

ROBB EVANS & ASSOCIATES LLC

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 January 1, 2011 Through May 31, 2011**

Filed August 3, 2011

**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 JANUARY 1, 2011 THROUGH MAY 31, 2011**

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 January 1, 2011 through May 31, 2011 (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

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.

\$126,000,000.00.² 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, \$1,048,742.28, \$7,406,049.77 and \$7,051,636.47 were received from the Trustee on February 3, 2009, March 9, 2009, August 5, 2010 and August 31, 2010. 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 currently unknown when an additional distribution will be made by the Trustee. The 7th Circuit appeal by the Trustee of the adverse decision of the District Court in the Liquidation Trust Lawsuit against the Bank of New York has been fully briefed. No date has been set for oral argument. The Trust is also preparing for trial in August 2011 against FTN Financial and others seeking in excess of 100 million dollars. The Receiver has been deposed in connection with the FTN litigation. The Trust is also prosecuting a motion for summary judgment against a “Seg 1” customer for distributions in excess of the amount the Trust alleges they were entitled to receive. The Trust is currently holding funds of approximately \$102,000,000, \$19,000,000 of which is unrestricted with the remainder being held in reserve accounts.⁵

9. As of the date of this Motion, the Receiver has distributed in excess of \$119,000,000 to the investors pursuant to the provisions of the distribution motions approved by this Court. On March 18, 2010, Andbanc filed a Notice of Appeal of the Distribution Order in the United States Court of

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 Reports from the Sentinel Liquidation Trust dated April 15, 2011 and July 15, 2011, attached hereto as Exhibit 1.

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 were argued before the Appeals Court (collectively, the “Seventh Circuit Appeals”) on October 8, 2010. On May 11 2011, the Appeals Court rendered its decision which affirmed the District Court.

10. On June 27, 2011, Andbanc filed a Petition for Rehearing or, alternatively, Petition for Rehearing on banc in the Appeals Court. On July 11, 2011, the Appeals Court entered an Order denying the Andbanc Petition.

11. On December 28, 2010, the Receiver filed his Motion for Entry of an Order Expanding Receivership to Include FTG Capital Canada (the “FTG Motion”) [Dkt. No. 853]. FTG has objected to the motion [Dkt. No. 860]. On February 11, 2011, the Receiver filed a reply in further support of the Motion [Dkt. No. 871]. The matter has been fully briefed and is under advisement before the Court.

12. 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 set forth in this request. This is the eighth request of the Receiver for approval of 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. The unrestricted fund balance after payment of the requested fees and expenses is \$4,930,091.80.

13. For this current application, the fees and expenses of the Receiver during the Fee Period include the following itemized items: Receiver’s fees of \$19,465.40, staff fees for financial reconstruction and accounting of \$13,817.50, staff fees for information technology and database maintenance of \$110.90, and support staff fees of \$754.10. The total amount of fees sought is \$34,147.90. The Receiver has also incurred out-of-pocket expenses in the amount of \$45,646.82 during the Fee Period for a total of \$79,794.72 in Receivership fees and costs.

14. Additionally, for the current application, the fees and expenses of the Receiver during the Fee Period for its outside counsel total \$70,860.65 itemized as follows: Heuking, Kuhn, Luer, Wojtek, \$9,320.25; Osler, Hoskin & Harcourt LLP, \$5,112.44; and Shaw Gussis, \$56,427.96.

15. As set forth in detail in Exhibit 2, the Receiver has incurred a total of \$150,655.37 in fees and expenses for the Fee Period.

16. 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, processed additional distributions to investors as approved by the Court.

ii. The Receiver and its staff and legal counsel continued to attempt to resolve the disclosure issues with Avalon Absolute Return Fund LLC and Avalon Value Fund.

iii. The Receiver and its staff and legal counsel continued to actively participate as an ad hoc member of the Sentinel Liquidation Trust Committee.

iv. The Receiver and its legal counsel prepared for and attended the deposition of the Receiver in the FTN litigation brought by the Trustee.

v. The Receiver and its staff and legal counsel prepared and filed the Receiver's Reply in support of the Motion for an Order Expanding Receivership to include FTG Capital Canada, Ltd.

vi. The Receiver and its staff and legal counsel concluded their discovery efforts in Germany. During the Fee Period, the Receiver's German counsel concluded its investigation of potential assets of the receivership estate in Germany, including the condominium project in Hamburg Germany which Philip Baker through his wife still maintains an interest. The efforts of the Receiver's German counsel has led to the seizure of records of George Schulz by the German authorities including the Lake Shore servers which were secreted from Canada at the beginning of the case.

17. 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.

18. In support of this Motion, the Receiver attaches the Declaration of Brick Kane as Exhibit 4.

CONCLUSION

19. In light of the ongoing work performed which has enabled the Receiver to continue his efforts to obtain additional funds for the benefit of the 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 January 1, 2011 through May 31, 2011, as more particularly set forth herein.

2. Approving the procedures for notice of this Motion by serving all parties who have appeared in this case through the courts electronic noticing system, and providing notice to all investors by posting the Notice of Motion, Motion and all Exhibits on the Receiver's website.

