

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

11450 Sheldon Street
Sun Valley, California 91352-1121
Telephone No.: (818) 768-8100
Facsimile No.: (818) 768-8802

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

Motion of Receiver for Order
Authorizing Payment of Administrative Fees and Expenses Incurred
for the Period April 1, 2009 Through October 31, 2009

Filed December 21, 2009

**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
PAYMENT OF ADMINISTRATIVE FEES AND EXPENSES INCURRED
FOR THE PERIOD APRIL 1, 2009 THROUGH OCTOBER 31, 2009**

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 payment of the administrative fees and expenses incurred by the Receiver for the period April 1, 2009 through October 31, 2009 (the “Fee Period”)¹. 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 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 the entities that comprise the LS Common Enterprise as defendants.

¹ For Manches LLP, London counsel for the Receiver, the Fee Period for which the Receiver is seeking authorization includes an invoice for services rendered in August, 2008, which had not been previously submitted to the Receiver prior to the filing of the last fee motion.

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.² 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, Hanford 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.

6. Pursuant to the Receivership Order, the Receiver is directed to among other things, 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, and to marshal, preserve, account for liquidate all assets of the LS Common Enterprise for purposes of making a distribution to the clients of the LS Common Enterprise.

² 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.

7. Since its appointment, the Receiver, in compliance with its duties under the Receivership Order, has taken possession and control of receivership assets totaling more than \$110 million.³ On December 19, 2008 the Receiver received an initial distribution from the Sentinel Liquidation Trustee (“Trustee”) in the amount of \$34,787,915.87.⁴ Additional distributions of \$25,581.03 and \$1,048,742.28 were received from the Trustee on February 3, 2009 and March 9, 2009. The sum of \$76,303,994.75, which was paid into Court by the London Futures Commission Merchants (MF Global UK Limited, Lehman Brothers International (Europe) and Newedge Group SA (formerly Fimat International Banque SA)), was transferred to the Receiver on April 7, 2009 as a result of the Receiver’s claim in an Interpleader action in the High Court of Justice, London, England.

8. Further distributions may be made by the Trustee, but the timing and amount of any such distributions is unknown and largely dependant on recoveries by the Trustee in certain pending lawsuits. The Trustee is currently holding funds of approximately \$450 million; \$440 million of which is being held in reserve accounts pending the outcome of the various lawsuits filed by the Trustee.

9. Subsequent to the Trustee’s initial distribution, the Receiver filed its Motion for Order Authorizing a Claims Verification Procedure [Dkt. No. 623]. On January 30, 2009, the Court granted the Receiver’s motion and entered an order approving the claims verification procedure proposed by the Receiver (the “Claims Procedure Order”) [Dkt. No. 631].⁵ Pursuant to the Claims Procedure Order, the Receiver notified investors of the Claim Verification Process and Claims Bar Date,⁶ and has now completed its analysis of the total claims received.

10. Due to LSAM’s failure to turn over its books and records, the Receiver spent considerable time reconstructing all investment and withdrawal activity relating to LSAM. Under the

³ As set out in the Receiver’s First Report to the Court, the total funds under management by LSAM at the time of the Receiver’s appointment was approximately \$273.5 million.

⁴ Sentinel Management Group filed a voluntary bankruptcy petition on August 17, 2007 in the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division (Case No. 07-14987). The distribution was made pursuant to the Fourth Amended Plan of Reorganization confirmed by the Bankruptcy Court on December 15, 2008. The Receiver is the second largest unsecured creditor in the Sentinel bankruptcy case.

⁵ On July 20, 2009, the Court amended the Claims Procedure Order. [Dkt. No. 676].

⁶ As defined in the Claims Procedure Order.

provisions of the Claims Procedure Order, Claimants were asked to provide proof of all Deposits and Pre-receivership Payments. In addition, the Receiver reviewed records from both Sentinel and the Bank of New York in an effort to match up all Deposits and Pre-receivership Payments. As set forth in the Receiver's Report of Approved Claim Amounts and Motion for Approval of the Receiver's Calculation of Claims and for Disallowance of Certain Claims (the "Claims Calculation Motion") [Dkt. No. 678], the Receiver determined that the net investor claims filed with the Receiver totaled \$268,668,762.71 (total Deposits of \$287,805,165.87 less total Pre-receivership Payments of \$19,136,403.16).

11. Under the terms of the Order approving the Claims Calculation Motion (the "Claims Calculation Order") [Dkt. No. 688] the Court disallowed claims totaling \$2,729,787 (the "Disallowed Claims"). The holders of Disallowed Claims are not entitled to share in any distribution unless the Receiver is able to resolve its dispute with such Claimant prior to the entry of an order approving this Motion.

12. In the Claims Calculation Order, the Court approved the method proposed by the Receiver to calculate the approved claims and further ruled that the Receiver should calculate its proposed distribution based upon an approved claims base totaling \$263,533,203.29⁷ (the "Approved Claims Base"). In particular, under the terms of the Claims Calculation Order, the Court authorized that the distribution would be made from a common pool comprised of all receivership assets and that all Claimants would be treated as a single investor class regardless of the particular Lake Shore Fund they had invested in.

13. The Receiver is currently holding approximately \$110,000,000 in receivership assets. On October 30, 2009 the Receiver filed his motion for approval of Proposed Distribution Plan and Method Used in the Calculation of Disbursements to Investors [Dkt. No. 692] (the "Distribution Motion") in which the Receiver seeks approval of an initial distribution in the amount of \$107,000,000

⁷ Total net investor claims of \$268,668,762.71 minus Disallowed Claims in the amount of \$2,729,787 and the disputed claim of Avalon in the amount of \$2,450,010 plus the claim of one non-investor creditor in the amount of \$44,237.58.

which consists of a net distribution of \$103,915,051.20 to the Approved Claims Base, assuming repayment of 100% of deposits made after the entry of the CFTC asset freeze in the amount of \$3,084,948.80. The Distribution Motion is currently set for a status hearing on January 12, 2010.

14. The Receiver seeks approval of its fees and expenses for the Fee Period set forth in this request. This is the fifth request of the Receiver for approval of fees and expenses.

15. The Receiver seeks approval of the fees and expenses of the Receiver, the Receiver's staff, and the Receiver's counsel for the Fee Period. Payment of the approved fees and expenses will be made from the funds currently held by the Receiver. The fees and expenses for which approval is requested are set forth in the summary entitled "Receivership Expenses by Month" attached hereto as Exhibit 1. The monthly invoices which were used to prepare Exhibit 1 are attached hereto as Exhibit 2

16. For this current application, the fees and expenses of the Receiver during the Fee Period include the following itemized items: Receiver's fees of \$57,328.80, staff fees for financial reconstruction and accounting of \$71,309.00, staff fees for information technology and database maintenance of \$1,024.71, and support staff fees of \$3,083.70. The total amount of fees sought is \$132,746.21.

17. Additionally, for the current application, the fees and expenses of the Receiver during the Fee Period for its outside counsel total \$243,859.83 itemized as follows: Osler, Hoskin & Harcourt LLP, \$12,324.92; Shaw Gussis, \$98,798.69; and Manches LLP, \$132,736.22.

18. As set forth in detail in Exhibit 1, and including additional out-of-pocket expenses of the Receiver of \$34,151.16, the Receiver has incurred \$410,757.20 in fees and expenses for the Fee Period.

19. During the relevant period, the Receiver, its staff and its outside counsel engaged in ongoing legal and administrative activities relating to the receivership estate, including the following:

- i. The Receiver and its staff continue to meet with, and are in regular contact with, investors and their representatives to identify the clients and investments made by these clients with the Receivership Defendants. In this regard the Receiver and its staff reviewed the information received in response to the Claims Verification Procedure and determined the

Approved Claims Base which is being used in the plan of distribution proposed by the Receiver in the Distribution Motion.

ii. The Receiver is conducting worldwide discovery, including efforts to contact, interview, subpoena and depose individuals, banks and business affiliations with information about the assets of the Receivership Defendants. During the Fee Period, the Receiver had Letters Rogatory issued and filed in Canada and has engaged in both documentary and testimonial discovery of John Kurgan, Nicholas Eveleigh, David Tonken, Roth Mosey and Partners LLP and FTG Capital (Canada) Ltd.

iii. The Receiver and its staff have continued to review records relating to customer deposits with Sentinel Management Group, Inc. and update the detailed report and analysis of all Lake Shore funds, deposits and transfers to the Lake Shore accounts at Sentinel.

iv. The Receiver and its staff are continuing the accounting and investigative work necessary to identify any additional assets of the Receivership Defendants and continue to prepare updated detailed reports of and analyses of all funds transferred to and through Hanford and Anglo International Associates Ltd., a London based professional services company which provided payroll services for the LS Common Enterprise.

v. The Receiver and its bankruptcy counsel were involved in the successful objection of the Trustee to the claim filed by GAMAG, Black & White, Ltd., a Lake Shore customer who asserted a separate claim from that of the Receiver in the Sentinel Case.

20. Pursuant to LR 66.1(a)(1), the court shall have discretion to fix the allowance of compensation of the Receiver and its attorneys. The Receiver has served all parties who have filed appearances in the case with a copy of this Motion and all Exhibits by electronic mail through the court noticing system. The Receiver will also post a copy of the Notice of Motion and Motion on the Receiver's website. The Receiver will also provide a written copy of the Motion and all Exhibits to any investor, upon request. The Receiver believes that under the circumstances such notice is sufficient.

