IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

U.S. COMMODITY FUTURES TRADING COMMISSION, Plaintiff, v. LAKE DOW CAPITAL, LLC a/k/a CLIFFORD, EDWARDS & TAYLOR AND TY EDWARDS, Defendants.	Civil Action File No. 1:05-CV-2709 Judge Clarence Cooper

RECEIVER'S MOTION FOR RECONSIDERATION AND/OR CLARIFICATION OF THIS COURT'S ORDER OF NOVEMBER 16, 2006 TOGETHER WITH RECEIVER'S MOTION TO FURTHER AMEND PLAN OF DISTRIBUTION AS SET FORTH IN SECOND AMENDED PLAN INCORPORATED HEREIN AND TO PROVIDE ADDITIONAL NOTICE TO INVESTORS AND CREDITORS

COMES NOW S. Gregory Hays, the duly authorized and acting Receiver herein, by and through his undersigned counsel of record, and makes and files his Motion for Reconsideration and/or Clarification of this Court's Order of November 16, 2006 together with Receiver's Motion to Further Amend Plan of Distribution as set forth in Second Amended Plan and to Provide Additional Notice to Investors and Creditors (the "Reconsideration Motion") and shows as follows:

PROCEDURAL BACKGROUND

1. This action commenced on October 19, 2005 through the filing a "Complaint for Injunctive and Other Equitable Relief and for Civil Monetary Penalties under the Commodity Exchange Act" (the "Complaint") by the U.S. Commodity Futures Trading Commission ("CFTC") against Lake Dow Capital LLC, a/k/a Clifford Edwards and Taylor LLC ("Lake Dow/CET") and Ty Edwards ("Edwards") (collectively, the "Defendants"). In the Complaint, the CFTC alleged that the Defendants employed schemes to defraud or had engaged in practices that operated as a fraud or deceit upon actual and prospective commodity pool participants and clients in an investment fund known as the "Aurora Fund".

2. On October 19, 2005, this Court entered its "Ex Parte Restraining Order to Freeze Assets, Preserve Books and Records, Authorize Expedited Discovery and To Appoint a Temporary Receiver" (the "TRO Order"). Pursuant to the terms of the TRO Order, the assets of the Defendants were frozen and S. Gregory Hays was appointed as Receiver for each of the Defendants. On November 8, 2005, this Court entered is "Consent Order of Preliminary Injunction and Asset Freeze" (the "Preliminary Injunction Order") continuing the appointment of the Receiver with the duties, obligations and powers set forth in the

TRO Order (the "TRO Order" and "Preliminary Injunction Order" shall be collectively referred to herein as the "Receivership Orders").

3. On December 19, 2005, the Receiver filed his First Interim Report in accordance with Paragraph IV(F) of the TRO Order. On July 17, 2006, the Receiver filed his Second Interim Report and provided detailed information to the Court, the parties and investors regarding the assets held by the Receiver and claims asserted against such assets. Each of these Reports are incorporated herein by reference and in support of the relief requested in this Motion for Reconsideration.

4. On August 25, 2006, and in accordance with the Receivership Orders, the Receiver filed his Plan of Distribution (the "August 25 Plan") with this Court together with his Motion seeking approval of same. On September 25, 2006 this Court entered its Order and Notice of Hearing with Respect to Plan of Distribution (the "Order and Notice"). The Order and Notice directed that a hearing be held to consider the August 25 Plan on November 13, 2006 and that any objections to the August 25 Plan be filed five business days prior to such hearing. As directed in the Order and Notice, the Receiver circulated the August 25 Plan to all investors and creditors in this case. Only one objection was timely filed to the Plan of Distribution, *to wit,* the "Objection of Richard Mintz, Alvin Pannell and Joseph Wyant to the Receiver's Proposed Plan of Distribution and Brief in Support" (the

"MPW Objection") (Messrs. Mintz, Pannell and Wyant shall be referred to collectively and individually referred to herein as the "Objectors").

5. The August 25 Plan provided that the Objectors would be classified in Category VI, Segregated IRA Investor Claims which consisted of 44 persons who invested in the Aurora Investment Fund through separate IRA accounts. Pursuant to the terms of the August 25 Plan, Segregated IRA Investors would have their IRA accounts returned to them, ***less*** an "Assessment" to be determined as set forth in Paragraph 41 of the August 25 Plan. The purpose of the Assessment, as set forth in the August 25 Plan, was to provide for equality of treatment between and among the Segregated IRA Investors and other investors in the Aurora Investment Fund.

6. In the MPW Objection, the Objectors objected to the Assessment and requested an amendment to the Plan which would require the return or "roll over" of their respective IRA accounts without any assessment or adjustment. The Objectors essentially asserted that their IRA accounts had not been commingled with accounts of other investors and that they were therefore entitled to the return of their IRA investments intact.

7. This Court held an evidentiary hearing with respect to the proposed August 25 Plan and the MPW Objection on November 13, 2006. During the course of this hearing, the Receiver submitted evidence to the Court in opposition

to the Objection. At the conclusion of this hearing, this Court announced its intent to sustain the MPW Objection provided that the Objectors reimburse the general investors for any commissions or expenses paid by the general investors on behalf of the Objectors. The Court approved the August 25 Plan in all other respects. This was memorialized in an Order entered November 16, 2006 which also required the Receiver to make and file an amended plan in accordance with the terms of the November 16 Order.

8. As directed, the Receiver filed his Notice of Filing of First Amended Plan with this Court on November 16, 2006. This First Amended Plan constituted an amendment to the August 25 Plan strictly in accordance with the direction provided by the Court. The First Amended Plan provides that the entire IRA account balances of the Objectors would be returned or rolled over to them less only "commissions or expenses". The remaining 41 Segregated IRA Claims would receive the treatment originally provided in the August 25 Plan.

9. The purpose of this Motion for Reconsideration is to address three issues which the Receiver believes should be addressed by this Court in light of the November 16 Order as follows.

(a) First, with respect to the Court's decision to limit its ruling with respect to the separate nature of the IRA accounts to the three Objectors, the Receiver respectfully requests that this ruling also be applied to the 41 other

persons included within Category VI of the August 25 Plan since these persons are similarly situated to the Objectors.

(b) Second, the Receiver requests clarification of this Court's ruling with respect to the "commissions or expenses" which must be reimbursed by the Objectors and that this Court issue an order designating the "commissions or expenses" to be reimbursed by them;

(c) Third, in light of the substantial changes made to the August 25 Plan in the November 16 Order and the relief requested herein, the Receiver requests that additional notice be given to investors and creditors in this matter.

MOTION FOR RECONSIDERATION

10. At the conclusion of the November 13 Hearing, this Court clarified that its ruling requiring an amendment of the plan would be limited to the Objectors and would not apply to the other 41 persons included in Category VI of the August 25 Plan. This was confirmed in the November 16 Order which sustained the MPW Objection but approved the August 25 Plan in all other respects. In accordance with the November 16 Order, the Receiver filed his First Amended Plan which placed the Objectors in their own category and which provided separate and distinct treatment for the Objectors from other Segregated IRA Investors. The Receiver respectfully requests reconsideration of this holding and requests that this Court permit the Trustee to further amend the First Amended

Plan as set forth herein and to provide the same treatment as provided to the Objectors herein to the other 41 persons included within Category VI of the August 25 Plan. A proposed Second Amended Plan, which provides the same treatment for all Segregated IRA Investors, including the Objectors, is attached hereto as Exhibit "A" and incorporated herein by reference.

11. In making and filing his August 25 Plan, one of the Receiver's primary considerations was to achieve equality of treatment among similarly situated investors. In filing the August 25 Plan, the Receiver determined that the investors identified in Categories IV("General Investor Claims"), V("Lake Dow/CET Investor Claims" and VI ("Segregated IRA Investors") had intended to invest in the same fund and should receive equal treatment. With respect to the Segregated IRA Investors, the Receiver intended to accomplish this result through the Assessment of their IRA Account balances. The Objectors, who were included as Segregated IRA Investors, objected to this treatment and, in particular, the Assessment of their accounts as provided for in the August 25 Plan. The Objectors argued that because their investments were established in separate IRA accounts and were not commingled with other investors funds or subject to the direct control of Defendant Ty Edwards, that they should not be treated equally with General Investor Claims or Lake Dow/CET Investor Claims and should be entitled to the return of their IRA Accounts without any assessment.

12. As established at the November 13 Hearing, if the Receiver's August 25 Plan were approved, investors in Categories IV, V and VI, including the Objectors, would receive a pro-rata distribution of 83%. If the treatment requested by the Objectors were applied to all investors in Category VI, investors in Categories IV and V would receive a pro-rata distribution of 63% and investors in Category VI would receive 109% of the principal amount invested by them The Receiver shows that if the First Amended Plan were put into effect, the Objectors would receive 109% of their principal investments and that the remaining investors in Categories IV, V and VI would receive 79% of their principal investments, a four percent reduction from the amount contemplated at the hearing. In addition, if the First Amended Plan is approved, the Objectors will receive a thirty percent (30%) higher distribution than the other Segregated IRA Investors who have virtually identical claims. Indeed, one other Segregated IRA Investors has already filed a motion with this Court seeking similar relief to that accorded to the Objectors and the Receiver has received complaints from other IRA Investors about the unfairness of this result to them.

13. In reaching its decision, it is clear to the Receiver that this Court concluded that the MPW Objection should be sustained because (i) the Objectors invested through IRA accounts which were not commingled with other investor funds, (ii) were not invested in the same manner as funds invested by persons in

Categories IV and V; (iii) were not subject to the direct control of Defendant Ty Edwards and (iv) were entitled to different treatment because they were IRA Accounts. Although the Receiver respectfully disagrees with the Court's ruling on this issue, the Receiver respectfully shows that the other 41 investors included in Category VI of the August 25 Plan are similarly situated to the Objectors and that fairness dictates that the remaining investors in Category VI of the August 25 Plan receive identical treatment.

14. In addition, the Receiver also believes that in requiring the Objectors to reimburse the general investors for any commissions or expenses paid by the general investors on behalf of the Objectors, this Court recognized the inherent unfairness in the ultimate relief requested by the Objectors in the MPW Objection (i.e. the return of their IRA Accounts without any deduction). Accordingly, the Receiver has amended his plan in the Second Amendment to once again place "Segregated IRA Investors", including the Objectors, in one category, Category VI. The Second Amended Plan provides that persons in this category will have their IRA Accounts returned to them less "commissions or expenses" to be determined by the Court and does away with the Assessment contained in the August 25 Plan. This will provide the Objectors with same treatment as provided to all Segregated IRA Investors generally.

15. The Receiver recognizes that the Second Amendment to Plan will have a significant, and detrimental, impact on General Investor Claims (Category IV) and Lake Dow/CET Investor Claims (Category V). If the Receiver were to proceed with the First Amended Plan, these investors would be likely to receive distributions of 79% of the principal amount of their investments. If the Plan is amended as set forth in Second Amended Plan of Distribution, these investors will likely receive around 63% of their investments, depending upon how this Court resolves the issue of "commissions and expenses" to be reimbursed. However, the Receiver now finds himself in a very awkward position vis a vis the remaining 41 investors in Category VI of the August 25 Plan and believes that the issue of whether they should receive the same treatment as the Objectors should be addressed. The Receiver submits, based on this Court's November 16 Order, that the remaining 41 persons contained in Category VI of the August 25 Plan are entitled to the same treatment as the Objectors and that the Plan should be amended as set forth herein.

MOTION TO CLARIFY

16. In its November 16 Order, the Court stated that the Objectors would be required "to reimburse the general investors for any commissions or expenses paid by the general investors on behalf of the Objectors". The Receiver believes that the Court directed this condition in response to evidence introduced at the

hearing that expenses related to the Objectors' IRA Accounts had been paid by the general investors. In particular, during the course of the November 13 hearing, the Receiver introduced evidence that commissions were paid to investment brokers at Wellstone Securities in connection with the accounts opened by the Objectors. The Objectors acknowledged at the hearing that these fees were not deducted from their IRA accounts and that these fees were paid by other investors. The Objectors also acknowledged that certain other fees which they understood they would be obligated to pay were never deducted from their accounts. The Court clearly concluded, just as the Receiver had concluded, that it would unfair to the general investors to force them to pay "commissions or expenses" which should rightfully be borne by the Objectors and by the other Segregated IRA Investors. This is also consistent with the Limited Partnership Agreements signed by the Objectors which contemplated the sharing of profits and losses by all limited partners. Respectfully, these were the issues which the Receiver was attempting to address in providing for the Assessment of the Segregated IRA Investor Claims in the August 25 Plan and were also the ultimate reason why the Receiver so vigorously opposed the MPW Objection. These are also the issues which remain to be resolved in determining the "commissions or expenses" to be reimbursed by the Objectors.

17. The Receiver has identified several categories of "commission or expenses" which he believes that the Objectors should be obligated to pay pursuant to the November 16 Order and therefore the Receiver respectfully requests clarification from the Court as to which "commissions or expenses" the Objectors should be required to pay. In addition, to the extent that this Court were to approve the Second Amended Plan of Distribution as filed herein, the Receiver shows that these same "commissions or expenses" should be deducted from the Segregated IRA Accounts which are in Category VII of the Second Amended Plan. The categories of expenses which the Receiver asserts should be deducted are as follows:

(a) Commissions Directly Attributable to the IRA Investors: The Receiver does have information with respect to the payment of commissions to Wellstone Securities for accounts opened by the Segregated IRA Investors, including the Objectors. These commissions were paid from funds invested by other investors and the Segregated IRA Investors did not pay commissions related to their accounts. The Receiver submits that commissions directly attributable to each IRA Investor should be deducted from their IRA Accounts and that the general investors should be reimbursed for these sums;

(b) Expenses of the Receivership: The Receivership Orders resulted in the preservation of the Objectors' accounts and of the accounts of the other IRA

Investors. The Receiver submits that deductions should be made on a pro-rata basis for the expenses of the Receivership, including receiver's fees, attorneys' fees, consulting fees and other expenses incurred by the Receiver.

(c) Commissions Indirectly Attributable to IRA Investors; Throughout the life of the Aurora Hedge Fund, commissions, fees and expenses were paid by the Defendants. These included commissions, fees and expenses related to the Objectors' accounts and to the IRA Accounts generally. The substantial expenses of purchasing futures contracts as well as the losses sustained from these purchases would be diminished by at least half had the defendants not used funds from the non-IRA accounts to purchase additional futures contracts to hedge positions held in the IRA accounts. If these expenses are not reimbursed, the General Investors and the other IRA Investors will be forced to pay commissions, fees and expenses which the Objectors agreed to pay themselves when they opened their accounts and which they contemplated paying as part of their investment; and

(d) Expenses from the Hedging of Segregated IRA Accounts: An important part of the Defendants trading strategy involved the use of hedging by purchasing futures contracts equal to the value of all investor equity holdings. During the course of the November 13 hearing, one or more of the Objectors testified that the hedging aspect of the Aurora fund was a major reason for investing in the fund. The IRA investors received the benefit of the Defendants

hedging strategy because for each futures transaction, the defendants purchased a number of futures contracts that equaled the total value of all equity holdings in all accounts, including the IRA accounts. Although IRA investors received the benefit of having the equity value of their IRA accounts hedged, the non-IRA investors bore the entire expense of all hedging activity. These expenses included not only the substantial commissions paid to brokers to sell these contracts, but also substantial losses. These expenses and losses would have been lessened if the Defendants did not account for the Objectors and for the Segregated IRA Investors in calculating the number of futures contracts to be sold. The Receiver respectfully requests that there should be a pro-rata reduction for the expenses and costs borne by non-IRA investors to pay for the hedging of the Objectors' IRA Accounts.

MOTION FOR ADDITIONAL NOTICE TO INVESTORS

18. The Receiver respectfully requests that additional notice be given to investors and creditors in this matter in connection with both the November 16 Order and this Motion for Reconsideration for several reasons. First, this Court's November 16 ruling will result in an approximate 4% reduction in the amounts to be distributed to other investors. This is a material change in the contemplated treatment of these investors and notice should be given to them. Although the Receiver has posted a copy of the November 16 Order on his website, the Receiver believes that each investor should be given notice and an opportunity to be heard

with respect to the reduction of their distributions. Second, the Receiver has been contacted by some of the other IRA Investors originally included in Category VI and it is the Receiver's understanding that certain of the persons included within this Category VI of the August 25 Plan may seek similar relief as granted to the Objectors. One such person has already filed such a motion. Other investors and creditors should receive notice and an opportunity to be heard with respect to the relief which may be sought by other IRA Investors. Third, the Receiver requests that investors and creditors be served with a copy of this Motion and of the proposed Second Amended Plan and that investors and creditors be given an opportunity to be heard with respect to the Second Amended Plan and that this Court set a hearing date to consider the relief requested herein.

WHEREFORE, the Receiver respectfully requests that this Motion be granted, that this Court's Order of November 16 be reconsidered and clarified as requested herein, that the Receiver be authorized to provide additional notification to investors and creditors, that this Court schedule a hearing to consider this

Motion and any other motions which may be filed related to the November 16 Order and for such other and further relief as may be just and proper.

Respectfully Submitted this 1st day of December, 2006.

s/ Henry F. Sewell, Jr.
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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

U.S. COMMODITY FUTURES TRADING COMMISSION,

Plaintiff,

v.

LAKE DOW CAPITAL, LLC a/k/a CLIFFORD, EDWARDS AND TY EDWARDS,

Defendants.

Civil Action File No.
1:05-CV-2709

Judge Clarence Cooper

CERTIFICATE OF SERVICE

This is to certify that I have this day served the within and foregoing RECEIVER'S MOTION FOR RECONSIDERATION AND/OR CLARIFICATION OF THIS COURT'S ORDER OF NOVEMBER 16, 2006 TOGETHER WITH RECEIVER'S MOTION TO FURTHER AMEND PLAN OF DISTRIBUTION AS SET FORTH IN SECOND AMENDED PLAN INCORPORATED HEREIN AND TO PROVIDE ADDITIONAL NOTICE TO INVESTORS AND CREDITORS upon opposing counsel in the above-captioned action by United States Mail addressed as follows:

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This 1st day of December, 2006.

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