

**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.)	
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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 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 sent to Receiver 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 May 26, 2014.
- (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.

- (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.
- (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 sent 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.
- (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 send their Statement of Claim Form indicating they agree with the ANIC back to Receiver by the Claims Bar Date. Investors who disagree with the ANIC as set forth in the Statement of Claim Form must timely send to the Receiver the Statement of Claim Form by the Claims Bar Date indicating their disagreement with the ANIC and providing other 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. The Receiver shall provide the Court with proof that all deliveries have been made within 7 days of sending the last Claims Packet.
- (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; and (b) publish a copy of the Claims Procedure Notice once in the national edition of *USA Today*.
- (iii) The Claims Bar Date shall be **May 26, 2014**, 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 send 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 send a properly completed and executed Statement of Claim Form to the Receiver on or before the Claims Bar Date shall be forever barred from participating in the Receivership. Investors shall bear the burden of proof of ensuring that their completed Statement of Claim Form has been properly and timely sent to 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** send to 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 send 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 other documentation have been properly and timely sent to 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 be required to complete and send such request for redeterminations within sixty (60) days of receipt of such request.
- (ix) 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 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 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 Final Determination, such matter shall be referred to the Court. The Court, in turn, may in its discretion refer the matter to a Magistrate Judge. The Magistrate Judge shall review the documentation provided by the Investor Claimant and the Receiver, and provide the Court with a Report and Recommendation concerning the matter within 45 days of referral. The Investor Claimant shall have the burden of proof in any such proceeding before the Magistrate Judge.
- (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 send 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.

(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.

IT IS SO ORDERED.

Date: February 24, 2014

s/Lawrence P. Zatkoff
Honorable Lawrence P. Zatkoff
United States District Court