

**In The United States District Court
For The Northern District Of Illinois
Eastern Division**

Commodity Futures Trading Commission,
Plaintiff,

vs.

Lake Shore Asset Management Limited
Defendant.

Civil Action No: 07 C 3598

Honorable Judge Manning
Magistrate Judge Mason

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION FOR RULE TO
SHOW CAUSE AGAINST LAKE SHORE ASSET MANAGEMENT LIMITED**

The plaintiff, Commodity Futures Trading Commission ("Commission"), submits this Memorandum of Law in support of its Motion for a Rule to Show Cause why Lake Shore Asset Management Limited ("Defendant" or "LAM"), should not be held in contempt of court for failure to comply with the provisions of this Court's Statutory Ex Parte Restraining Order entered on June 27, 2007, requiring that Defendant allow representatives of the plaintiff Commission to inspect Defendant's books and records and to copy said documents, data, and records either on or off the premises where they are located. To date, Defendant has neither allowed representatives of the Commission to immediately inspect its books and records nor has it allowed CFTC representatives to copy said documents or records either on or off the premises where they are situated. In support of this Petition, plaintiff states as follows:

A. STATUTORY EX PARTE RESTRAINING ORDER

On June 27, 2007, this Court entered a Statutory Ex Parte Restraining Order ("SRO") (See the June 27, 2007 SRO attached hereto as Exhibit 1). LAM was notified of the entry of the SRO by e-mailing a copy to its attorney Jay B. Gould Esq., Pillsbury Winthrop Shaw Pitman LLP, in San Francisco, California at jay.gould@pillsburylaw.com. (See the e-mail transmission to Mr. Gould attached hereto as Exhibit 2). A copy of the SRO was also personally served upon

the Defendant by delivering a copy of the summons, complaint, SRO, and Motion for Preliminary Injunction to LAM's director and principal, Laurence Rosenberg ("Rosenberg"). (See the Return of Service, dated June 28, 2007, attached hereto as Exhibit 3).

B. VIOLATION OF THE STATUTORY RESTRAINING ORDER

1. Defendant's Actions Since the Issuance of the SRO

Paragraph 3 of the SRO provides:

IT IS FURTHER ORDERED that representatives of the plaintiff Commission be allowed to immediately inspect the books, records and other electronically stored data, tape recordings, and other documents of the defendant and its agents, including all such records of defendant's business operations, wherever they are situated and whether they are in the possession of the defendant or others and to copy said documents, data, and records either on or off the premises, where they may be situated.

Since the issuance of the SRO, Defendant has provided Commission staff with some documents, including a fact sheet dated May 31, 2007 for Lake Shore Alternative Financial Asset Fund IV Limited, a generic chart listing the total amount of assets under management as \$1 billion, a listing of telephone numbers for LAM's staff, copies of some selected net asset values ("NAV") and performance information for LAM, Bermuda incorporation documents, and account documents for one New York investor, who Defendant claims is LAM's sole U.S. investor.

Defendant, however, has not provided all of the documents enumerated in the Commission's document request made pursuant to Section 4n of the Act, nor has Defendant allowed Commission staff to inspect its books and records. In particular, Defendant has not provided the Commission with a list of all accounts under management, account opening documents for those accounts, monthly and daily statements for each account, and copies of all correspondence between Defendant and each account holder. Additionally, Defendant has not

provided the Commission with Disclosure Documents and Offering Memoranda for funds under its management.

Defendant has flagrantly ignored this Court's SRO that LAM allow representatives of the plaintiff Commission to immediately inspect Defendant's books and records and to copy said documents, data, and records either on or off the premises, where they may be situated. Since the entry of the SRO on June 27, 2007, Defendant has used every conceivable means to delay and obviate the clear mandate of this Court. For example, Defendant retained California counsel, who indicated that the firm would be producing certain documents to CFTC staff. Defendant then fired the California firm before that firm produced any documents to CFTC staff, and retained a Chicago firm which similarly agreed to produce certain documents to CFTC staff. To date, the Chicago firm has only produced a two page account document for the purportedly sole U.S. investor.

Instead of allowing plaintiff immediate inspection, as required by the SRO, Defendant has continued to hide behind unspecified "bank secrecy" laws in Switzerland and has told CFTC staff that investor contracts prohibit them from disclosing the records at issue. Moreover, Defendant has informed CFTC staff that the firm will produce only account documents for the one U.S. investor because its other investors are all foreign investors, their investments are located off-shore, and thus, the Commission is not entitled to inspect those books and records. Each time CFTC staff have requested that Defendant be more specific about which Swiss bank secrecy laws apply, Defendant has refused to provide more specific information about what Swiss bank laws are implicated.

2. Documents Obtained by CFTC Evidencing that LAM is a CTA and Invests in Lake Shore's Three Other Funds

LAM, a registered commodity pool operator ("CPO"), appears to operate one pool, Lake Shore Alternative Financial Asset Fund IV ("Fund IV"), which purportedly consists of two sub-

funds – Class E (“Fund-E”) for European investors and Fund US for U.S. investors. These funds have trading accounts with Man Financial London, Lehman Brothers London and Fimat London and Sentinel in Chicago, Illinois.

CFTC staff has obtained a Confidential Explanatory Memorandum for Lake Shore Alternative Financial Asset Fund IV Limited (“Confidential Memo”) from a futures commission merchant (“FCM”) that carries an account under that name. The Confidential Memo expressly states:

Lake Shore Alternative Financial Asset Fund IV Limited, a British Virgin Islands limited company (the “Fund”), seeks to maximize returns whilst preserving capital by investing in three assets, Lake Shore Alternative Financial Asset Fund Ltd., (LSAFA I), Lake Shore Alternative Financial Asset Fund II Ltd., (LSAFA II), Lake Shore Alternative Financial Asset Fund III Ltd., (LSAFA III). (See Confidential Memo, page 3, attached hereto as Exhibit 4).

The Memo further states that LSAFA I, II and III each invest in a portfolio of exchange traded financial derivatives traded on a stock or futures exchange and that the Fund utilizes the proprietary trading program developed and operated by LAM. (See Confidential Memo, page 3, attached hereto as Exhibit 4).

The Confidential Memo also states that the “Investment Manager of the Fund [Fund IV] is Lake Shore Asset Management Limited, and the Investment Advisor is Lake Shore Asset Management Limited, a corporation incorporated in Hamilton, Bermuda and a registered CTA (the “Investment Manager”).” (See Confidential Memo, page 3, attached hereto as Exhibit 4). According to the Confidential Memo, the Investment Manager is responsible for identifying suitable investments and has been authorized to make investments for and on behalf of the Fund. The Confidential Memo names Laurence Rosenberg (“Rosenberg”) as Chairman of LAM’s Advisory Board and its Vice President and names Philip J. Baker (“Baker”) as LAM’s Managing Director and President of LAM. (See Confidential Memo, pages 5-6, attached hereto as Exhibit 4).

Similarly, CFTC staff has obtained Confidential Explanatory Memoranda from Nicholas Eveleigh, LAM's purported compliance officer. Documents produced by Eveleigh state that LAM is the registered CTA advising Lake Shore Alternative Financial Asset Funds III, IV and IV E. Specifically, each Confidential Explanatory Memorandum produced by Eveleigh for the foregoing Funds states that LAM is the Investment Manager and Advisor for each of the respective Funds and is "a registered CTA."

CFTC staff has also obtained a chart from Eveleigh entitled "Lake Shore Group of Companies Product Range," (the "chart"). The chart shows specific entities under LAM's management. According to the chart, Lake Shore Alternative Financial Asset Funds I, II, III, IV and Yen Fund are all under the management of LAM. Similarly, the chart depicts Lake Shore Alternative Asset Accounts I and II under LAM's management. (See chart entitled "Lake Shore Group of Companies Product Range," attached hereto as Exhibit 5).

Based on the foregoing Memoranda produced by Eveleigh, representations contained in the chart and the Confidential Memo, particularly the representations that LAM is the Investment Manager and Investment Advisor for Fund IV, which invests in the three other LAM Funds, and that LAM is a registered CTA, the Commission is entitled to inspect all of LAM's books and records, not simply the account statement of the purportedly sole U.S. investor.

3. Inconsistent Statements Made by Defendant

As described in greater detail in plaintiff's complaint and supporting Memorandum of Law previously filed with this Court, LAM and its principals and directors, have made numerous inconsistent statements to National Futures Association ("NFA") and Commission staff concerning assets in Defendant's pools and managed accounts, LAM's ownership, U.S. investors in the pools, and the location of its books and records.

For example, on June 21, 2007, Mr. Laurence Rosenberg (“Rosenberg”), a LAM director, told Commission staff that there were no books and records in the Chicago office and that all books and records were located in Toronto and were not available for inspection. Commission staff later learned that the address for the Toronto office provided by LAM in registration materials was a UPS store or “mail drop.” On July 2, 2007, Commission staff asked Thomas Baker, President of LAM, what the real address for the Toronto or Ontario office was. He could not remember. He promised to provide the correct address to Commission staff that afternoon, but failed to do so. Commission staff also learned that Eveleigh, whose name appeared on registration materials as LAM’s compliance officer, claimed to be an “IT” consultant under contract with LAM.

This Court’s asset freeze appears to have frozen approximately \$238 million on deposit with FCMs. Because the Commission does not have access to the customer records, it cannot determine whether or not all customer funds are accounted for. Moreover, based on representations appearing in the Confidential Memos obtained by CFTC staff, it would appear that pool participants or prospective participants may have been led to believe that LAM was a registered CTA, and as a registrant, subject to Commission review of its books and records. Thus, the Commission must be allowed to fully inspect all of LAM’s books and records in order to protect their interests.

In sum, by repeatedly refusing to allow representatives of the plaintiff Commission to immediately inspect its books and records and to copy said documents, data, and records either on or off the premises, where they may be situated, the Defendant has violated the SRO.

C. **AUTHORITY TO ENFORCE COURT ORDERS VIA CONTEMPT PROCEEDINGS**

The Court has inherent power to enforce compliance with its own orders. *Shillitani v. U.S.*, 384 U.S. 364, 370 (1966); *Jones v. Lincoln Elec. Co.*, 188 F.3d 709, 737 (7th Cir. 1999)

(“A court’s civil contempt power rests in its inherent limited authority to enforce compliance with court orders and ensure judicial proceedings are conducted in an orderly manner.”); *In the Matter of Betts*, 927 F.2d 983, 986 (7th Cir. 1991) (“A federal court has the power and discretion to punish contempt of its authority, including acts of disobedience or resistance to its order or commands.”).

A showing of civil contempt requires proof that (1) the court entered a lawful order of reasonable specificity and (2) the order was violated. *United States v. Dowell*, 257 F.3d 694, 699 (7th Cir. 2001); *CFTC v. Nickolaou*, 2000 U.S. Dist. LEXIS 11561, at *26 (N.D. Ill. July 26, 2000); *Watson v. Potter*, 2007 U.S. Dist. LEXIS 36061, at *11-12 (N.D. Ill. May 15, 2007). These two elements must be established by clear and convincing evidence. *D. Patrick, Inc. v. Ford Motor Co.*, 8 F.3d 455, 460 (7th Cir. 1993); *Dowell*, 257 F.3d at 699. Plaintiff will be able to carry its burden of proof as to each of these elements.

The Court maintains “the obligation to accomplish proper relief . . . through its contempt power.” *Watson*, 2007 U.S. Dist. LEXIS 36061, at *11. “The enforcement of an order through a civil contempt action is designed to serve either of two purposes: (1) to compel or coerce obedience to a court order; or (2) to compensate the parties for losses resulting from the contemnor’s non-compliance with a court order.” *Grove Fresh Distrib., Inc. v. John Labatt Ltd.*, 888 F. Supp 1427, 1435 (N.D. Ill. 1995), *citing United States v. United Mine Workers of America*, 330 U.S. 258, 303-04 (1947). The court need not find that the violations were willful or intentional. *McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 191 (1949). The court may find a party in civil contempt if that party has not been reasonably diligent and energetic in attempting to accomplish what was ordered. *See SEC v. Homa*, 2000 WL 1700139 (N.D. Ill), *citing, Goluba v. School Dist. of Ripon*, 45 F.3d 1035, 1037 (7th Cir. 1995). In this case, the plaintiff’s objective in obtaining the SRO is to obtain and review LAM’s books and records.

This court entered the SRO and LAM was served with the order but continues to comply by turning over or making its books and records available to the Commission.

WHEREFORE, plaintiff Commission requests that Defendant LAM be required to show cause why it should not be held in contempt of Court for failing to comply with this Court's SRO.

Date: July 3, 2007

Respectfully submitted,

s/ Diane M. Romaniuk

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