

ROBB EVANS & ASSOCIATES LLC
Temporary Receiver of
Lake Shore Asset Management, Ltd., et al.

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Commodity Futures Trading Commission v. Lake Shore Asset Management Limited, et al.
CASE No. 07C-3598

Motion for Order Authorizing Issuance of a Receivership Certificate

Filed October 29, 2008

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES COMMODITY FUTURES)	
TRADING COMMISSION,)	
)	No. 07 C 3598
Plaintiff,)	
)	HON. BLANCHE M. MANNING
v.)	
)	MAG. JUDGE MICHAEL T. MASON
LAKE SHORE ASSET MANAGEMENT)	
LIMITED, <i>et al.</i> ,)	
)	
Defendants.)	

**MOTION OF RECEIVER FOR ORDER AUTHORIZING
ISSUANCE OF A RECEIVERSHIP CERTIFICATE**

Robb Evans & Associates LLC, the Court appointed temporary equity Receiver (the “Receiver”) for the Lake Shore Common Enterprise (“LS Common Enterprise”), pursuant to LR 66.1 moves for the entry of an order authorizing the Receiver to issue a Receivership Certificate to California Bank & Trust, a California banking corporation (the “Lender”) in the amount of \$1,500,000.00 in order for the Receiver to pay certain administrative fees and expenses incurred and to be incurred by the Receiver in the preservation of the receivership assets. In support of this motion, the Receiver respectfully represents as follows:

INTRODUCTION

1. This action was commenced by the Commodity Futures Trading Commission (“CFTC”) against the receivership defendants, who are alleged to have committed fraud against investors by making material misrepresentations and omissions regarding certain commodity pools operated by the defendants, specifically, by presenting false financial statements to investors and providing false performance tables to investors that misrepresented the pools’ respective and collective track records.

2. The Original CFTC Complaint was filed June 26, 2007; the First Amended Complaint was filed on August 8, 2007. A Second Amended Complaint was filed February 19, 2008, naming all of the entities that compromise the LS Common Enterprise as defendants.

3. On October 4, 2007, Robb Evans & Associates LLC was appointed as temporary equity Receiver. This appointment followed the entry of an Order of Preliminary Injunction on August 28, 2007.

4. On April 24, 2008, the Court entered a Memorandum and Order which granted a default judgment and entered a permanent injunction against the LS Common Enterprise.¹ On April 24, 2008, the Court also entered an Amended Order Appointing Receiver (the “Receivership Order”).

5. The Receivership Order appointed the Receiver as receiver for the LS Common Enterprise, which was defined to include the following entities: “Lake Shore Asset Management Limited (“LSAM”). Lake Shore Group, Lake Shore Asset Management Inc., Lake Shore Alternative Financial Asset Account Limited, a/k/a Lake Shore Alternative Financial Asset Ltd., Lake Shore Alternative Financial Asset Account I Limited, Lake Shore Alternative Financial Asset Account II Limited, Lake Shore Alternative Financial Asset Account III Limited, Lake Shore Alternative Financial Asset Fund Limited, Lake Shore Alternative Financial Asset Fund II Limited, Lake Shore Alternative Financial Asset Fund III Limited, Geneva Corporation Funds World Limited and/or Genevacorp Funds World Ltd. (formerly known as Lake Shore Alternative Financial Asset Fund IV Limited), Lake Shore Alternative Financial Asset Fund IV US, LLC, Lake Shore Alternative Financial Asset Yen Fund I, Lake Shore Alternative Financial Asset Yen Fund Limited Class II, Lake Shore Alternative Financial Asset Yen Fund Limited Class III, Hartford Investments Ltd., all funds, properties, premises, accounts and other assets directly or indirectly owned, beneficially or otherwise, by the LS Common Enterprise, individually or collectively, including, but not limited to, funds on deposit at Sentinel Management Group, Inc.....” *See* Receivership Order at 2-3.

¹ On September 17, 2008, the Court entered a Memorandum and Order which granted a default judgment and entered a permanent injunction against Philip J. Baker.

6. Pursuant to the Receivership Order, the Receiver is directed to take custody and control of all of the funds, property, accounts and other assets of LSAM in the possession of, or under the control of the LS Common Enterprise.

7. Since the appointment, the Receiver has investigated and is attempting to take possession and control of assets of the receivership estate in excess of \$245 million dollars. To that end, the Receiver has filed Proofs of Claim in the pending chapter 11 bankruptcy of Sentinel Asset Management Group, Inc. ("Sentinel") in the approximate amount of \$165 million dollars and is a party to the interpleader proceedings pending in the High Court of London to resolve the competing claims to the approximately \$80 million dollars paid into the court by MF Global UK Limited, Lehman Brothers International (Europe) and Newedge Group SA (formerly Fimat International Banque SA).

8. As the Court is well aware the members of the LS Common Enterprise and Philip J. Baker have ignored the Receivership Order and all other orders of this Court requiring that all funds, assets and other property be turned over to the Receiver. As a result at present there are no funds in the receivership estate.

9. The actions of the LS Common Enterprise and Philip J. Baker have necessitated that the Receiver expend significant time and money to preserve all claims to the funds of LSAM in both the Sentinel bankruptcy and the London interpleader proceedings.

10. In particular, the Receiver has successfully had certain competing Proofs of Claim filed on behalf of the Lake Shore entities disallowed and expunged by the Bankruptcy Court in Sentinel. The Receiver is now the sole party with a right to receive distributions from the Sentinel estate.

11. The Receiver, through it's London counsel, Manches is vigorously pursuing the Receiver's claims in the London interpleader proceedings. Significant time and expense has been incurred up to this point and the Receiver will continue to incur significant expenses prior to the trial date of April 29, 2009, in discovery and preparation for trial.

12. In light of the lack of any funds in the receivership estate and the need of the Receiver for use of funds to pay certain costs and expenses necessary to preserve and protect the Receiver's claims in the Sentinel bankruptcy and the London interpleader proceedings, the Receiver seeks authority to incur indebtedness in the maximum amount of \$1,500,000 in the form of a Receivership Certificate attached hereto as Exhibit A.

13. The Receivership Certificate will be issued in favor of the Lender on the following terms and conditions:

Maximum Amount:	\$1,500,000-non-revolving line of credit
Term:	One Year
Interest Rate:	(Variable) Lender's announced prime rate plus 1.50%
Repayment:	Principal plus accrued interest at maturity.
Fee:	\$7,500.00, one half (.50%) percent (payable upon closing of the Facility)
Collateral:	Receivership Certificate

In addition, the Receiver will pay the Lender's costs and expenses in the negotiation and documentation of the loan. A copy of the Commitment Letter from the Lender is attached hereto as Exhibit B.

14. The Receiver will use the proceeds received from issuance of the Receivership Certificate to pay the following administrative expenses which were incurred for the period of October 4, 2007 through January 31, 2008, and were approved by Order dated May 1, 2008 entered by Magistrate Judge Mason[Dkt. No. 559]:

i. Manches LLP	-	\$43,547.80
ii. Mello Jone & Martin	-	\$9,821.00
iii. Shaw Gussis	-	\$157,434.75

15. Additionally the Receiver will be filing a motion seeking approval of administrative expenses which were incurred for the period of February 1, 2008 through August 31, 2008, and

would anticipate also paying the following additional administrative expenses subject to entry of an order approving same:

- i. Manches LLP - \$389,983.91
- ii. Ogier - \$5,378.50
- iii. Shaw Gussis - \$161,767.66

The remaining funds will be used to fund the ongoing administrative costs and expenses of pursuing the Receiver's claims in both the Sentinel bankruptcy and the London interpleader proceedings.

16. The Receiver will not use any portion of the funds received from the Lender to pay any of the allowed fees and expenses of the Receiver and its staff. The Receiver and its staff will be paid at such time as funds of the LS Common Enterprise are transferred to the Receiver and become part of the receivership estate.

17. Under the terms of the Commitment Letter from the Lender the Receiver will provide the Lender with a Receivership Certificate as collateral for the Loan. The Receivership Certificate shall provide the Lender with an unsecured administrative expense claim to be paid from the first funds received from a distribution in the Sentinel bankruptcy. The administrative expense claim shall have priority over all other claims against the receivership estate except for such receivership costs of administration (including the costs and fees of the Receiver and any attorneys and other professionals employed by the Receiver) as approved by the Court. The advancement of funds by the Lender will not create any liability against the Lender based on the conduct of the Receiver.

18. Under LR 66.1, the court "shall direct the manner in which the estate shall be administered...." It is well settled that this Court may use its equitable powers to authorize the issuance of the Receivership Certificate requested herein. *See Union Trust Co. of New York v. Illinois Midland Ry. Co.* 117 US 434, 455 29 L. Ed. 963, 655 S. Ct. 809 (1886). Where as in this case, the issuance of the Receivership Certificate is based on consideration of the loan to be

received from the Lender, it is proper to provide the Lender with an administrative expense claim with priority over all other claims against the receivership estate other than the administrative expenses of the Receiver. See *Turner v. Peoria and Springfield Railroad Company*, 95 Ill. 134 (1880); *Wire Wheel Corporation of America v. Fayette Bank and Trust Co.*, 30 F.2d. 318 (7th Cir. 1928); *Petersburg Savings and Insurance Co. v. Dellatorre*, 70 F. 643 (5th Cir. 1995).

WHEREFORE, the Receiver prays that this Court enter an order authorizing the Receiver to issue a Receivership Certificate in favor of the Lender on the terms and conditions set forth in this motion and for such other and further relief as the Court may deem just and proper..

DATED: October 29, 2008

Respectfully submitted,

ROBB EVANS & ASSOCIATES, LLC

By: /s/ Ira Bodenstein
One of Its Attorneys

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EXHIBIT A

5. Lender is hereby provided with an unsecured administrative expense claim to be paid from the first funds received from a distribution in the Sentinel bankruptcy.

6. The administrative expense claim provided hereunder shall have priority over all other general claims against the receivership estate; except for such receivership costs of administration (including the costs and fees of Receiver and any attorneys and other professionals employed by Receiver) as approved by the Court.

7. This Certificate is due and payable twelve months after the date of issuance. The maturity of this Certificate may be extended by the Court from time to time, in the Court's sole discretion.

8. This Certificate is subject to redemption at any time before maturity, without any prepayment penalty, by payment of the principal and interest then owing, in the sole discretion of Receiver. Upon payment in full, the original Certificate must be returned to Receiver.

9. This Certificate is not transferable or assignable without an order of the Court authorizing any such transfer or assignment.

10. This Certificate evidences an obligation of the receivership estate in the above-entitled action and is not a personal obligation of the individual who acts as receiver thereof. Lender's advancing funds to Receiver pursuant to this Certificate does not and will not create any liability as against Lender based in whole or in part on Receiver's conduct.

DATED: November ____, 2008

Brick Kane, Chief Operating Officer

ROBB EVANS & ASSOCIATES, LLC
temporary equity Receiver