

**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 SECOND INTERIM REPORT**

COMES NOW S. Gregory Hays, the duly authorized and acting Receiver herein, and files his Second Interim Report 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 Investment 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 its "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. Neither the TRO Order nor the Preliminary Injunction Order provide for or direct the filing of additional reports. The Receiver is making and filing this Second Interim Report in order to provide the Court

and interested parties in this case with an update as to his activities since the filing of the First Interim Report.

4. The Receivership Orders authorize and direct the Receiver to:

(a) to take full control of the corporate Defendants and any business entities owned by any Defendant;

(b) to take custody and possession of all funds and property, to secure the residential and business premises of the Defendants,

(c) to preserve, hold and manage all receivership assets, and

(d) to manage and preserve the assets of the receivership during the pendency of this action.

5. As authorized in the Receivership Orders and as set forth in the First Interim Report, the Receiver employed the following professionals to assist him in discharging his duties as Receiver: Hays Financial Consulting, LLC, of Atlanta, Georgia to serve as accountants and financial consultants to the Receiver, and McKenna Long & Aldridge LLP, of Atlanta, Georgia to serve as attorneys for the Receiver.

6. Since the filing of the First Interim Report, the Receiver and the professionals working with him have diligently continued to take control of the assets of the Receiver Estate and have begun to liquidate these assets. The Receiver has also largely completed the

claims review process and has made substantial progress in his investigation of the affairs the Defendants. Finally, the Receiver can now provide a detailed analysis of the sources and uses of funds raised from investors.

7. This Second Interim Report is intended to provide an update of the matters reported in the First Interim Report, to report on the recent activities of the Receiver and to outline how the Receiver intends to proceed with and complete his administration of the Receivership. It is important to understand that the Receiver's investigation continues and that he and those working with him may learn additional facts that could, and probably will, differ from the information provided below. Finally, in order to fully understand the status of the Receivership and the activities of the Receiver, one should consult both this Second Interim Report and the First Interim Report. This report, together with all other significant documents, will be placed on the Receiver's web site at [www.haysconsulting.net](http://www.haysconsulting.net).

**SUMMARY OF SIGNIFICANT ACTIVITIES SINCE THE  
FILING OF THE FIRST INTERIM REPORT**

8. Since the filing of his First Interim Report, the following significant developments have taken place in this case:

(a) The Court set a bar date for filing claims on February 28, 2006. In connection with this, the Receiver mailed approximately 300 claim forms to potential investors and creditors has received and reviewed 224 claims. The Receiver anticipates that total allowed claims in this case will be approximately \$23,200,000.

(b) In addition to procuring documents from the Defendants, subpoenas have been served upon and documents received from the following:

- (i) Man Financial, Inc.;
- (ii) Bear Stearns Company;
- (iii) Wellstone Securities LLC;
- (iv) Robert Taylor;
- (v) Richard Clifford;
- (vi) Wilmer Cutler Hale Dorr LLP;
- (vii) Wachovia Bank NA;
- (viii) People's Bank;
- (ix) Security Bank of Jones County;
- (x) Norforke Partners, L.P.;
- (xi) First Tennessee Bank;
- (xii) Porter Keadle Moore, LLP;
- (xiii) Sheffield & Boatright, P.A.;
- (xiv) Carew Carswell Company;
- (xv) Gifford, Hillegass, & Ingwersen, LLP;
- (xvi) O'Neill & Company;
- (xvii) Denis Thompson & ATJ Development;
- (xviii) Douglas Allvine

(xix) Fred Allvine;

(xx) Henry Godbee and Financial Solutions Advisory & Investment Group; and

(xxi) Alan J. Satterfield.

(c) The following persons have been deposed by both the Receiver and CFTC since the filing of the First Interim Report:

(i) Ty Edwards;

(ii) Richard Clifford;

(iii) Douglas Allvine

(iv) Fred Allvine; and

(v) Dennis Thompson;.

(d) The Receiver has completed the sales of each of the Boat and the Monroe County Property, as set forth in further detail below; and

(e) The Receiver has continued the investigation outlined in the First Report, has analyzed the voluminous documentation and information obtained by him to date and has reached certain conclusions regarding the amounts of moneys raised and spent by the Defendants prior to the appointment of the Receiver and is now in a position to proceed with the filing of a Plan of Distribution in this case.

### **RECEIVER'S FINANCIAL ANALYSIS AND REPORT**

9. As set forth in the First Interim Report, the Receiver's investigation of the affairs of the Defendants and of the Receivership Estate has been hampered by the wholesale failure of the Defendants to maintain records and the Receiver has been required to incur substantial time and effort in recreating the Defendants' books and

records. However, based upon his review and analysis of the voluminous documents produced pursuant to the subpoenas identified above and from the claim information submitted by investors and other creditors with their proofs of claim, the Receiver can now provide more detailed information about the amount of funds raised from investors and the uses of these monies.

10. At the time the First Interim Report was filed, the Receiver provided certain estimates regarding the sources and uses of monies raised from investors. These estimates have proved to be substantially correct. As set forth in the Summary of Cash Flows attached hereto as Exhibit "A", the Receiver believes that the Defendants raised \$26,151,223 from investors either for deposit into the Aurora Investment Fund or as an investment in CET/Lake Dow. Of this sum, \$2,518,098 was withdrawn by or returned to investors prior to the appointment of the Receiver.

11. Contrary to reports which were sent to certain investors by the Defendants, the account statements and other investment account information shows that the Aurora Investment Fund consistently lost money as the result of investing activities. As set forth in the prospectus circulated to investors, a significant part of the

investment strategy of the Aurora Investment Fund was to generate substantial profits from the sale of futures contracts utilizing proprietary futures trading strategies. However, during the operation of the Aurora Investment Fund, the Fund incurred losses of \$3,435,485 from the trading of futures contracts. A summary of the losses is attached at Exhibit "B". These losses were only partially set off by gains of \$1,226,907 from funds invested in S&P accounts during this same period. Defendant Edwards has alleged that to the extent losses were incurred in the Aurora Investment Fund, these losses were proximately caused by the failure of the broker employed by the Defendants, Man Financial, to follow his trading instructions. The Receiver has not yet reached a conclusion as to the merits of this allegation and continues to investigate this claim. It should be noted, however, that the Defendants did not employ Man Financial until August, 2004 and that the fund also consistently lost money from trading activities prior to employing Man Financial.

12. The Receiver has also confirmed that substantial commissions and other monies were paid to Defendant Edwards and to others involved in the selling of interests in the Aurora Investment Fund. Ty Edwards received a total of \$1,879,156 paid directly to him



or paid on his behalf. A listing of the payments made directly to or for the benefit of Ty Edwards is at Exhibit "C". Richard Clifford received \$192,797. A list of the payments made to or for the benefit of Richard Clifford is at Exhibit "D". Sales commissions totaling \$434,410 were paid to various brokers. A listing of the commissions paid is attached as Exhibit "E". In addition, miscellaneous business expenses of \$214,356 were incurred.

13. The Receiver has prepared a detailed list of each and every deposit and withdrawal from accounts maintained or controlled by the Defendants. A copy of this schedule is attached hereto as Exhibit "F".

14. Finally, the Receiver has prepared a chart, labeled "Cash Flow Chart" which is attached hereto as Exhibit "G" and shows the actual flow of funds received from investors. The fund provides a more visual flow of what happened to the monies raised from the investors.

#### **STATUS OF ASSETS MARSHALLED BY THE RECEIVER**

15. Bank Accounts: As reported in the First Interim Report, the Receiver froze and took possession of \$326,475.54 in cash held by the Defendants in several bank accounts. Based upon the information

discovered by the Receiver to date, he believes he has identified all of the bank accounts used by the Defendants and/or into which funds raised from investors were deposited.

16. Investment Accounts at Man Financial: A total of approximately \$18.4 Million was held by Aurora Investment Fund either in the name of Aurora Investment Fund or in the names of individual retirement account owners at Man Financial as of the appointment of the Receiver. The Receiver has taken control of the amounts held in the name of the Aurora Investment Fund and has deposited these funds into an interest bearing account in his name at SunTrust Bank. The Receiver has determined that the accounts held in the names of the individual retirement account owners at Man Financial should remain at Man Financial pending a formal court order and approval of a plan of distribution in this case as set forth below. Attached hereto as Exhibit "H" is a summary of the balances in the IRA accounts as of June 30, 2006.

17. Real Estate: The Receiver froze and took possession of several pieces of real property as outlined in the First Interim Report. Based on his review of information provided to date, the Receiver believes that he has identified all of the real estate owned by the

Defendants and/or which was purchased using investor funds. The following is a status report with respect to the real estate identified in the First Interim Report:

(a) Camden County Property: This property consists of two undeveloped lots located in a new golf course community in Camden County, Georgia. There are no mortgages or other liens against this property. The Receiver has listed this property for sale with a local real estate broker with a combined list price of \$550,000. The Receiver is advised that since the community in which these lots are located has only recently been developed, that there has been no re-sale activity with respect to undeveloped lots such as those owned by Mr. Edwards and that it will likely take several more months before these lots can be sold. The Receiver will continue to monitor the situation with respect to the Camden County Property to determine whether his asking price for this property should be modified or whether the property should be sold at public auction.

(b) Monroe County Property: The Receiver has sold this property, consisting of approximately two hundred and thirty-five acres of undeveloped land in Monroe County, Georgia at public auction for a gross sales price of \$889,313.00. After paying the secured creditor and the fees and expenses of the auctioneer, the Receivership Estate netted \$274,959.01, which such funds were placed in an interest bearing account maintained by the Receiver. Unfortunately, the Receiver's efforts to sell this property at public auction were hampered by opposition of Defendant Edwards who sought to compel the Receiver to engage in a private sale of the Monroe County Property. This opposition required an evidentiary hearing before the Court and resulted in a delay of the ultimate sale of the property and increased attorneys fees and expenses. Copies of the pleadings relating the auction sale, including the Receiver's Report with respect to the Auction are available for review on the Receiver's Web Site.

(c) Edwards Residence: Pursuant to a Court Order, the Receiver has continued to make mortgage payments with respect to the Edwards Residence in order to preserve any equity in this home

and to preserve the overall status quo pending a final disposition of this case. The Receiver is currently re-evaluating whether to continue to make mortgage payments and whether the Receivership Estate should continue to maintain this asset.

18. Personal Property: The following is the status with respect to the miscellaneous personal property of Ty Edwards identified in the First Interim Report:

(a) Boat: The Receiver has sold this asset for a gross sales price of \$117,500. The Receiver is holding the proceeds of the sale in an interest bearing account.

(b) Automobiles: The Receiver secured the titles for these vehicles has now made a demand upon Mr. Edwards for the return of these two late model vehicles purchased using investor funds in order to sell them.

19. Current Cash Position of the Receivership: As of June 30, the Receiver is currently holding or has frozen at Man Financial the sum of \$18,989,095. A document titled "Summary of Receivership Cash Flows" is attached hereto as Exhibit "I". The following additional information is provided with respect to certain of the significant items listed in this Summary:

(a) Aurora Investment Fund Account or "SKY" Account: The history of this account is summarized in the First Interim Report. Since the filing of the First Interim Report, the funds in this account have been moved from Man Financial to a money market bank account at SunTrust Bank.

(b) IRA Accounts: The IRA and/or qualified investment accounts, which were separately established by Man Financial, will remain at Man Financial pending final resolution of the treatment of

these accounts by the District Court. More information regarding the accrual of interest on this account and on the SKY Account is set forth below in the discussion of investigation of claims against Man Financial.

(c) Recoveries: Total recoveries to date, including interest and the proceeds of asset sales listed above, are \$675,116.

(d) Payments to Ty Edwards: Pursuant to the Preliminary Injunction Order, Ty Edwards has been paid the sum of \$30,602 since the appointment of the Receiver. Of this sum, \$12,000 was paid as an interim allowance. These payments ceased in February, 2006. The remaining amounts relate to the preservation of the Edwards Residence and include mortgage payments and the payment of necessary utilities. The Receiver is currently in discussions with the parties to this case as to whether these payments should continue or not.

(e) Payments to Defendants' Counsel: Pursuant to the Preliminary Injunction Order, the Receiver paid approximately \$24,000 to attorneys retained by the Defendants prior to the filing of this case and the appointment of the Receiver. These fees related to time spent and expenses incurred by such attorneys in preparing information regarding the management and operation of the Aurora Investment Fund. The work product generated by these attorneys has been turned over to the Receiver. The Receiver will not make any additional payments to attorneys or other professionals employed by the Defendants unless specifically directed by the Court.

(f) Improper Withdrawal of IRA Investor Funds: Since the filing of the First Interim Report, the Receiver has learned that Man Financial allowed three investors holding IRA accounts to withdraw funds from their IRA accounts. The total amount transferred was \$338,680. These transfers were in direct violation of the TRO Order and Preliminary Injunction Order. In addition, Man Financial had represented to both the Receiver and the CFTC that it had possession of these funds and that these funds were frozen. The Receiver intends to hold Man Financial accountable for these transfers. The Receiver has transferred the SKY Account from Man Financial and has received assurances from Man Financial that no

further withdrawals from the Man Financial Accounts will be permitted

### CLAIMS ADMINISTRATION

20. Pursuant to the Order of the District Court establishing a bar date in this case, the Receiver and his counsel and consultants developed a listing of known individuals the Receiver believed are currently, or were at one time Investors in one of the Receiver Entities. The list contains over 300 persons and entities, each of whom was sent the claim form attached as Exhibit "J".

21. In response to this mailing, the Receiver received 224 claims from investors and creditors. Each of these claims has been reviewed and investigated by the Receiver. The purpose of this review and investigation, which has required substantial time and effort by the Receiver, is to ensure the accuracy of each claim since distributions under any plan of distribution which may be approved in this case will be premised upon the amount of each investor's claim. It should be noted that the identification of possible investors and the determination of the correct amount of their claims has also been hampered by the failure of the Defendants to maintain adequate records.

22. To the extent the Receiver had any questions about a claim or required any additional information about a claim, the Receiver contacted the claimant to obtain such information. In addition, the Receiver also compared the claims filed with the Defendants' records to ensure that all investors who had invested monies in either the Aurora Investment Fund or Lake Dow/CET and who did not receive a refund of their investment prior to the appointment of the Receiver, filed claims. The Receiver has completed his review of the claims and now believes that all investors holding claims have filed claims.

23. Out of the 224 claims filed, the Receiver believes, based upon his review of the Defendants' records, that 17 claims were filed with incorrect amounts. The Receiver has contacted each of these claimants in an effort to informally resolve the discrepancy between the claim amount and the amount indicated by the Defendants' records. In the event that the issues relating to these claims cannot be resolved consensually, the Receiver will assert formal objections to such claims with the Court and the Court shall determine the amounts of the allowed claims.

24. In addition, the Receiver believes that 24 claims were filed against the incorrect entity. As set forth in more detail in the First Interim Report, the Receiver is advised and informed that investors had the option of either investing directly in the Aurora Investment Fund or investing in Lake Dow/CET. As with the claims filed for incorrect amounts, the Receiver has commenced informal discussions with these 24 claimants and in the event issues related to these claims cannot be resolved consensually, the matter will be turned over to the Court.

25. Finally, four claims were filed by non-investor claimants. Of these four claims, one was filed by a printer asserting unpaid printing charges, one was filed by Ty Edwards for unpaid compensation, one was filed by Rusty Cochran, a close friend and business associate of Mr. Edwards, for a commission in connection with the Monroe County Property Sale and the fourth by a former employee of the Defendants, Beverly Burney. The Receiver intends to oppose the allowance of any claim to either Mr. Edwards or Mr. Cochran. The Receiver continues to analyze the remaining two claims and will make a recommendation as to their disposition in his Plan of Distribution.



26. The Receiver will attempt to resolve any issue or objection he may have to any claim consensually and through discussions with a claimant. To the extent such discussions do not result in a consensual resolution, the Receiver will file a formal objection to such claims with the Court. The Receiver will provide notice of such objections to affected claimants and such claimants will have an opportunity to be heard by the Court with respect to the objection. Claim amounts will not be modified by the Receiver without either the express consent of a claimant or approval of the Court. Except for the filing and resolution of potential objections to claims as set forth in paragraphs 23 through 25, the Receiver believes that he has completed the claims review process.

**FURTHER ADMINISTRATION OF THE RECEIVERSHIP**

27. Although the Receiver has made substantial progress on many of the tasks assigned to him by this Court, substantial work remains to be done. The following are some of the remaining steps to be taken by the Receiver in discharging his duties under the Receivership Orders and other issues which will have to be addressed in this Receivership:

28. Plan of Distribution: The Receiver is currently in the process of formulating a Plan of Distribution for review and consideration by the Court and investors. This Plan will be filed with the Court on or before August 1, 2006 and the Receiver will request a hearing date to consider the Plan from the Court. Copies of the Plan will be sent to each investor and creditor and each investor and creditor will have an opportunity to be heard with respect to the Plan. The Plan will provide for an interim distribution to investors with the Receiver retaining a certain percentage of investor funds pending completion of his investigation or of any litigation which may be filed by him.

29. Expansion of the Receivership: Contemporaneously with the filing of this Second Interim Report, the Receiver is filing a Motion with the Court to add Aurora Capital Management LLC and the Aurora Investment Fund LP as Relief Defendants to this case. This Motion has been reviewed and approved by the CFTC prior to its filing and is designed to aid the Receiver in his administration of this case and in consummating any Plan of Distribution which may be approved by the Court.

30. Additional Depositions and Discovery: Discovery in this case is scheduled to be completed by October 31, 2006. During the next several weeks, the Receiver anticipates taking several depositions of interested parties and witnesses, including, but not limited to, Robert Taylor, agents and employees of Man Financial, agents and employees of Wellstone Securities, accountants and attorneys retained by the Defendants prior to the appointment of the Receiver and brokers who raised funds from investors. The Receiver will also issue additional subpoenas to third parties as they are identified during the course of the contemplated depositions.

31. Fee Applications: Contemporaneously with the filing of this Second Interim Report, the Receiver, his financial consultants and attorneys are filing their first applications for compensation and reimbursement of expenses in this case. These applications will seek payment of compensation and reimbursement of expenses from the time the Receiver was appointed through April 30, 2006. In the future, the Receiver will file fee applications on a quarterly basis.

32. Issues Relating to Man Financial: As set forth above, the Defendants have asserted that some or all of the losses incurred in the Aurora Investment Fund were proximately caused by the failure of

Man Financial to follow directions given to them by the Defendants. The Receiver has not reached any conclusion about this allegation, but does believe that this allegation should be investigated and is in the process of doing so. In addition, at least two other disputes have arisen with Man Financial since the filing of the First Interim Report. First, as set forth above, Man Financial violated the TRO Order and Preliminary Injunction Order by permitting three investors with IRA accounts to improperly withdraw their investments. Second, a dispute has arisen concerning the interest paid on funds held by Man Financial. It appears to the Receiver that Man Financial has not paid the correct rate of interest on investor funds. The Receiver is still in the process of reviewing this matter and will take such action against Man Financial as is necessary to protect the interests of investors and to hold Man Financial accountable for its conduct.

33. Claims Against Other Third Parties: The Receiver is investigating whether third parties may be responsible for some or all of the losses which the Investors in this matter have suffered and/or whether persons who received payments for commissions should be required to return same. This investigation is still in its early stages and the Receiver does not believe it is appropriate to provide any

further information about such claims at this time. The Receiver will take additional discovery in connection with these claims and will aggressively pursue valid claims against third parties.

34. Tax returns: As set forth in the First Interim Report, no federal or state tax returns were ever filed for Lake Dow/CET, ACM and/or Aurora Investment Fund. In addition, Mr. Edwards does not appear to have filed tax returns during the Relevant Period (as defined in the First Interim Report). The ultimate determination of any tax liability for the Defendants during the Relevant Period could have a significant outcome on the administration of this Receivership Estate.

35. Disposition of Claims against Ty Edwards: Mr. Edwards has denied any liability or culpability for the losses suffered by investors in this case. The Receiver is informed and believes that the CFTC will continue to pursue the claims against Mr. Edwards which are set forth in its Complaint.

36. Disposition of Real Property: The Receiver is working to market and sell the Camden County and will make a recommendation to the Court and the investors as to the disposition of the Edwards Residence.

37. Interim Reporting and Final Report: The Receiver will file his Third Interim Report on or before October 1, 2006. At the conclusion of his administration of this Receivership Estate, the Receiver will file a detailed final report setting forth and documenting his investigation and conclusions..

Respectfully Submitted this 17<sup>th</sup> day of July, 2006.

s/ S. Gregory Hays  
S. Gregory Hays, Receiver

ATLANTA:4835159.1

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Judge Clarence Cooper

**CERTIFICATE OF SERVICE**

This is to certify that I have this day served the within and foregoing  
**Receiver's Second Interim Report** upon opposing counsel in the above-captioned  
action by United States Mail addressed as follows:

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This 17<sup>th</sup> day of July, 2006.

s/ Henry F. Sewell, Jr.  
Henry F. Sewell, Jr.  
Georgia Bar No. 636265

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