

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 of Receiver for Order
Authorizing Payment of Administrative Fees and Expenses Incurred
for the Period November 1, 2009 Through May 31, 2010

Filed August 3, 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 NOVEMBER 1, 2009 THROUGH MAY 31, 2010**

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 November 1, 2009 through May 31, 2010 (the “Fee Period”). 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.

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, 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.

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

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.

million.² On December 19, 2008 the Receiver received an initial distribution from the Sentinel Liquidation Trustee (“Trustee”) in the amount of \$34,787,915.87.³ 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 \$76,304,674.58⁴, 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. It is anticipated that a further distribution will be made by the Trustee in the third or fourth quarter of this year, but the amount of any such distribution is unknown. Based on recoveries already received, the Trustee is currently holding funds of approximately \$490 million; \$60 million of which is unrestricted with the remainder being held in reserve accounts pending the outcome of the various lawsuits filed by the Trustee.⁵

9. Subsequent to the Trustee’s initial distribution, the Receiver filed his 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].⁶ Pursuant to the Claims Procedure Order, the Receiver notified investors of the Claim Verification Process and Claims Bar Date.⁷

² 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.

³ 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.

⁴ This amount is \$679.83 higher than previously reported due to interest which accrued prior to receipt of the funds by the Receiver.

⁵ See Report from the Sentinel Liquidation Trust dated July 15, 2010, attached hereto as Exhibit 1.

⁶ On July 20, 2009 and February 5, 2010, the Court amended the Claims Procedure Order. [Dkt. Nos. 676 and 754].

⁷ As defined in the Claims Procedure Order.

10. On August 5, 2009, the Receiver filed his 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]. On October 1, 2009, the Court entered an Order approving the Claims Calculation Motion (the "Claims Calculation Order") [Dkt. No. 688].

11. 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"). On March 15, 2010, the Court entered a Memorandum and Order overruling all objections and approving the Distribution Motion (the "Distribution Order") [Dkt. No. 770]. The Distribution Order was amended by Order entered on March 26, 2010 [Dkt. No. 790] to among other things, provide for the creation of a reserve for the claim of Andorra Bank Agricol Reig S.A. ("Andbanc") and adjust the amount of the distribution to investors as a result of the creation of the reserve.

12. Beginning on April 6, 2010 and ending on April 26, 2010, the Receiver distributed the funds to the investors pursuant to the Distribution Order, as amended.

13. On June 30, 2010, the Court entered a Memorandum and Order authorizing the Receiver to make an additional distribution to certain investors due to a calculation error and to certain investors who had intra-family account transfers [Dkt. No. 831] (the "Additional Distribution Order"). The Receiver completed distribution of those additional funds on or about July 8, 2010.

14. On March 18, 2010, Andbanc filed a Notice of Appeal of the Distribution Order in United States Court of Appeals for the Seventh Circuit [Appeal No. 10-1666]. On April 14, 2010, GAMAG Black & White, Ltd filed a Notice of Appeal of the Distribution Order in the United States Court of Appeals for the Seventh Circuit [Appeal No. 10-1915]. On April 23, 2010, the Appeals Court consolidated the appeals. The appeals have been fully briefed and are pending before the Appeals Court (collectively, the "Seventh Circuit Appeals").

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

16. 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 Receiver is currently holding \$936,331.64 in unrestricted funds available to pay the approved fees and expenses. The fees and expenses for which approval is requested are set forth in the summary entitled "Receivership Expenses by Month" attached hereto as Exhibit 2. The monthly invoices which were used to prepare Exhibit 2 are attached hereto as Exhibit 3. A reconciliation of the reserve balance available to pay approved fees and expenses is attached hereto as Exhibit 4.

17. For this current application, the fees and expenses of the Receiver during the Fee Period include the following itemized items: Receiver's fees of \$84,783.20, staff fees for financial reconstruction and accounting of \$43,609.00, staff fees for information technology and database maintenance of \$2,571.11, and support staff fees of \$4,610.80. The total amount of fees sought is \$135,574.11.

18. Additionally, for the current application, the fees and expenses of the Receiver during the Fee Period for its outside counsel total \$301,073.89 itemized as follows: Law Firm Holzhacker \$10,607.05; HOPP GmbH \$12,618.19; Heuking, Kuhn, Luer, Wojtek \$64,302.59; Osler, Hoskin & Harcourt LLP, \$52,505.90; Shaw Gussis, \$123,199.44; and Manches LLP, \$37,840.72.

19. As set forth in detail in Exhibit 2, and including additional out-of-pocket expenses of the Receiver of \$79,114.53, the Receiver has incurred a total of \$515,762.53 in fees and expenses for the Fee Period.

20. During the Fee 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, using the information received in response to the Claims Verification Procedure and after approval of the Claims Calculation Motion, prepared the plan of distribution which was approved by the Court.

ii. The Receiver and its staff facilitated the distribution of in excess of \$104,000,000 pursuant to the Distribution Order to Lake Shore investors and then calculated

and facilitated an additional distribution of in excess of \$700,000 pursuant to the Additional Distribution Order.⁸

iii. The Receiver and its staff and legal counsel successfully overcame all objections filed to the Distribution Motion.

iv. The Receiver and its staff and legal counsel are involved in defending the Seventh Circuit Appeals.

v. The Receiver and its staff and legal counsel have conducted worldwide discovery, including efforts to contact, interview, subpoena and depose individuals, banks and business affiliations with information about the assets of the LS Common Enterprise. During the Fee Period, the Receiver retained German counsel to investigate potential assets of the receivership estate in Germany, continued its investigation in Canada of John Kurgan, Nicholas Eveleigh, David Tonken, Roth Mosey and Partners LLP and FTG Capital (Canada) Ltd, and through London counsel initiated discovery in the Turks & Caicos Islands and obtained authority from the London Court to use all documentary evidence produced by the defendants in the Interpleader action.

vi. The Receiver and its staff completed its analysis of all funds transferred to and through Hanford and Anglo International, Ltd. and filed a full report detailing the flow of funds on April 16, 2010 (the "Hanford Report") [Dkt. No. 803].

21. 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

⁸ The \$700,000 was distributed subsequent to the Fee Period and does not appear on Exhibit 2.

any investor, upon request. The Receiver believes that under the circumstances such notice is sufficient.

22. In support of this Motion, the Receiver attaches the Declaration of Brick Kane as Exhibit 5.

CONCLUSION

23. In light of the extensive work performed which has enabled the Receiver to consummate his proposed plan of distribution and distribute in excess of \$105,000,000⁹ to Lake Shore investors, it is respectfully submitted that the fees and expenses of the Receiver and its professionals are reasonable and should be approved and authorized for payment.

WHEREFORE, the Receiver prays that this Court enter an Order as follows:

1. Approving confirming and authorizing for payment, the administrative fees and expenses of the Receiver and its staff and counsel for the Receiver, for the period November 1, 2009 through May 31, 2010, as more particularly set forth herein.

⁹ Including the funds distributed under the Additional Distribution Order subsequent to the Fee Period.

