

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

COMMODITY FUTURES TRADING )  
COMMISSION, )

Plaintiff, )

v. )

ALAN JAMES WATSON, MICHAEL POTTS )  
and CASH FLOW FINANCIAL LLC. )

CIVIL ACTION NO.: 11-cv-10949

Defendants, )

Judge Lawrence P. Zatkoff

and )

THE JEDBURGH GROUP, )  
Relief Defendant. )

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**STATUTORY RESTRAINING ORDER,  
ORDER FOR EXPEDITED DISCOVERY, AND ORDER TO SHOW CAUSE WHY A  
PRELIMINARY INJUNCTION SHOULD NOT BE ENTERED**

This matter came before the Court on the United States Commodity Futures Trading Commission’s (“Commission”) motion for an *ex parte* statutory restraining order, an order for expedited discovery, and an order to show cause why a preliminary injunction should not be entered. The Court, having considered the Commission's motion, memorandum of law, complaint, and other relevant materials, and all other evidence and arguments presented by the Commission, finds that:

1. This Court has jurisdiction over the parties and over the subject matter of this action pursuant to Section 6c of the Commodity Exchange Act (Act), as amended, 7 U.S.C. § 13a-1 (2006).

2. Venue lies properly within this District pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e).

3. There is good cause to believe that defendants, Alan James Watson (“Watson”), Michael S. Potts (“Potts”) and Cash Flow Financial LLC (“CFF”) have engaged, are engaging, or are about to engage in acts and practices constituting violations of the Act, 7 U.S.C. § 1, *et seq.*, and Commission Regulations (Regulations), 17 C.F.R. § 1.1 *et seq.* (2009).

4. There is good cause to believe that relief defendant, The Jedburgh Group (hereinafter, “Relief Defendant”), received funds and/or property as a result of the Defendants’ unlawful conduct and have been unjustly enriched thereby. There is good cause to believe that Relief Defendant has no legitimate entitlement to or interest in all of the funds and/or property received as a result of the Defendants’ unlawful conduct.

5. There is good cause to believe that immediate and irreparable damage to the Court's ability to grant effective final relief for investors in the form of monetary redress will occur from the sale, transfer, assignment, or other disposition by Defendants or Relief Defendant of assets or records unless Defendants and Relief Defendant are immediately restrained and enjoined by order of the Court.

6. Good cause exists for freezing Defendants' assets and all assets held in Account No. xxxxxx4493 at Bank of America, N.A., or any other assets held for the benefit of, received from or in any way related to Defendants Watson, Potts and/or CFF (collectively hereinafter “Certain Assets of Relief Defendant”) and for entry of an order prohibiting Defendants and Relief Defendant from destroying records and denying agents of the Commission access to inspect and copy records.

7. Good cause exists to require an accounting to determine location and disposition of customer funds.

8. Good cause exists to order repatriation of assets controlled by Defendants and Certain Assets of Relief Defendant to assure payment of restitution and disgorgement as authorized and for the benefit of customers.

9. Good cause exists to permit expedited discovery before the early meeting of counsel pursuant to Rule 26(d) of the Federal Rules of Civil Procedure, in order to ascertain the existence and location of assets, clarify the source of funds, and identify all pool participants and other investors.

10. Weighing the equities and considering the Commission's likelihood of success in its claims for relief, the issuance of a statutory restraining order is in the public interest.

#### **DEFINITIONS**

For the purposes of this order, the following definitions apply:

11. The term "document" is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes, but is not limited to, writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, drives, networks, servers, and other data compilations from which information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term.

12. "Assets" mean any legal or equitable interest in, right to, or claim to, any real or personal property, including but not limited to: chattels, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, mail or other deliveries, inventory, checks, notes, accounts including bank accounts and accounts at financial institutions, credits, receivables, lines

of credit, contracts including spot and futures contracts, insurance policies, and all cash, wherever located.

13. "Defendants" shall mean and refer not only to Watson, Potts and CFF, but also to any d/b/a, successor, or other entity controlled by any of the aforementioned individuals.

14. "Relief Defendant" shall mean and refer to not only The Jedburgh Group, but also to any d/b/a, successor, or other entity controlled by any of the aforementioned parties.

**RELIEF GRANTED**

**I. ORDER AGAINST TRANSFER, DISSIPATION, AND DISPOSAL OF ASSETS**

**IT IS HEREBY ORDERED** that:

15. Defendants and their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with them, who receive actual notice of this order by personal service or otherwise, are restrained and enjoined from directly or indirectly transferring, selling, alienating, liquidating, encumbering, pledging, leasing, loaning, assigning, concealing, dissipating, converting, withdrawing, or otherwise disposing of any assets, wherever located, including assets held outside the United States, except as provided in Section III of this order, or as otherwise ordered by the Court. The assets affected by this paragraph shall include both existing assets and assets acquired after the effective date of this order.

16. Relief Defendant and its agents, servants, employees, assigns, attorneys, and persons in active concert or participation with them, who receive actual notice of this order by personal service or otherwise, are restrained and enjoined from directly or indirectly transferring, selling, alienating, liquidating, encumbering, pledging, leasing, loaning, assigning, concealing, dissipating, converting, withdrawing, or otherwise disposing of all assets held in Account No. xxxxxx4493 at Bank of America, N.A., or any other assets held for the benefit of, received from

or in any way related to Watson and/or CFF, wherever located, including assets held outside the United States, except as provided in Section III of this order, or as otherwise ordered by the Court. The assets affected by this paragraph shall include both existing assets and assets acquired after the effective date of this order and shall be referenced herein as “Certain Assets of Relief Defendants.”

17. Defendants and Relief Defendants are restrained and enjoined from directly or indirectly accessing or removing anything from any existing safe deposit boxes and from opening or causing to be opened any new safe deposit boxes titled in the name of, or subject to access by, any or all of the Defendants and/or Relief Defendants.

## **II. DIRECTIVES TO FINANCIAL INSTITUTIONS AND OTHERS**

**IT IS FURTHER ORDERED**, pending further order of this Court, that any financial or brokerage institution, business entity, or person that holds, controls, or maintains custody of any account or asset of Defendants and/or Certain Assets of Relief Defendant, or has held, controlled, or maintained custody of any account or asset of Defendants and/or Relief Defendants at any time since November 27, 2007, shall:

18. Prohibit Defendants, Relief Defendant and all other persons from withdrawing, removing, assigning, transferring, pledging, encumbering, disbursing, dissipating, converting, selling or otherwise disposing of any such asset except as directed by further order of the Court;

19. Deny Defendants, Relief Defendant, and all other persons identified in this order, access to any safe deposit box that is: (a) titled in the name of Defendants and/or Relief Defendants either individually or jointly; or (b) otherwise subject to access by Defendants and/or Relief Defendant;

20. Provide counsel for the Commission, within five (5) business days of receiving a copy of this Order, a statement setting forth: (a) the identification number of each and every such account or asset titled in the name, individually or jointly, of each and every Defendant, or held on behalf of, or for the benefit of each and every Defendant and/or the Certain Assets of Relief Defendant; (b) the balance of each such account, or a description of the nature and value of such asset as of the close of business on the day on which this Order is served, and, if the account or other asset has been closed or removed, the date closed or removed, the total funds removed in order to close the account, and the name of the person or entity to whom such account or other asset was remitted; and (c) the identification of any safe deposit box that is either titled in the name, individually or jointly, of each and every Defendant and/or Relief Defendant or is otherwise subject to access by Defendants and/or Relief Defendant; and

21. Upon request by the Commission, promptly provide the Commission with copies of all records or other documentation pertaining to such account or asset, including, but not limited to, originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, Internal Revenue Service 1099 forms, and safe deposit box logs.

### **III. ACCOUNTING AND TRANSFER OF FUNDS AND DOCUMENTS**

**IT IS FURTHER ORDERED** that within ten (10) business days following the service of this order, Defendants and Relief Defendant shall:

22. Provide the Commission with a full accounting of all funds, assets, and documents inside and outside of the United States that are held by each and every Defendant and

the Certain Assets of Relief Defendant, for their benefit, or under their direct or indirect control, whether jointly or singly;

23. Transfer to the territory of the United States all of the Certain Assets of Relief Defendant and any documents held by or for Relief Defendant that refer or relate in any way to Defendants, which are located outside of the United States; and

24. Transfer to the territory of the United States all funds, documents, and assets located outside of the United States that are held by each and every Defendant, for their benefit, or under their direct or indirect control, whether jointly or singly; and

25. Provide the Commission access to all records of each and every Defendant and the Certain Assets of Relief Defendant held by financial institutions located outside the territorial United States.

#### **IV. TEMPORARY RECEIVER**

**IT IS FURTHER ORDERED** that:

- A. Philip S. Stenger of Stenger & Stenger P.C., a duly licensed attorney and Certified Public Accountant who has acted as receiver in numerous prior actions, is appointed temporary Receiver for the Defendants' assets and the assets of any affiliates or subsidiaries of any defendant, with the full powers of an equity receiver. The Receiver shall be the agent of this Court in acting as Receiver under this Order;
- B. The Receiver is directed and authorized to accomplish the following:
  1. Assume full control of the corporate Defendants and any business entities owned by any Defendant, by removing any officer, independent contractor, employee, or agent of a corporate defendant, from control and management

of the affairs of the corporate defendant and any business entities owned by any Defendant;

2. Take exclusive custody, control, and possession of all the funds, property, mail and other assets of, in the possession of, or under the control of the Defendants, wherever situated and the Certain Assets of the Relief Defendant. The Receiver shall have full power to sue for, collect, receive and take possession of all goods, chattels, rights, credits, moneys, effects, land, leases, books, records, work papers, and records of accounts, including computer-maintained information, and other papers and documents of the Defendants, including documents related to customers or clients whose interest are now held by or under the direction, possession, custody or control of the Defendants, and all documents held by the Relief Defendant that refer or relate to any of the Defendants;
3. Take all steps necessary to secure the residential and business premises of the Defendants;
4. Preserve, hold and manage all receivership assets, and perform all acts necessary to preserve the value of those assets, in order to prevent any loss, damage or injury to customers or clients;
5. Prevent the withdrawal or misapplication of funds entrusted to the Defendants and Certain Assets of the Relief Defendants, and otherwise protect the interests of customers, clients, pool participants or investors;
6. Manage and administer the assets of the Defendants and Certain Assets of the Relief Defendant by performing all acts incidental thereto that the

- Receiver deems appropriate, including hiring or dismissing any and all personnel or suspending operations;
7. Collect all money owed to the Defendants;
  8. Initiate, defend, compromise, adjust, intervene in, dispose of, or become a party to any actions or proceedings in state, federal or foreign court necessary to preserve or increase the assets of the Defendants or to carry out his or her duties pursuant to this Order;
  9. Choose, engage and employ the law firm of Stenger & Stenger, P.C., other attorneys, accountants, appraisers, and other independent contractors and technical specialists (“Retained Personnel”), as the Receiver deems advisable or necessary in the performance of duties and responsibilities under the authority granted by this Order;
  10. Issue subpoenas to compel testimony of persons or obtain documents and records pertaining to the receivership, and conduct discovery in this action on behalf of the receivership estate;
  11. Open one or more bank accounts as designated depositories for funds of the Defendants and Certain Assets of the Relief Defendant. The Receiver shall deposit all funds of the Defendants and Certain Assets of the Relief Defendant in such designated accounts and shall make all payments and disbursements from the receivership estate from such accounts; and
  12. Make payments and disbursements from the receivership estate that are necessary or advisable for carrying out the directions of, or exercising the authority granted by, this Order. The Receiver shall apply to the Court for

prior approval of any payment of any debt or obligation incurred by the Defendants prior to the date of entry of this Order, except for payments that the Receiver deems necessary or advisable to secure assets of the Defendants.

C. Immediately upon service of this Order upon them, the Defendants, Relief Defendant, and any other person or entity served with a copy of this Order, shall immediately or within such time as permitted by the Receiver in writing, deliver over to the Receiver:

1. Possession and custody of all funds, property, and other assets, owned beneficially or otherwise, wherever situated, of the Defendants and Certain Assets of the Relief Defendant;
2. Possession and custody of documents of the Defendants and those of Relief Defendant that refer or relate to Defendants, including but not limited to, all books and records of accounts, all financial and accounting records, balance sheets, income statements, bank records (including monthly statements, canceled checks, records of wire transfers, and check registers), client lists, title documents and other papers;
3. Possession and custody of all precious metals, other commodities, funds, and other assets being held by or on behalf of the Defendants, on behalf of the Defendants' customers, clients, pool participants or investors or which constitute Certain Assets of Relief Defendant;
4. All keys, computer passwords, entry codes, and combinations to locks necessary to gain or to secure access to any of the assets or documents of the Defendants or those of Relief Defendants that relate or refer to the

Defendants, including but not limited to, access to the Defendants' and Relief Defendant's residential and business premises, means of communication, accounts, computer systems, or other property; and

5. Information identifying the accounts, employees, properties or other assets or obligations of the Defendants.

D. The Defendants, Relief Defendant and all other persons or entities served with a copy of this order shall cooperate fully with and assist the Receiver. This cooperation and assistance shall include, but not be limited to, providing any information to the Receiver that the Receiver deems necessary to exercising the authority; providing any password required to access any computer or electronic files in any medium; and discharging the responsibilities of the Receiver under this Order, and advising all persons who owe money to the Defendants that all debts should be paid directly to the Receiver.

E. Except by leave of the Court, during the pendency of the receivership ordered herein, the Defendants, Relief Defendant, and all other persons and entities be and hereby are stayed from taking any action to establish or enforce any claim, right or interest for, against, on behalf of, in, or in the name of, the Defendants, the Receiver, receivership assets, or the Receiver's duly authorized agents acting in their capacities as such, including but not limited to, the following actions:

1. Commencing, prosecuting, litigating or enforcing any suit, except that actions may be filed to toll any applicable statute of limitations;
2. Accelerating the due date of any obligation or claimed obligation, enforcing any lien upon, or taking or attempting to take possession of, or retaining possession of, property of the Defendants or any property

claimed by the Defendants, or attempting to foreclose, forfeit, alter or terminate any of the Defendants' interests in property, whether such acts are part of a judicial proceeding or otherwise;

3. Using self-help or executing or issuing, or causing the execution or issuance of any court attachment, subpoena, replevin, execution or other process for the purpose of impounding or taking possession of or interfering with, or creating or enforcing a lien upon any property, wherever located, owned by or in the possession of the Defendants, or the Receiver, or any agent of the Receiver; and
4. Doing any act or thing to interfere with the Receiver taking control, possession or management of the property subject to the receivership, or to in any way interfere with the Receiver or the duties of the Receiver; or to interfere with the exclusive jurisdiction of this Court over the property and assets of the Defendants.

This paragraph does not stay the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power.

F. Within 60 days of the date of this Order, the Receiver shall file with this Court and serve Plaintiff Commission a report outlining the steps taken to identify customers, marshal assets, determine the amount invested by each customer, and the portion of assets available to pay back customers. This report shall also include a statement as to the estimated time it will take to distribute available assets to customers and wind up the receivership.

G. The Receiver and his Retained Personnel, are entitled to reasonable compensation for the performance of duties pursuant to this Order and for the cost of actual out-of-pocket

expenses incurred by them, from the assets now held by, or in the possession or control of, or which may be received by the Defendants. The Receiver shall file with the Court and serve on the parties, including Plaintiff Commission, periodic requests for the payment of such reasonable compensation, with the first such request filed no more than sixty (60) days after the date of this Order. Plaintiff Commission may object to any part of a request within 30 calendar days of service of a request. The Receiver shall not increase the hourly rates used as the bases for such fee applications without prior approval of the Court.

H. According to applicable statutes, including 7 U.S.C. § 13a-1(b), the Receiver shall not be required to post bond or give an undertaking of any type in connection with his fiduciary duties and obligations in this matter unless and until the Court so orders.

I. The Receiver and his Retained Personnel are entitled to rely on all outstanding rules of law and court orders and shall not be liable to anyone for their good faith compliance with any order, rule, law, judgment or decree, including those issued or passed in foreign jurisdictions. In no event shall the Receiver or his Retained Personnel be liable to anyone for their good faith compliance with their duties and responsibilities as Receiver or counsel for the Receiver, nor shall the Receiver or his Retained Personnel be liable to anyone for any actions taken or omitted by them, except upon a finding by this Court that he or they acted or failed to act as a result of misfeasance, bad faith, gross negligence or in reckless disregard of their duties.

**V. MAINTENANCE OF BUSINESS RECORDS**

**IT IS FURTHER ORDERED** that:

26. Defendants, Relief Defendant and their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with them, and all other persons or entities who receive notice of this order by personal service or otherwise, are restrained and enjoined

from directly or indirectly destroying, mutilating, erasing, altering, concealing or disposing of, in any manner, directly or indirectly, any documents that relate to the business practices or business or personal finances of Defendants.

**VI. INSPECTION AND COPYING OF BOOKS AND RECORDS**

**IT IS FURTHER ORDERED** that:

27. Representatives of the Commission be immediately allowed to inspect the books, records, and other documents of Defendants and their agents, including, but not limited to, electronically stored data, hard drives, networks, servers, compact discs, tape recordings, and computer discs, wherever they may be situated and whether they are in the person of Defendants, Relief Defendant or others, and to copy said documents, data and records, either on or off the premises; and

28. Representatives of the Commission be immediately allowed to inspect the books, records, and other documents of Relief Defendant and its agents that refer or relate in anyway to Defendants, including, but not limited to, electronically stored data, hard drives, networks, servers, compact discs, tape recordings, and computer discs, wherever they may be situated and whether they are in the person of Relief Defendant or others, and to copy said documents, data and records, either on or off the premises; and

29. Defendants, Relief Defendant and their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with the Defendants and/or Relief Defendant who receive actual notice of this order by personal service or otherwise, including facsimile transmission, shall cooperate fully with the Commission to locate and provide to representatives of the Commission all books and records of Defendants and the relevant records of Relief Defendants, wherever such books and records may be situated.

**VII. ORDER PERMITTING EXPEDITED DISCOVERY**

**IT IS FURTHER ORDERED** that:

30. The prohibition upon discovery before the early meeting of counsel is removed pursuant to Rule 26(d) of the Federal Rules of Civil Procedure.

31. The prohibition upon the immediate commencement of depositions is removed pursuant to Rule 30(a)(2)(C) of the Federal Rules of Civil Procedure.

32. The parties may proceed to take the oral deposition of any person upon three calendar days actual notice if the notice is served upon the parties personally or by telecopier to the party's last known business telecopier number.

33. The parties may take the deposition of any person for the purpose of discovering the nature, location, status and extent of assets of the Defendants or Relief Defendants and the location of any documents reflecting those assets.

**VIII. BOND NOT REQUIRED OF PLAINTIFF**

**IT IS FURTHER ORDERED** that:

34. The Commission is an agency of the United States of America and, accordingly, need not post a bond pursuant to 7 U.S.C. § 13a-1(b).

**IX. ORDER TO SHOW CAUSE**

**IT IS FURTHER ORDERED** that:

35. Defendants shall appear before this Court on the 30<sup>th</sup> day of March, 2011, at 10:30 a.m., before the Honorable Lawrence P. Zatkoff , 526 Water Street, Port Huron, Michigan 48060 to show cause, if there be any, why an order for preliminary injunction should not be entered to preserve the status quo obtained by the statutory restraining order, prohibit further violations of the Act and grant other relief requested pending trial on the merits of this action.

36. Should any party wish to file a memorandum of law or other papers in opposition to Plaintiff's Motion for a Preliminary Injunction, all papers shall be filed no later than four (4) days prior to the hearing on Plaintiff's Motion for a Preliminary Injunction, and served no later than three (3) days prior to the hearing on Plaintiff's Motion for a Preliminary Injunction.

**X. SERVICE OF ORDER**

**IT IS FURTHER ORDERED** that:

37. Copies of this order may be served by any means, including facsimile transmission, upon any entity or person that may have possession, custody, or control of any documents or assets of Defendants and/or Relief Defendant or that may be subject to any provision of this order, and, additionally, that Paul Hayeck, Allison Baker Shealy, Jason Mahoney, George Malas, or any other representatives of the Commission are specially appointed by the Court to effect service. Service of the summons, Complaint or other process may be effected by U.S. Marshal or Deputy U.S. Marshal, or in accordance with Fed. R. Civ. P. 4.

**XI. SERVICE ON THE COMMISSION**

**IT IS FURTHER ORDERED** that:

38. Defendants and Relief Defendant shall comply with all electronic filing rules and requirements of the U.S. District Court of the Eastern District of Michigan.

39. Defendants and Relief Defendant shall serve all pleadings, correspondence, notices required by this Order, and other materials on the Commission by delivering a copy to Allison Baker Shealy, Division of Enforcement, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581, by electronic filing, and also by either e-mail, personal delivery or courier service (such as Federal Express or United Parcel Service) and not by regular mail

due to potential delay resulting from heightened security and decontamination procedures applicable to the Commission's regular mail.

**XII. ASSISTANCE OF UNITED STATES MARSHAL SERVICE**

**IT IS FURTHER ORDERED** that:

40. The United States Marshals Service is directed to assist the Commission in the service of the summons, complaint, and this statutory restraining order on the Defendants and Relief Defendant.

**XIII. FORCE AND EFFECT**

**IT IS FURTHER ORDERED** that:

41. This order shall remain in full force and effect until further order of this Court and that this Court retains jurisdiction of this matter for all purposes.

**IT SO ORDERED**, at , Michigan on this 11<sup>TH</sup> day of March, 2011.

s/Lawrence P. Zatkoff  
LAWRENCE P. ZATKOFF  
UNITED STATES DISTRICT JUDGE