds, property and other assets in the possession of or under the control of the defendants; take all steps necessary to secure the residential and business premises of the defendants; preserve, hold and manage all receivership assets and perform all acts necessary to preserve the value of those assets; prevent the withdrawal or misapplication of funds entrusted to the defendants and otherwise protect the interests of customers, clients, pool participants or investors; manage and administer the assets of the defendants; collect all money owed to the defendants; initiate, defend, compromise, adjust, intervene in, dispose of, or become a party to any actions or proceedings in state, federal or foreign court necessary to preserve or increase the assets of the defendants; choose, engage, and employ the law firm of Stenger & Stenger, PC,

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<sup>3</sup> See *CFTC vs. Safevest, LLC, Jon G. Ervin and John V. Slye*, United States District Court, Central District of California, Case No.: SACV08-00474JVS; and *SEC vs. Safevest, LLC, Jon G. Ervin and John V. Slye*, United States District Court, Central District of California, Case No.: SACV08-00473JVS. Judgments have been entered in both matters against Safevest, LLC and the other defendants; however, no assets have been recovered for the benefit of the victims of this fraudulent activity.

<sup>4</sup> The Receiver sent demand letters to Safevest, LLC investors who received reimbursement from Cash Flow Financial, LLC; however, no monies have been recovered to date.

other attorneys, accountants, and other retained personnel as necessary; issue subpoenas to compel testimony of persons or obtain documents and records pertaining to the receivership; open one or more bank accounts as designated depositories for funds of the defendants; and make payments and disbursements from the receivership estate necessary for carrying out the directions of, or exercising the authority granted by the Order of the court.

5. Since his appointment, the Receiver has undertaken many activities, including marshaling assets of approximately \$4,809,276. In addition, the Receiver has coordinated with the Commission, interviewed individuals, reviewed documents, and issued subpoenas in an effort to understand the workings of the scheme.

6. At the time the Receiver was appointed, the accounting and business records of CFF (including Investor records) were incomplete, confusing, misleading and in many cases nonexistent. As a result, the Receiver has used his best efforts to largely recreate the accounting and business records of CFF using available company records and bank records, including wire transfer receipts and cancelled checks. Reconstructing the accounting records has helped the Receiver ascertain what he believes to be the net investment (amount invested less amount returned, from whatever source as further defined in the Investor Claims Procedure attached as Exhibit A) of each Investor (hereinafter referred to as the **"Adjusted Net Investor Claim"** or **"ANIC"**). The Receiver also sent information requests to approximately 974 Investors on forms he created for that purpose entitled **"Investor Response Forms"**. The Investor Response Forms requested information regarding the particulars of each Investor's investment. Investor Response Forms were returned by 768 Investors. Using the accounting the Receiver created from bank records and the information disclosed in the Investor Response Forms, as well as other information available to the Receiver, the Receiver has calculated a preliminary ANIC for each known Investor.

7. The Receiver recommends that the Court adopt the Investor Claims Procedure (Exhibit A) to determine the allowable claims of each Investor in the assets of the Receivership.

## II.

### DISCUSSION

#### A. The Proposed Investor Claims Procedure is Fair and Reasonable

8. As part of its equitable powers, the court in a Commission enforcement action may order a wrongdoer to disgorge all gains from the illegal activity.<sup>5</sup> The purpose of disgorgement is to prevent the wrongdoer from profiting from his illegal acts, not to reimburse those who have been injured by his conduct, and there is no requirement that disgorged funds be used for investor restitution.<sup>6</sup> The courts have held that any plan of distribution may be adopted that is reasonable,<sup>7</sup> even though the reviewing court might have chosen a different plan.<sup>8</sup> The plan may

<sup>5</sup> *CFTC v. Skorupskas*, 605 F.Supp. 923, 943 (D.C.Mich. 1985); *CFTC v. Hunt*, 591 F.2d 1211, 1223 (7<sup>th</sup> Cir. 1979); *CFTC v. Co Petro Marketing Group*, 680 F.2d 573, 583 (9<sup>th</sup> Cir. 1982). *SEC v. Fischbach Corporation*, 133 F.3d 170, 175 (2d Cir. 1997) (“*Fischbach*”); *SEC v. First Jersey Securities, Inc.* 101 F.3d 1450, 1474 (2<sup>nd</sup> Cir. 1996); see *SEC v. Certain Unknown Purchasers of the Common Stock of and Call Options for the Common Stock of Santa Fe International Corporation*, 817 F.2d 1018, 1020-21 (2d Cir. 1987) (“*Santa Fe*”); see also *SEC v. Lund*, 570 F. Supp 1397, 1404 (C.D.Cal. 1983) (“*Lund*”). In appropriate circumstances, disgorgement can also be ordered against relief defendants, even though they engaged in no wrongful conduct. *CFTC v. Kimberllynn Creek Ranch, Inc.* 276 F.3d 187, 190-193 (4<sup>th</sup> Cir. 2002).

<sup>6</sup> Disgorgement may be ordered as a remedy for violations of the Commodity Exchange Act for “the purpose of depriving the wrongdoer of his ill-gotten gains and deterring violations of the law.” *CFTC v. American Metals Exchange Corp.*, 991 F.2d 71, 76 (3<sup>rd</sup> Cir. 1993), citing *CFTC v. British Am. Commodity Options Corp.*, 788 F.2d 92, 94 (2<sup>nd</sup> Cir. 1986); “...the primary purpose of disgorgement is not to compensate investors...it is a method of forcing a defendant to give up the amount by which he was unjustly enriched...” *SEC v. Commonwealth Chemical Securities, Inc.*, 574 F.2d 90, 102 (2<sup>nd</sup> Cir. 1978) (“*Commonwealth*”). This principle from *Commonwealth* was reaffirmed by the Second Circuit in *SEC v. Tome*, 833 F.2d 1086, 1096, (2<sup>nd</sup> Cir. 1987); *SEC v. Wang*, 944 F.2d 80, 85, 88 (2d Cir. 1991) (“*Wang*”), and *Fischbach*, 133 F.3d at 175-76 (“The primary purpose of disgorgement orders is to deter violations of the securities laws by depriving violators of their ill-gotten gains. ... The effective enforcement of the federal securities laws requires that the SEC be able to make violations unprofitable .... Although disgorged funds may often go to compensate securities fraud victims for their losses, such compensation is a distinctly secondary goal...and a district court may order disgorgement regardless of whether the disgorged funds will be paid to such investors as restitution.”) See also *SEC v. Huffman*, 996 F.2d 800, 802 (5<sup>th</sup> Cir. 1993) (“...disgorgement is not precisely restitution. Disgorgement wrests ill-gotten gains from the hands of a wrongdoer. It is an equitable remedy meant to prevent the wrongdoer from enriching himself by his wrongs. Disgorgement does not aim to compensate the victims of the wrongful acts, as restitution does.”)

<sup>7</sup> *CFTC v. Muller*, 570 F.2d 1296, 1300 (5<sup>th</sup> Cir. 1978) (“*Muller*”) (“It has long been recognized that in an action brought to enforce the requirements of remedial statutes such as [the Commodity Exchange Act], a district court has broad discretion to fashion appropriate relief.”); *SEC v. Black*, 163 F.3d 188, 199 (3d Cir.1998) (“...where there is a receiver with equitable power in a proceeding before it, the District Court has wide discretion as to how to proceed”); *FDIC v. Bernstein*, 786 F.Supp. 170, 177 (E.D.N.Y.1992) (“...one common thread keeps emerging out of the cases involving equity receiverships—that is, a district court has extremely broad discretion in supervising an equity receivership”). This discretion extends to the review of a receiver's proposed distribution plan. See *SEC v.*

also provide for reimbursement to certain claimants, while excluding others,<sup>9</sup> or provide different treatment for different classes of investors,<sup>10</sup> this is particularly applicable when the losses suffered due to the scheme cannot be fully compensated by available proceeds.<sup>11</sup>

9. The Receiver believes it is in the best interests of those who invested in CFF, and is fair, reasonable and equitable, for the Court to adopt as a plan of distribution for the Receivership Assets, the Investor Claims Procedure attached as Exhibit A hereto.

10. Under applicable law, this Court should approve the Investor Claims Procedure, so long as the Court determines that the plan is *fair and reasonable*.<sup>12</sup>

### **B. Investor Claims Procedure Provides Due Process to Investors**

11. The use of summary proceedings to implement a plan of distribution is customary in Commission receivership actions and is perfectly permissible under “due process” rules so

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*Forex Asset Management LLC*, 242 F.3d 325 (5th Cir.2001) (“*Forex*”) (analyzing the district court’s approval of the receiver’s distribution plan under an abuse of discretion standard because the district court was “acting pursuant to its inherent equitable powers” when it approved [the receiver’s distribution] plan. (quoting *United States v. Durham*, 86 F.3d 70, 72 (5th Cir.1996) (“*Durham*”); *Wang*, 944 F.2d at 83-84. See also *SEC v. Basic Energy and Affiliated Resources, Inc.*, 273 F.3d 657, 670-71 (6th Cir. 2001) (“*Basic Energy*”) (“Similarly, in the present case, the district court carefully considered the Escrow Investors’ arguments, the position of the other BEAR investors, and the facts of the case, and accordingly fashioned a distribution plan that was fair and equitable. Thus, we cannot conclude that the district court has abused its discretion.”); *Forex*, 242 F.3d at 331 (“...in shaping equity decrees the trial court is vested with broad discretionary power....”); *SEC v. Elliott*, 953 F.2d 1560, 1566-67 (11th Cir. 1992) (“*Elliott*”) (“The district court has broad powers and wide discretion to determine relief in an equity receivership.”); *SEC v. Hardy*, 803 F.2d 1034, 1037-39 (9th Cir. 1986) (“*Hardy*”) (“It is a recognized principle of law that the district court has broad power and wide discretion to determine the appropriate relief in an equity receivership.”); *Lund*, 570, F. Sup. at 1404 (“The receiver or trustee, in addition to handling other duties if necessary, is given the task of locating those members of the public who were injured by the illegal activity and to pay each injured party an amount determined by the trustee to be fair and equitable.”)

<sup>8</sup> *Wang*, 944 F.2d at 88.

<sup>9</sup> *SEC v. Levine*, 881 F.2d 1165, 1173, 1183 (2d Cir. 1989) (“*Levine*”), cited with approval in *Wang*, 944 F.2d at 84; see also *Santa Fe*, 817 F.2d 1020-21; *Basic Energy*, 273 F.3d at 660-661.

<sup>10</sup> *Wang*, 944 F.2d at 85-88; see also *Basic Energy*, 273 F.3d at 660-661.

<sup>11</sup> *Wang*, 944 F.2d at 86, 87; *Santa Fe*, 817 F.2d at 1021.

<sup>12</sup> “We therefore hold that unless the consent decree specifically provides otherwise, once the district court satisfies itself that the distribution of proceeds in a proposed SEC disgorgement plan is fair and reasonable its review is at an end.” *Wang*, 944 F.2d at 85. Insofar as the drawing of distinctions between different classes of investors, the court also observed “this kind of line-drawing ---which inevitably leaves out some potential claimants --- is, unless commanded otherwise by the terms of a consent decree, appropriately left to the experience and expertise of the SEC in the first instance....The district court’s task is to decide whether, in the aggregate, the plan is equitable and reasonable.” *Id.*, at 88.

long as the investors are given the opportunity to be heard, to object to the plan, and to present their claims.<sup>13</sup> Thus, as the Eastern District of New York noted in *FDIC v. Bernstein*:

...One common thread keeps emerging out of the cases involving equity receivership – that is, a district court has extremely broad discretion in supervising an equity receivership and in determining the appropriate procedures to be used in its administration.

In keeping with this broad discretion, the use of summary proceedings in equity receiverships as opposed to plenary proceedings under the Federal Rules of Civil Procedure is within the jurisdictional authority of a district court. Such procedures avoid formalities that would slow down the resolution of disputes. This promotes judicial efficiency and reduces litigation costs to the receivership, thereby preserving receivership assets for the benefit of creditors.<sup>14</sup>

12. The Investor Claims Procedure provides for notice to Investors by mailing, publication and website posting of a right to file a claim, with supporting documentation, and to object to the Investor Claims Procedure; review of Claims Procedure Objections by the Court; review of claims by the Receiver before issuance of his Final Determinations, with a right to seek reconsideration of that determination; and a right of appeal to the Court, including, if necessary, reasonable discovery. In addition, the Receiver has expended significant effort to identify Investors, determine each known Investor's ANIC and to notify them of their potential claims and the steps to be taken to protect and assert such claims. These provisions and actions clearly satisfy "due process" requirements. The courts have also sustained providing for a reasonable Claims Bar Date.<sup>15</sup>

<sup>13</sup> See, e.g., *CFTC v. Topworth Int'l Ltd.*, 205 F.3d 1107, 1113 (9th Cir.1999) ("Topworth challenges the entire 'summary' procedure used by the district court as improper and in violation of due process. But '[f]or the claims of nonparties to property claimed by receivers, summary proceedings satisfy due process so long as there is adequate notice and opportunity to be heard,'"quoting *SEC v. American Capital Invs., Inc.*, 98 F.3d 1133, 1146 (9<sup>th</sup> Cir. 1996), *abrogated on other grounds*, *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 118 S.Ct. 1003, 1012, 140 L.Ed.2d 210 (1998); *Basic Energy*, 273 F. 3d at 668-671; *Elliott*, 953 F.2d at 1566-67, 1570-71; *Hardy*, 803 F.2d at 1040; *SEC v. Wencke*, 783 F.2d 829, 834-839 (9th Cir. 1986) ("*Wencke*"); *U.S. v. Arizona Fuels Corporation*, 739 F.2d 455, 458-460 (9<sup>th</sup> Cir. 1984). Reduction in administrative costs is a consideration that may also be taken into account in developing a plan of distribution. *Wang*, 944 F2d at 86-87; see also *Fischbach*, 133 F.3d at 175; *Elliott*, 953 F.2d at 1566; *Wencke*, 783 F.2d at 837. For a detailed discussion of due process issues, see *Elliott*, 953 F. 2d at 1566-68, 1570.

<sup>14</sup> 786 F. Supp 170, 177-78 (E.D.N.Y. 1992) ("*Bernstein*"), citations omitted. See also, *Hardy*, 803 F.2d at 1038).

<sup>15</sup> *Hardy*, 803 F2d at 1038-1040.

13. It is in the interest of all parties, including the Investors, that the expense of administration of the estate, including the processing of Investor Claims, be reduced, so long as the procedures adopted are still fair and equitable. Adopting the recommendations contained in the Proposed Investor Claims Procedure, which places the burden of proof on the Investor, including monitoring to insure that necessary notices are properly given and received, does not infringe on any "due process" rights, so long as the Investors are advised of these requirements and are still given the opportunity for their "day in court."

14. **The goal of the Investor Claims Procedure is the determination of an Adjusted Net Investor Claim or ANIC for every Investor who wishes to participate in the distribution. For purposes of the distribution, each Investor Claimant shall receive a pro-rata portion of the funds to be distributed to Investors based on a fraction, the numerator of which is the Investor Claimant's ANIC as finally determined by the Court (as adjusted for Excluded Parties and Insubstantial Marketers as set forth herein) and the denominator of which is the approved adjusted ANIC for all Investor Claimants as finally determined by the Court. This type of distribution has been deemed equitable since it distributes assets according to out-of-pocket losses.<sup>16</sup>**

**C. Exclusions from Definitions of "Investors" and "Investor Claimants"**

15. All Investors will be eligible to participate; however, the Receiver recommends that the claims of the Defendants, the Relief Defendant and persons and/or entities who marketed or promoted CFF for reward or otherwise received compensation for the sale of CFF investments, including the ECMs or other type of marketers (collectively "**Excluded Parties**"), should be disallowed in full. In the opinion of the Receiver, valid grounds exist for the Court to distinguish between the treatment of innocent Investors and Excluded Parties, all of whom are in

some way responsible for the huge losses incurred by Investors. In addition, several of the ECMs and/or other marketers invested through an entity and should not be able to receive compensation through an entity in which they have a financial interest. Equity dictates that any individual who had inside knowledge of the fraudulent scheme should not be entitled to participate in a recovery of funds. This is particularly important in this case because it is expected that Investors will lose well in excess of 50% of their initial investment. In a receivership action, the Court is exercising its authority as a court in equity. District courts have broad powers and wide discretion to determine relief in an equity receivership.<sup>17</sup> That wide discretion extends to a district court's decision relating to the choice of a distribution plan for the receivership.<sup>18</sup> Because the district court possesses such wide discretion, it has the authority to classify claims sensibly in receivership proceedings.<sup>19</sup> Thus, its treatment of various types of Investors can be different, so long as there are reasonable and equitable bases for the distinctions. The exclusion of those who participated in the development, implementation or marketing of the scheme, or who should have known of the fraudulent nature of the scheme, is reasonable, since it permits the Receivership estate to be distributed to those who are most innocent.<sup>20</sup>

16. Notwithstanding the foregoing, the Receiver recommends that there should be an exception to the exclusion rules set forth above. To the extent an individual received less than \$5,000.00 in compensation for the sale of CFF investments, they should be considered an **"Insubstantial Marketer"** and instead of being completely excluded from participating in the

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<sup>16</sup> Limiting participation in the distribution to those who have suffered actual out-of-pocket losses has been approved in the past: *see Santa Fe*, 817 F.2d at 1020-22; *see also, CFTC v PrivateFX Global One*, 778 F.Supp. 775, 784 (S.D. Tex. 2011) (approving receiver's pro rata plan for distribution on basis of each investor's net out-of-pocket loss).

<sup>17</sup> *Muller*, 570 F.2d at 1300; *Elliott*, 953 F.2d at 1566; *see also SEC v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9<sup>th</sup> Cir. 2005).

<sup>18</sup> *Quilling v. Trade Partners, Inc.*, 572 F.3d 293, 298 (6<sup>th</sup> Cir. 2009); *Forex*, 242 F.3d at 331; *Durham*, 86 F.3d at 72.

<sup>19</sup> *SEC v. Enterprise Trust Co.*, 559 F.3d 649, 652 (7<sup>th</sup> Cir. 2009); *Basic Energy*, 273 F.3d at 670. ("The district court did not abuse its wide discretion when it categorically precluded the Pension Fund's former Regional directors and sales agents from recovering from the receivership estate.") *See Fischbach*, 133 F.3d at 175.

distribution, their ANIC, as finally determined, should be reduced by 50% for purposes of calculating their share of the distribution from the estate. This is equitable in that it penalizes these individuals for the role they played in the scheme but also recognizes that their role was minor.

17. The Trade, LLC fraudulent scheme was closely related to the CFF fraudulent scheme. The Receiver in the Trade, LLC matter pending in Florida has provided the Receiver with the names of individuals who received more returns from Trade, LLC than they invested in Trade, LLC. Some of those investors who received excess funds from Trade, LLC have a claim in this receivership. The Receiver believes it would be inequitable for individuals who received excess "profits" out of Trade, LLC, to then receive a distribution out of this receivership and therefore recommends that any excess profits made out of the Trade, LLC fraudulent scheme be deducted from the Investor's ANIC in this receivership.

### **III.**

#### **THE PROPOSED INVESTOR CLAIMS PROCEDURE**

18. The Receiver believes it is in the best interest of the receivership estate, and is reasonable and equitable, for the Court to adopt the Investor Claims Procedure as fully set forth in Exhibit A. A summary of the Investor Claims Procedure is as follows:

- (i) The Receiver shall mail to all Investors known to the Receiver a Statement of Claim Form which will include the Investor's ANIC (claim amount) to the extent the Receiver has sufficient information to calculate the Investor's ANIC.
- (ii) The Receiver shall also: (a) post a copy of the Claims Procedure Adoption Order, including Exhibits, on the Receiver's Cash Flow

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<sup>20</sup> See *Basic Energy*, 273 F.3d at 660-661 (6<sup>th</sup> Cir. 2001), (where defendants were excluded from participation in disgorgement proceeds and marketers of the scheme were reimbursed for a smaller fraction of their losses than were

Financial, LLC website, [www.cffreceiver.com](http://www.cffreceiver.com); and (b) publish a copy of the Claims Procedure Notice (Exhibit A to the Investor Claims Procedure) once in the national edition of *USA Today*.

- (iii) The Receiver shall promptly provide a Claims Packet to any purported Investor that requests one and shall determine an ANIC for such Investor to the extent the Receiver has sufficient information to calculate the ANIC.
- (iv) Investors who *agree* with the Receiver's determination of their ANIC as set forth on the Statement of Claim Form included in the Claim's Packet, **must** sign the Statement of Claim Form indicating their acceptance of the ANIC as calculated by the Receiver and return the Statement of Claim Form to the Receiver on or before the Claims Bar Date in order to preserve their claim.<sup>21</sup>
- (v) 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 purported ANIC amount and all supporting documentation by the Claims Bar Date in order to preserve their claim. A purported Investor that has timely filed an appropriate Statement of Claim as prescribed in the Investor Claims Procedure shall be known as an **"Investor Claimant."** An Investor Claimant's return of a disagreeing

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non-marketers.)

<sup>21</sup> The Receiver believes it is important to have agreeing investors return the Statement of Claim Form to insure that the Receiver has properly recorded the names of investors and co-investors since the CFF records regarding the identity of investors was not always clear and accurate.

Statement of Claim Form will be treated as a “**Request for Redetermination**” of the ANIC.

- (vi) Requests for Redetermination shall clearly set forth the Investor Claimant’s basis for requesting a redetermination of its ANIC and shall include any necessary supporting documentation. The Receiver shall review each Request for Redetermination to determine the validity of such request, together with any additional conclusions of the Receiver on other issues relevant to the Statement of Claim.
- (vii) The Receiver shall 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.
- (viii) Any Investor Claimant that is dissatisfied with the Receiver’s Final Determination concerning its Request for Redetermination, as reflected in the relevant Final Determination Notice, may request adjudication of the Receiver’s Final Determination by filing a written “**Request for Adjudication**” with the Court. The Request for Adjudication shall clearly explain the Investor Claimant’s disagreement with the Receiver’s Final Determination as reflected in the Final Determination Notice and shall include copies of all relevant documentation, which shall also be provided to the Receiver.
- (ix) No Investor or Investor Claimant who has failed to timely file an appropriate Statement of Claim Form, Request for Redetermination, or Request for Adjudication, shall be permitted to object to the barring or treatment of its Investor Claim.

19. At the conclusion of the Investor Claims Procedure, the Receiver shall file with the Court a list of the Investor Claimants together with the ANIC for each such Investor Claimant and make a recommendation for an initial distribution. For purposes of the distribution, each Investor Claimant shall receive a pro-rata portion of the funds to be distributed to Investors based on a fraction, the numerator of which is the Investor Claimant's ANIC as finally determined by the Court (as adjusted for Excluded Parties and Insubstantial Marketers as set forth herein) and the denominator of which is the approved adjusted ANIC for all Investor Claimants as finally determined by the Court.

#### IV.

#### CLAIMS PROCEDURE ADOPTION ORDER

20. Attached as **Exhibit F** to this Motion and incorporated herein by reference is a proposed "**Claims Procedure Adoption Order**," which the Receiver respectfully requests that this Court enter.

**WHEREFORE**, the Receiver respectfully requests that the Court enter the proposed Claims Procedure Adoption Order or an order substantially similar thereto:

- A. Approving the Investor Claims Procedure as more fully set forth on Exhibit A, including approval of the Claims Procedure Notice to be published in the national edition of the *USA Today* newspaper and attached as Exhibit B, subject to any revisions the Court now or hereafter deems appropriate;
- B. Approving the proposed Statement of Claim Form attached as Exhibit C hereto, and the Summarizing Letter attached as Exhibit D hereto, subject to any revisions the Court deems appropriate;
- C. Directing the Receiver to mail a Claims Packet to each known Investor, and to otherwise give notice as provided herein;

- D. Setting a Claims Bar Date of ninety (90) days following entry of the Claims Procedure Adoption Order; and
- E. Authorizing the Receiver to pay the costs of publication and mailing as provided in the Investor Claims Procedure.

Respectfully submitted,

**STENGER & STENGER, P.C.**

Attorneys for the Receiver

Dated: July 27, 2012

By: /s/ Laura D. Duston  
Laura D. Duston (P66541)

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2618 East Paris Ave, S.E.  
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**CERTIFICATE OF SERVICE**

Laura D. Duston, an attorney, hereby certifies that on July 27, 2012, she caused to be served a copy of the foregoing *Motion and Memorandum Requesting Approval of 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](mailto: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](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)

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](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)

Dated: July 27, 2012.

/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](mailto:laura@stengerlaw.com)

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

**EXHIBIT A**  
**to**  
**MOTION AND MEMORANDUM REQUESTING APPROVAL OF**  
**PROPOSED INVESTOR CLAIMS PROCEDURE**

*Investor Claims Procedure*

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

COMMODITY FUTURES TRADING )  
COMMISSION )

Plaintiff, )

11-cv-10949-LPZ-MKM

v. )

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

Defendants, )

And )

THE JEDBURGH GROUP, )

Relief Defendant. )

**INVESTOR CLAIMS PROCEDURE**

**I. DEFINITIONS**

As used herein, the following words shall have the following meanings:

- (i) “*ANIC*” or “*Adjusted Net Investor Claim*” shall be the Investor’s Adjusted Net Investor Claim and is calculated as the total amount of investment made in CFF by an Investor, less all payments received, whether as principle, interest, commissions, loans, etc., from whatever source derived, including but not limited to, CFF, Watson, Potts, ECMs, other marketers, etc. To the extent an Investor also received distributions from Trade, LLC, if they received more money out of Trade, LLC than they put into Trade, LLC, this negative amount will also be subtracted from an Investor’s CFF claim in arriving at their ANIC. Investors who have zero or negative ANICs will not be entitled to participate in a Receivership distribution. In calculating the

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**Investor Claims Procedure**  
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ANIC for Investors with multiple investments, the Receiver shall net positive and negative ANICs to arrive at one combined ANIC for each investor. The ANIC of Marketers and Insubstantial Marketers shall be reduced as set forth herein.

- (ii) “**CFF**” shall mean Cash Flow Financial, LLC.
- (iii) “**CFTC**” shall mean the Commodity Futures Trading Commission
- (iv) “**CFTC Action**” shall mean *CFTC v. Alan James Watson, et al*, United States District Court, Eastern District of Michigan, Southern Division, Case No.: 11-cv-10949.
- (v) “**Claims Bar Date**” shall mean the date established by the Claims Procedure Adoption Order by which, under the Investor Claims Procedure, an Investor’s Statement of Claim must be filed as prescribed in the Claims Procedure Adoption Order to avoid being barred. Subject to certain extensions provided for under Section II (v), the Claims Bar Date is ninety (90) days after entry of the Claims Procedure Adoption Order.
- (vi) “**Claims Packet**” shall mean the materials directed by the Claims Procedure Adoption Order to be provided to Investors known to the Receiver or so requesting, including copies of: (a) the Statement of Claim Form; (b) the Investor Claims Procedure; and (c) a Summarizing Letter.
- (vii) “**Claims Procedure Adoption Order**” shall mean the Order adopting the Investor Claims Procedure and providing for implementation thereof, entered by this Court as of the date set forth therein.

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- (viii)        “***Claims Procedure Notice***” shall mean the notice given to Investors as provided in the Claims Procedure Adoption Order, notifying the Investors of their right and obligation to file their Statements of Claim. The Claims Procedure Notice shall be substantially in the form prescribed by the Court and attached to the Claims Procedure Adoption Order.
- (ix)         “***Court***” shall mean the United States District Court for the Eastern District of Michigan, Southern Division, 526 Water Street, Port Huron, MI 48060.
- (x)          “***Court Clerk***” shall mean the Clerk of the United States District Court for the Eastern District of Michigan, Southern Division, 231 West Lafayette Blvd, Room 564, Detroit, MI 48226.
- (xi)         “***ECM***” shall mean Executive Club Member or 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.
- (xii)        “***Excluded Party(ies)***” shall mean Watson, Potts, ECMs, Marketers, and the Jedburgh Group, but does not include an Insubstantial Marketer.
- (xiii)       “***Final Determination Notice***” shall mean the notice sent by the Receiver stating the Receiver’s final determination concerning an Investor Claimant’s Request for Redetermination (the “***Final Determination***”).
- (xiv)        “***Governmental Authorities***” shall mean federal, state, and local regulatory authorities, including, without limitation, taxing, workmen's compensation, and unemployment authorities.

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**Investor Claims Procedure**  
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- (xv) ***"Insubstantial Marketer"*** shall mean an ECM who received less than \$5,000 in marketing compensation from CFF, Watson, Potts and/or another ECM or 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.
- (xvi) ***"Investor"*** shall mean a natural person or entity that invested in CFF but shall not include any Trade Creditor (as defined herein) in its capacity as such, or any Excluded Party.
- (xvii) ***"Investor Claimant"*** shall mean a purported Investor that has timely filed an appropriate Statement of Claim as prescribed in the Investor Claims Procedure. Classification of an Investor as an Investor Claimant does not involve any determination of the validity, amount, or priority of an Investor Claim, or the entities potentially liable therefore.
- (xviii) ***"Investor Claims"*** shall mean those claims of purported Investors for investments in CFF.
- (xix) ***"Investor Claims Procedure"*** shall mean the procedure established by the Court through which purported Investors may file their Investor Claims with the Receiver and secure a determination of such Investor Claims, as set forth in this Investor Claims Procedure, which may be modified by the Court from time to time.
- (xx) ***"Jedburgh Group"*** shall mean The Jedburgh Group International, Inc.

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- (xxi) **"Marketer"** shall mean 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.
- (xxii) **"Potts"** shall mean Michael Potts.
- (xxiii) **"Receiver"** shall mean Phillip S. Stenger.
- (xxiv) **"Request for Adjudication"** shall mean the Investor Claimant's request to the Court Clerk asking for an adjudication of the Receiver's Final Determination.
- (xxv) **"Request for Redetermination"** shall mean the Statement of Claim Form, together with any necessary supporting documentation, filed by the Investor Claimant with the Receiver requesting that the Receiver re-determine the Investor's ANIC.
- (xxvi) **"Statement of Claim Form"** shall mean the statement initially prepared by the Receiver showing the Investor's ANIC (to the extent the Receiver's records show that the Investor has an ANIC), investment information, and contact information. Investors who agree with the ANIC as set forth in the Statement of Claim Form are required to return their Statement of Claim Form indicating they agree with the ANIC by the Claims Bar Date. Investors who disagree with the ANIC as set forth in the Statement of Claim Form must timely return the Statement of Claim Form by the Claims Bar Date to the Receiver indicating their disagreement with the ANIC and providing other

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information as required by the Investor Claims Procedure for an Investor to preserve its Investor Claim.

(xxvii) ***“Summarizing Letter”*** shall mean a letter from the Receiver summarizing the Investor Claims Procedure in a form approved by the Court.

(xxviii) ***“Trade Creditor”*** shall mean: (a) those natural persons and business entities that have provided goods or services or otherwise have claims against CFF; and (b) those Governmental Authorities with claims against CFF;

(xxix) ***“Watson”*** shall mean Alan James Watson.

## II. THE INVESTOR CLAIMS PROCEDURE

The following, including the definitions set forth above, is hereby established as the Investor Claims Procedure:

- (i) Within thirty (30) days following the entry by the Court 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 will contain the Investor’s ANIC (claim amount) to the extent the Receiver has sufficient information to calculate the Investor’s ANIC.
- (ii) Within ten (10) days following the entry of the Claims Procedure Adoption Order, the Receiver shall also: (a) post a copy of the Claims Procedure Adoption Order, including Exhibits, on the Receiver’s Cash Flow Financial, LLC website, [www.cffreceiver.com](http://www.cffreceiver.com); and (b) publish a

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**Investor Claims Procedure**  
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copy of the Claims Procedure Notice once in the national edition of *USA Today*.

- (iii) The Claims Bar Date shall be ninety (90) days following the date of entry of the Claims Procedure Adoption Order, or \_\_\_\_\_, 2012; unless waived by the Receiver in his sole discretion for good cause shown.
- (iv) The Receiver shall promptly provide a Claims Packet to any purported Investor that requests one. Upon receipt of a request for a Claims Packet, the Receiver shall determine an ANIC for such Investor and state the ANIC amount on the Statement of Claim Form included with the Claims Packet to the extent the Receiver has sufficient information to calculate the ANIC.
- (v) Investors who *agree* with the Receiver's determination of their ANIC as set forth on the Statement of Claim Form included in the Claim's Packet, **must** complete and sign the Statement of Claim Form indicating their acceptance of the ANIC as calculated by the Receiver and return the Statement of Claim Form to the Receiver on or before the Claims Bar Date in order to preserve their claim. Agreeing Investors must also provide the Receiver with any updated contact or address information. Unless waived by the Receiver in his sole discretion for good cause shown, any agreeing Investor that does not file a properly completed and executed Statement of Claim Form with the Receiver on or before the Claims Bar Date shall be forever barred from participating in the

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**Investor Claims Procedure**  
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Receivership. Investors shall bear the burden of proof of ensuring that their completed Statement of Claim Form has been properly and timely received by the Receiver, as evidenced by a letter of confirmation from the Receiver.

- (vi) As provided in the Claims Procedure Adoption Order, on or before the Claims Bar Date, 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 purported ANIC amount and all supporting documentation by the Claims Bar Date in order to preserve their claim. An Investor's return of a disagreeing Statement of Claim Form will be treated as a Request for Redetermination of the ANIC. Unless waived by the Receiver in his sole discretion for good cause shown, any purported Investor that does not file a properly completed and documented Request for Redetermination on the prescribed Statement of Claim Form with the Receiver on or before the Claims Bar Date shall be forever barred from challenging the ANIC determined by the Receiver, asserting a claim against the Receiver, the Receiver's retained personnel, CFF or the Receivership Estate including all bank accounts containing CFF Funds. Investors shall bear the burden of ensuring that the Request for Redetermination and documentation have been properly and timely

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received by the Receiver, as evidenced by a letter of confirmation from the Receiver.

- (vii) Requests for Redetermination shall clearly set forth the Investor's basis for requesting a redetermination of its ANIC and shall include any necessary supporting documentation. The Receiver shall review each Request for Redetermination to determine the validity of such request, together with any additional conclusions of the Receiver on other issues relevant to the Statement of Claim. Each Investor Claimant filing a Request for Redetermination shall have the burden of proof to establish the validity of his Request; and the Receiver shall have the right to request, and the Investor Claimant shall be obligated to provide to the Receiver, any additional information and/or documentation deemed relevant by the Receiver in order to make the Receiver's Final Determination.
- (viii) The Receiver shall 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 shall also have the right to refer the Request for Redetermination of any Investor Claimant to the Court for final determination.
- (ix) Any Investor Claimant that is dissatisfied with the Receiver's Final Determination concerning its Request for Redetermination, as reflected in

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**Investor Claims Procedure**

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the relevant Final Determination Notice, may request adjudication of the Receiver's Final Determination by filing a written Request for Adjudication with the Court Clerk, at 231 West Lafayette Blvd, Room 564, Detroit, MI 48226, with a copy to the Receiver at 2618 East Paris Ave. SE, Grand Rapids, MI 49546. Such written Request for Adjudication must be mailed by the requesting Investor Claimant in sufficient time that it is received by the Court Clerk and the Receiver no later than thirty (30) days after the date on which the Final Determination Notice was mailed to the Investor Claimant by the Receiver. The burden of ensuring such timely receipt shall be upon the Investor Claimant. The Request for Adjudication shall clearly explain the Investor Claimant's disagreement with the Receiver's Final Determination as reflected in the Final Determination Notice and shall include copies of all relevant documentation, which shall also be provided to the Receiver. Failure to properly and timely request adjudication of a Receiver's Final Determination as reflected in the relevant Final Determination Notice shall permanently waive the Investor Claimant's right to object to or contest the Receiver's Final Determination. The Receiver shall have the right, in his sole discretion, to file with the Court Clerk a written response to such Request for Adjudication, with copies to the appealing Investor Claimant.

- (x) An Investor Claimant requesting adjudication shall have the right to reasonable discovery from the Receiver if necessary for the proper

*CFTC v. Alan J. Watson, et al.*

**Investor Claims Procedure**

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preparation and presentation of the Investor Claimant's claim, so long as such discovery and its manner of conduct would not interfere with, or unduly burden, the administration of the Receivership estate. If the Receiver and the Investor Claimant cannot agree concerning the reasonableness and appropriateness of such discovery request and/or implementation, the request for discovery shall be referred to the Court for determination. A revised written Request for Adjudication, with supporting documentation, may be filed with the Court Clerk by the Investor Claimant, with copies to the Receiver, within fifteen (15) days after the date such discovery materials are delivered to the Investor Claimant by the Receiver.

- (xi) In the event that an Investor Claimant properly requests adjudication of a Receiver's Determination, or the Receiver requests that an Investor Claim be referred to the Court for determination, such matter shall be referred to a Magistrate Judge. The Magistrate Judge shall review the documentation provided by the Investor Claimant and the Receiver. At that time, the Magistrate Judge may make a final determination or may set the matter for hearing and at the conclusion of the hearing make a final determination. The Investor Claimant shall have the burden of proof in any such referral, whether the Investor Claim is before the Magistrate Judge based upon a Request for Adjudication from a Receiver's Final Determination, or a

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**Investor Claims Procedure**  
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request by the Receiver that the determination of such Investor Claim be referred to the Court.

(xii) **The burden of notifying the Receiver of an Investor or Investor Claimant's current address and other contact information, and of insuring that an Investor's name and/or proper contact information are on the Receiver's list, shall be upon the Investor or Investor Claimant and the Receiver shall be under no obligation to attempt to determine current contact information for any Investor or Investor Claimant or to determine the identity of Investors whose names and/or current contact information do not appear, or properly appear, on the Receiver's list.**

(xiii) No Investor or Investor Claimant who has failed to timely file an appropriate Statement of Claim Form, Request for Redetermination, or Request for Adjudication, shall be permitted to object to the barring or treatment of its Investor Claim on the basis: (a) that the Receiver failed to mail, or that such Investor or Investor Claimant failed to receive, a copy of the Claims Procedure Notice, the Statement of Claim or the relevant Final or Partial Determination Notice; (b) that a Statement of Claim or Request for Adjudication made by the Investor Claimant was improperly reflected as not having been received by the Receiver or the Court Clerk; or (c) that an Investor's name and/or proper contact information was not properly reflected on the Receiver's list.

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**Investor Claims Procedure**

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- (xiv) After the Receiver has filed a definitive list of the approved Investor Claims, the Receiver shall make a recommendation to the Court as to the manner, amount, and timing of distribution of funds. For purposes of the distribution, each Investor Claimant shall receive a pro-rata portion of the funds to be distributed to Investors based on a fraction, the numerator of which is the Investor Claimant's ANIC as finally determined by the Court (as adjusted for Excluded Parties and Insubstantial Marketers as set forth herein) and the denominator of which is the approved adjusted ANIC for all Investor Claimants as finally determined by the Court.
- (xiv) The Receiver shall separately file a Trade Creditor Claims Procedure if necessary.
- (xv) The Court reserves the right to amend this Investor Claims Procedure from time to time and retains jurisdiction of all related matters.

**AS ORDERED BY THIS COURT** on the \_\_\_\_ day of \_\_\_\_\_, 2012.

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

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

**EXHIBIT B**  
to  
**MOTION AND MEMORANDUM REQUESTING APPROVAL OF**  
**PROPOSED INVESTOR CLAIMS PROCEDURE**

*Claims Procedure Notice*

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

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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.

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TO ALL INVESTORS IN CASH FLOW FINANCIAL, LLC

Notice is hereby given that, on \_\_\_\_\_, 2012, United States District Court Judge Lawrence P. Zatkoff issued an "*Order Approving Investor Claims Procedure*" (the "Order"), establishing an Investor Claims Procedure for the distribution of assets of Cash Flow Financial, LLC ("CFF") to investors in CFF. The Order established a "Claims Bar Date" of \_\_\_\_\_. Failure to return a Statement of Claim by the Claims Bar Date may result in forfeiture of your claim. A copy of the Order and Investor Claims Procedure and all related documents may be obtained on the Receiver's website at [www.cffreceiver.com](http://www.cffreceiver.com), or by calling the Receiver at 1-877-512-2483, or by requesting a copy from the Receiver via email at [cffreceiver@stengerlaw.com](mailto:cffreceiver@stengerlaw.com).

**Note:** The Receiver has already mailed a Claims Packet to known CFF Investors as reflected on his records. **If you did not receive a copy of this notice by mail, you may not be listed, or your contact information may not be correct on the Receiver's list of possible claimants and you should contact the Receiver immediately to avoid a loss of your possible claim against the Receivership.**

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

**EXHIBIT C**

to.

**MOTION AND MEMORANDUM REQUESTING APPROVAL OF**  
**PROPOSED INVESTOR CLAIMS PROCEDURE**

*Statement of Claim Form*

**YOU ARE REQUIRED TO SUBMIT THIS FORM WITH AN ORIGINAL SIGNATURE (COPIES WILL NOT BE ACCEPTED) AND ANY SUPPORTING DOCUMENTATION TO THE ADDRESS PROVIDED BELOW FOR RECEIPT BY THE CLAIMS BAR DATE OF \_\_\_\_\_, 2012 IN ORDER TO PRESERVE YOUR CLAIM.**

**STATEMENT OF CLAIM FORM**

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

CFF Claim No.:  
 [Investor Name]  
 [Address]  
 [2<sup>nd</sup> Investor's Name]  
 [Address]

Based on the banking records of Cash Flow Financial, LLC ("CFF") and other supporting documentation, the Receiver has determined your Adjusted Net Investor Claim ("ANIC")<sup>1</sup> as follows:

<b>(1) Payments made to CFF</b>	<b>\$0.00</b>
<b>(2) Less: All payments received from CFF</b>	<b>-\$0.00</b>
<b>(3) Less: Commissions/marketing compensation<sup>2</sup></b>	<b>-\$0.00</b>
<b>(4) Less: Trade, LLC excess returns<sup>3</sup></b>	<b>-\$0.00</b>
<b>(5) Preliminary ANIC</b>	<b>\$0.00</b>
<b>(6) Less: 100% of Line (5) for ECMs and Marketers who received more than \$5,000 in commissions/marketing compensation as shown on Line (3)</b>	<b>-\$0.00</b>
<b>(7) Less 50% of Line (5) for Insubstantial Marketers who received less than \$5,000 in commissions/marketing compensation as shown on Line (3)</b>	<b>-\$0.00</b>
<b>(8) ANIC</b>	<b>\$0.00</b>

<sup>1</sup> "ANIC" or the "Investor's 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, etc. Investors who have zero or negative ANICs may not be entitled to participate in a Receivership distribution. In calculating ANICs for Investors with multiple investments, the Receiver has netted positive and negative ANICs to arrive at one combined ANIC for each investor.

<sup>2</sup> As defined in section (xi) and (xxi) of the Investor Claims Procedure.

<sup>3</sup> "Trade, LLC excess returns" occur when an investor in Trade, LLC received more money back from Trade, LLC than they invested, and therefore have a negative claim in the Trade, LLC receivership. The Receiver has been provided information regarding excess Trade, LLC returns from the Trade, LLC receiver.

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**(1) IF YOU AGREE WITH THE ANIC:**

If you agree with the ANIC as stated on Line (8) above, you **MUST complete and sign this form in the space provided below indicating your agreement with the ANIC and return the signed Form to the Receiver by the Claims Bar Date of \_\_\_\_\_** in order to preserve your claim. Any distribution you receive from the Receiver in this action will be based on the ANIC amount, as stated.

**(2) IF YOU DISAGREE WITH THE ANIC:**

If you do NOT agree with the ANIC as stated on Line (8) above, you **MUST:** (i) complete and sign this form in the space provided below indicating your disagreement with the ANIC; (ii) state what you believe your ANIC should be; (iii) provide any additional documentation to support what you believe your ANIC should be; and (iv) return the signed Form to the Receiver by the Claims Bar Date of \_\_\_\_\_.

**PLEASE COMPLETE:**

- ☐ I/we **AGREE** with the ANIC as stated above.
- ☐ I/we **DO NOT** agree with the ANIC as stated. I/we believe my/our ANIC should be \$\_\_\_\_\_. (Please provide a detailed explanation and documentation to support your position.)

I/we acknowledge that the information contained herein is true and accurate. I/we understand that the Receiver will rely on the information and documentation provided with this Form. **This Form is submitted under penalties of perjury.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
(First Investor)

\_\_\_\_\_  
[Print Name]

\_\_\_\_\_  
SOCIAL SECURITY NUMBER/EIN NUMBER

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Second Investor)

\_\_\_\_\_  
[Print Name]

\_\_\_\_\_  
SOCIAL SECURITY NUMBER/EIN NUMBER

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PLEASE RETURN THIS COMPLETED FORM TO:

Phillip S. Stenger, Receiver  
Stenger & Stenger, P.C.  
2618 East Paris Ave. SE  
Grand Rapids, MI 49546-2425

You may also fax this Form and any supporting documentation to (800) 429-5805 or email to [cffreceiver@stengerlaw.com](mailto:cffreceiver@stengerlaw.com), **in addition to mailing.**

**FAILURE TO RETURN THIS FORM BY THE CLAIMS BAR DATE OF  
\_\_\_\_\_ CAN RESULT IN FORFEITURE OF YOUR CLAIM.**

**(3) CHANGE OF CONTACT INFORMATION:**

It is your sole responsibility to keep the Receiver updated with your current contact information. The Receiver is not obligated to take measures to locate your current whereabouts. Failure to update your contact information may result in removal of your claim from future distribution lists. If you need to update your address or contact information with the Receiver, please do so in the space provided below. Completing this portion of the Statement of Claim Form will **not** result in a redetermination of your ANIC amount or preserve your claim. Redeterminations of the ANIC amount, if any, will only be provided to Investors who complete Section (2) above.

Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Home Telephone: \_\_\_\_\_

Work Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

**Instructions for completing the Statement of Claim Form:**

1. Terms used in this Statement of Claim Form that are also defined in the Investor Claims Procedure adopted by the United States District Court for the Eastern District of Michigan, Southern Division, in the case of *Commodity Futures Trading Commission v. Alan J. Watson, et al.*, Case No. 11-cv-10949, will have the same meaning as set forth in such Investor Claims Procedure. Read these terms carefully! A copy of the Investor Claims Procedure and the Order of the Court adopting the Investor Claims Procedure is posted on the Receiver's website at [www.cffreceiver.com](http://www.cffreceiver.com).

2. Please complete a separate Statement of Claim Form for each claim (as represented by the account number which was assigned to you by the Receiver for processing each of your claims).

3. **If you agree with your ANIC as stated herein, you MUST complete this Statement of Claim Form, sign and return it to the Receiver on or before the Claims Bar Date of \_\_\_\_\_, 2012. If you disagree with your ANIC as stated herein, the Receiver must receive your Statement of Claim Form and supporting documentation by the Claims Bar Date of \_\_\_\_\_, 2012.**

4. This Statement of Claim Form must be: (a) completed legibly in English; (b) in ink or typed; and (c) submitted by the Claims Bar Date of \_\_\_\_\_ **with an original signature** to: Phillip S. Stenger, Receiver, Stenger & Stenger, P.C., 2618 East Paris Ave SE, Grand Rapids, MI 49546-2425.

5. Any Investor who does not file a properly completed and documented Statement of Claim Form on or before the Claims Bar Date shall be forever barred from asserting a claim or disputing the ANIC shown on the Statement of Claim Form unless waived by the Receiver in his sole discretion for good cause shown. It is the Investor's responsibility to insure that the Statement of Claim Form is received by the Receiver on or before the Claims Bar Date. The Receiver will send a letter confirming receipt of your Statement of Claim Form.

6. If you do not agree with the ANIC as stated in this Statement of Claim Form, you must request redetermination of your ANIC in writing using this Statement of Claim Form and return it to the Receiver on or before the Claims Bar Date. Failure to make this request in writing will result in a forfeiture of your ability to dispute this ANIC. Please note that if you are requesting redetermination of your ANIC, you will not be eligible to participate in any distributions until the resolution of your request.

7. If you request a redetermination of your ANIC as stated in this Statement of Claim Form, you must provide documentation to the Receiver to support your reasons why you believe the ANIC is inaccurate.

8. **It is your sole responsibility to keep the Receiver updated with your current contact information. The Receiver is not obligated to take measures to locate your current whereabouts. Failure to update your contact information may result in removal of your claim from future distribution lists.**

9. Neither the Receiver nor any of his agents represent you and, as such, cannot give you legal or financial advice. If you have any questions concerning how to complete this form, consult your own attorney or other independent advisor. The Receiver recommends that you secure such independent advice.

**10. Remember, this Statement of Claim Form is submitted by you under penalties of perjury!**

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

**EXHIBIT D**  
**to**  
**MOTION AND MEMORANDUM REQUESTING APPROVAL OF**  
**PROPOSED INVESTOR CLAIMS PROCEDURE**

*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-cv-10949

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

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

On \_\_\_\_\_, 2012, the United States District Court for the Eastern District of Michigan, Southern Division (the "**Court**") approved the Investor Claims Procedure proposed to the Court by the Court-appointed Receiver, Phillip S. Stenger (the "**Receiver**"). The following is a summary of the provisions of the Investor Claims Procedure provided herein for your convenience. The Investor Claims Procedure, the Motion to Adopt Investor Claims Procedure (the "**Claims Procedure Motion**"), and the Claims Procedure Adoption Order 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](http://www.cffreceiver.com). Again, you are encouraged to carefully study the Investor Claims Procedure and to consult with your own advisors regarding your rights and obligations under the Investor Claims Procedure.

**SUMMARY OF INVESTOR CLAIMS PROCEDURE**

(1) **Mailing to Known Investors.** Within sixty (60) 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) 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](mailto: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](http://www.cffreceiver.com), and shall publish a copy of the Claims Procedure Notice once in the national edition of *USA Today*. 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 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 \_\_\_\_\_, 2012.
- 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, Michigan 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, Michigan 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, the Jedburgh Group and Related Parties, 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, 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.

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

**EXHIBIT E**  
**to**  
**MOTION AND MEMORANDUM REQUESTING APPROVAL OF**  
**PROPOSED INVESTOR CLAIMS PROCEDURE**

*List of ECMs and Marketers*

Name of Marketer	Title
Bajek, Matthew	ECM
Baker, Doug	CC
Baker, Ryan	SUB CC
Baransky, Mindy	ECM
Begalla, George	SR CC
Bender, Anthony	SUB CC
Bess, Beau	CC
Bess, Pete (Ronald)	CC
Bias, Everett	SR CC
Bias, Steve	SR CC
Bontrager, Janet	SUB CC
Brunner, Karen	CC
Bubon, Nicholas	CC
Bush, Erin	SUB CC
CanAm	ECM
Carley, Jeff	CC
Chin, Mark	ECM
Christensen, Tim	SUB CC
Coulter, Lonie	SR CC
Crown, William	SUB CC
DeFries, Jerry	SR CC
Dincler, Kyle	SUB CC
Ellis, Gary	SR CC
Emsick, Dean	SUB CC
Erne, Bohdana	CC
Gorman, Michael	SR CC
Hartner, JC	CC
Hathaway, Michelle and Donald	ECM
Hoffmeyer, Mark	SR CC
Hongsermeier, Bruce	SUB CC
Jimbo, Hideo	ECM
Jordan, Estate of O Robert	ECM
Juberg, Don	CC
Kaplan, Phil	CC
Keith, Ted	CC
Klima, David	SR CC
Komisar, Sher	ECM
LaLonde, Michael	ECM
Larocque, Jack	CC
Larocque, Ray	CC
Lawrence, James	SUB CC
Lawrence, Terry	SR CC/CC
Leiss, Sharon	SUB CC
Lemert, Steven	ECM
Levett, Leanne	CC

Lock, George	CC
Mann, Richard	SUB CC
Martin, Marina	SUB CC
May, Ezzie	SR CC
McBride, Bill	SR CC
Mealy, Scott	SUB CC
Miller, John	ECM
Miller, Mark	ECM
Moreno, Charles	SR CC
Moritz, Jerry	SUB CC
Mullet, Mark	SUB CC
Neff, Darrel	ECM
Oestreich, James	ECM
Parker, Jim/James	SUB CC
Paulsen, Lisa	CC
Pelchat, Modene	CC
Penny, Terry	ECM
Pittmann, Justin	SUB CC
Potts, Michael	ECM
Proulx, Mel	SUB CC
Rognon, Chris	SUB CC
Rowe, Rebecca	SUB CC
Rutan, Michelle	CC
Schlaack, Ron	SUB CC
Schroeder, Jerry	CC
Schulman, Warren	ECM
Sestina, Stephen (Steve?)	CC
Sims, Michele	SUB CC
Snyder, Dave	SUB CC
Spealman, Daniel E.	ECM
Steele, Donald	ECM
Talbot, Scott	ECM
Talmdage, Daniel	CC
Talmdage, David	CC
Talmdage, John	SR CC
Talmdage, Steve	SR CC
Tomlin, Jeff	CC
Valdez, Bob	CC
Vieregger, Susan	SUB CC
vonPongracz, Anthony	SUB CC
Woodfill, Bonnie	SUBCC
Woods, Doug	SUB CC

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

**EXHIBIT F**  
to  
**MOTION AND MEMORANDUM REQUESTING APPROVAL OF**  
**PROPOSED INVESTOR CLAIMS PROCEDURE**

*Claims Procedure Adoption Order*

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

**ORDER APPROVING INVESTOR CLAIMS PROCEDURE**

Phillip S. Stenger, temporary receiver (the “**Receiver**”), by and through his counsel, Stenger & Stenger P.C., having filed his “*Motion and Memorandum Requesting Approval of the Proposed Investor Claims Procedure*” (the “**Claims Procedure Motion**”), requesting that this Court enter an order (the “**Approving Order**”) that will:

- (i) Approve the proposed investor claims procedure attached as Exhibit A to the Claims Procedure Motion (the “**Investor Claims Procedure**”);
- (ii) Approve the proposed claims procedure notice (“**Claims Procedure Notice**”) attached as **Exhibit B** to the Claims Procedure Motion;
- (iii) Approve the proposed statement of claim form (“**Statement of Claim Form**”), attached as **Exhibit C** to the Claims Procedure Motion;

- (iv) Approve the summarizing letter ("**Summarizing Letter**") attached as **Exhibit D** to the Claims Procedure Motion;
- (v) Authorize and direct the Receiver to mail the Statement of Claim Form, Investor Claims Procedure and Summarizing Letter, (collectively referred to as "**Claims Packet**") as defined in the Investor Claims Procedure to each known investor and to otherwise give notice as provided in the Investor Claims Procedure; and
- (vi) Establish a claims bar date ("**Claims Bar Date**") as defined in the Investor Claims Procedure of \_\_\_\_\_, 2012.

The Court having carefully considered such matters, finds and concludes 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. On July 27, 2012, the Receiver filed the Claims Procedure Motion requesting approval of the proposed investor claims procedure (the "**Proposed Investor Claims Procedure**").

3. Contemporaneously with the filing of the Claims Procedure Motion, the Receiver filed his Motion and Memorandum Regarding Hearing on the Proposed Investor Claims Procedure ("**Hearing Motion**") wherein he proposed a procedure for filing objections to the Proposed Investor Claims Procedure and providing notice of hearing.

4. The Hearing Motion requested that: (i) the Court set a hearing date on the Claims Procedure Motion; and (ii) establish procedures for sending notice of the hearing to interested

parties and provide a mechanism for interested parties to object to the proposed Investor Claims Procedure.

5. On \_\_\_\_\_, the Court entered the Order for Hearing on Proposed Investor Claims Procedure (“**Hearing Order**”) setting the date for interested parties to file objections, recommendations and comments to the Proposed Investor Claims Procedure with the Court of \_\_\_\_\_ and setting the date to be heard before the Court on \_\_\_\_\_, 2012.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

6. The Court finds that reasonable notice and opportunity to be heard on the adoption of the Proposed Investor Claims Procedure has been provided to all interested parties pursuant to the provisions set forth in the Hearing Order;

7. The Court finds that the Proposed Investor Claims Procedure is Fair and Reasonable for the reasons set forth in the Claims Procedure Motion;

8. The Court finds that the Proposed Investor Claims Procedure provides due process to Investors for the reasons set forth in the Claims Procedure Motion;

9. The Court finds that the definition of Adjusted Net Investor Claim shall be determined as the total amount of investments 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.

10. The Court finds that it is just and equitable to exclude from participation in this Receivership, the claims of the Defendants, Relief Defendant, and persons and/or entities who marketed or promoted CFF for reward, including the ECMs and other Marketers (collectively referred to as “**Excluded Parties**”).

11. The Court finds that it is just and equitable to reduce the ANIC, as finally determined, of an ECM or Marketer who received less than \$5,000 in marketing compensation (“**Insubstantial Marketer**”), by 50% for purposes of calculating their share of the distribution from the estate.

**ACCORDINGLY, IT IS HEREBY ORDERED AND DIRECTED THAT:**

- A) The Investor Claims Procedure, is hereby adopted and approved by the Court, subject to any revisions the Court hereafter deems appropriate, including revisions based upon the Court’s consideration of any Claim Procedure Objections;
- B) The Court hereby approves and adopts the Claims Procedure Notice, the Statement of Claim Form, and the Summarizing Letter, subject to any revisions the Court deems appropriate;
- C) The Court directs the Receiver to mail a Claims Packet to each known Investor, and to otherwise give notice as provided in the Investor Claims Procedure, and directs that the Receiver shall promptly provide a Claims Packet to any person so requesting;
- D) All potential Investor Claimants are hereby directed to file a Statement of Claim Form with the Receiver in the manner provided in the Investor Claims Procedure by no later than the Claims Bar Date established by the Court;
- E) The Court hereby sets a Claims Bar Date of ninety (90) days from the date of entry of the Claims Procedure Adoption Order or \_\_\_\_\_, 2012;

- F) The Court hereby authorizes the Receiver to pay the costs of publication and mailing as provided in the Investor Claims Procedure; and
- G) 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 Investor Claims Procedure as it sees fit and believes to be in the best interest of the Receivership.

Dated: \_\_\_\_\_, 2012

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