

UNITED STATES DISTRICT COURT  
for the NORTHERN DISTRICT OF GEORGIA  
Civil Action No. \_\_\_\_\_

FILED IN CLERK'S OFFICE  
U.S.D.C. Atlanta

OCT 19 2005

LUTHER D. THOMAS, Clerk  
By: *[Signature]*  
Deputy Clerk

COMMODITY FUTURES TRADING COMMISSION,

Plaintiff,

v.

LAKE DOW CAPITAL, LLC, a.k.a. CLIFFORD,  
EDWARDS, AND TAYLOR, and  
TY EDWARDS

Defendants.

1 05 - CV 2709

**COMPLAINT FOR INJUNCTIVE AND OTHER  
EQUITABLE RELIEF, AND FOR CIVIL MONETARY  
PENALTIES UNDER THE COMMODITY EXCHANGE ACT**

**I.**

**SUMMARY**

1. From at least August 2002 through September 2005, defendant Lake Dow Capital, LLC ("Lake Dow"), previously known as Clifford, Edwards, and Taylor ("CET"), which was acting as a commodity pool operator ("CPO") and commodity trading adviser ("CTA") and was registered in those capacities with plaintiff Commodity Futures Trading Commission ("Commission"), along with defendant Ty Edwards ("Edwards"), employed schemes to defraud, or have engaged in practices that operated as a fraud or deceit upon, actual and prospective commodity pool participants and clients, by misrepresenting the rates of return Lake Dow Capital, LLC generated for its pool participants and the value of assets it managed. Lake Dow/CET and Edwards also employed schemes to defraud or have engaged in practices which operated as a fraud or deceit upon, actual and prospective commodity pool participants

and clients by failing to disclose to them the following facts: (i) that the purported rates of return were based upon Edwards "eyeballing" and estimating Lake Dow/CET's trading results, and (ii) that Edwards was named as a defendant in a prior fraud action filed by the Plaintiff in this action. Moreover, in addition to the fraudulent conduct described above, Edwards also willfully concealed material information from the National Futures Association ("NFA") and failed to submit Annual Reports to the NFA, as required by Commission regulation.

2. Lake Dow/CET, and Edwards as an associated person of Lake Dow/CET, thus have engaged, are engaging or are about to engage in acts and practices in violation of Sections 4o(1) and 9(a)(4) of the Commodity Exchange Act, as amended ("CEA"), 7 U.S.C. §§ 6o(1) and 13(a)(4) (2002) and Commission Regulation 4.22(c), 17 C.F.R. § 4.22(c) (2004). Further, pursuant to Section 13(b) of the CEA, 7 U.S.C. § 13c(b), Edwards is liable for every violation of Lake Dow/CET and its employees as he is the controlling person of Lake Dow/CET.

3. At all times relevant, and in regard to all conduct alleged herein, Edwards was an agent of Lake Dow/CET and acted within the scope of his employment. As such, Lake Dow/CET is liable for Edwards' conduct pursuant to Section 2(a)(1)(B), 7 U.S.C. § 2(a)(1)(B)

4. Unless restrained and enjoined by this court, the defendants are likely to continue to engage in the acts and practices alleged in this Complaint and similar acts and practices, as more fully described below.

## II.

### JURISDICTION AND VENUE

5. Section 1a(5) defines a "commodity pool operator" as any person engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise and in connection therewith, has solicited, accepted or received funds, securities or property from

others for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility.

6. Section 1a(6) defines a “commodity trading advisor” as any person who “for compensation or profit ... advise[s] others, either directly or through publications, writings, or electronic media, as to the value of or the advisability of trading in” commodity futures or “issue(s) or promulgate(s) analyses or reports concerning” trading in commodity futures.

7. Section 4o(1) of the CEA, 7 U.S.C. § 6o (2002), prohibits commodity pool operators and commodity trading advisers or associated persons of commodity pool operators and commodity trading advisers from directly or indirectly: (1) employing any device, scheme, or artifice to defraud any client or participant or prospective client or participant; or, (2) engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or participant or prospective client or participant.

8. Section 9(a)(4) of the CEA, 7 U.S.C. § 13(a)(4) (2002), prohibits any person from willfully falsifying, concealing, or covering up by any trick, scheme or artifice, a material fact to a registered entity, board of trade, or futures association designated or registered under the CEA, acting in furtherance of its official duties under the CEA.

9. Commission Regulation 4.22(c), 17 C.F.R. § 4.22(c) (2004), provides that registered CPOs are required to submit to the NFA Annual Reports for the pools they operate.

10. Section 6c of the CEA, 7 U.S.C. § 13a-1 (2002), authorizes the Commission to seek injunctive relief against any person whenever it shall appear that such person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the CEA or any CFTC rule, regulation or order thereunder.

11. Venue properly lies with this Court pursuant to Section 6c(e) of the CEA, 7 U.S.C. § 13a-1(e) (2002), in that defendants are found in, inhabit, or transact business, among other places, in this District or the acts and practices in violation of the CEA have occurred, are occurring, or are about to occur within this District, among other places.

### III.

#### THE PARTIES

12. Plaintiff **Commodity Futures Trading Commission** (“Commission”) is a federal independent regulatory agency charged with the administration and enforcement of the CEA, 7 U.S.C. §§ 1 *et seq.*, and the Regulations promulgated thereunder, 17 C.F.R. §§ 1 *et seq.*

13. Defendant **Lake Dow Capital, LLC** is a business entity organized in Delaware, with a principal place of business in McDonough, Georgia. It previously was organized under the name Clifford, Edwards, and Taylor on May 24, 2002. CET was registered with the Commission as a CTA and a CPO beginning on July 17, 2002. Delaware corporate filings show that it changed its name to Lake Dow Capital, LLC on June 7, 2005. Commission registration records identify it as “Lake Dow Capital LLC, a.k.a. Clifford, Edwards, and Taylor.”

14. Defendant **Ty Edwards** (“Edwards”) is an individual residing in McDonough, Georgia. Edwards is the sole owner of Lake Dow/CET and is responsible for the trading of the commodity pool operated by that entity. Edwards is a principal and is registered with the Commission as an associated person (“AP”) of Lake Dow/CET.

#### IV.

#### FACTS

15. On or about July 17, 2002, CET commenced operations as a CPO. Around the same time, CET created Aurora Investment Fund, LP (“Aurora Investment Fund” or “the Fund”), a hedge fund and commodity pool. CET acted as the CPO and general partner of that limited partnership. CET was jointly owned by Aurora Capital Management, LLC and an individual named Robert Taylor. Aurora Capital Management, LLC, a privately held financial investment firm, in turn was jointly owned by Edwards and another individual, Richard Clifford.

16. Edwards, individually and by and through agents, solicited prospective pool participants and clients, i.e., investors, to become limited partners in the Aurora Investment Fund. Edwards engaged in such solicitations through the use of the U.S. mail or through other means of interstate commerce. From at least August 2002 until September 2005 (the “relevant period”), defendants required individuals seeking to become limited partners to make a minimum capital contribution of \$250,000. Investors were instructed to wire funds to an account at People’s Bank & Trust, “for further credit to” a second account in the name of Aurora Investment Fund. Alternatively, investments made by check were to be made payable to Aurora Investment Fund and sent to Lake Dow/CET.

17. During the relevant period, at least 62 individuals and entities became direct limited partners in the Aurora Investment Fund. A substantial majority of the 62 individual investors used funds from their personal Individual Retirement Accounts (“IRA accounts”) to invest in the Aurora Investment Fund.

18. Edwards knowingly made, or caused to be made, material misrepresentations to actual and prospective participants and clients regarding the Aurora Investment Fund’s trading

performance and its assets under management. Specifically, Edwards represented that the Aurora Investment Fund had consistently generated positive returns, on an annual basis, for 2003 and 2004. He also represented that Aurora Investment Fund had generated positive returns through August 2005 with not one losing month. These representations were false. Edwards made such representations through the use of the U.S. mail or through other means of interstate commerce. In fact, in September 2005, legal counsel for Edwards stated to at least one NFA representative that it was his impression that Lake Dow/CET and Edwards had raised approximately \$20.2 million from investors and that approximately \$19.7 million was available to disburse back to the investors. When NFA asked about the apparent shortfall between paid-in principal and available funds, as well as the purported 13% positive rate of return for the Fund during the period of January 1st to June 30, 2005, Edwards's counsel responded that he had no doubt that the reported performance was inaccurate. Actual and prospective Aurora Investment Fund investors consider the Fund's performance results important to their decision of whether to invest in that fund.

19. Edwards also falsely represented to actual and prospective pool participants and clients that in 2004 Lake Dow/CET managed approximately \$100 million in the Aurora Investment Fund, and that as of September 2005, it managed approximately \$60 million. These statements were false and misleading. Edwards made such representations through the use of the U.S. mail or through other means of interstate commerce. For example, in September 2005 the total amount of funds for the Aurora Investment Fund did not exceed \$20 million. Aurora Investment Fund investors would have considered such information important to their determination of whether to invest in that fund.

20. Edwards willfully failed to disclose or caused others to fail to disclose material facts to actual and prospective Aurora Investment Fund participants and clients in materials he provided them through the U.S. mail or through other means of interstate commerce. For example, Edwards failed to disclose the fact that he is a named defendant in a pending Commission civil injunctive action alleging fraud, filed in July 2003. *See CFTC v. Risk Capital Trading Group, Deron Baugh, Tyrone Edwards, et. al*, Case No. 103 CV-2633 (N.D. GA 2003). Edwards knowingly sought to conceal this information from investors. For example, in documents Edwards submitted to a futures commission merchant in July 2004, Edwards falsely represented that he had not been the subject of an investigation or proceeding by a futures or securities regulatory or self-regulatory body. Aurora Investment Fund investors would have considered such information important to their decision of whether to invest in that fund.

21. In materials provided through the U.S. mail or through other means of interstate commerce, Edwards also failed to disclose to actual and prospective Aurora Investment Fund participants and clients the fact that the rates of return, or performance returns, Edwards attributed to the Aurora Investment Fund were not based upon any actual financial documents, actual performance results, or analysis thereof. Rather, the results reported to actual and prospective participants and clients were based upon Edwards' "eyeballing" certain financial information he received, together with his best recollection of the amounts of funds the participants and clients had invested. Aurora Investment Fund investors would have considered such information important to their decision of whether to invest in that fund.

22. Lake Dow/CET is required to provide the NFA with an Annual Report pursuant to Commission Regulation 4.22(c). The NFA is a registered futures association designated as

such under the CEA. As of the date of the filing of this Complaint, Lake Dow/CET failed to provide its Annual Report to the NFA for at least the years 2003 and 2004.

23. On September 6, 2005, an audit team from the NFA visited the offices of Lake Dow/CET for the purpose of conducting a financial examination. The audit team found no one present at Lake Dow/CET's offices and thereafter contacted Edwards by telephone. Edwards informed a NFA employee that he would not be available for an examination of Lake Dow/CET until September 24, 2005, because he and his family were in Jacksonville, Florida, where they were vacationing and he was doing some business. During a conversation on September 6, 2005 between a NFA representative and Edwards, Edwards stated that he was the sole owner of Lake Dow/CET.

24. In the afternoon of September 6, 2005, an Associate Director in the NFA's Compliance Department sent a letter to Edwards advising him that the NFA had serious concerns about Lake Dow/CET and its operations, based on the following circumstances, which Edwards had previously confirmed: (a) Lake Dow/CET had not submitted Annual Reports for fiscal years 2003 and 2004 for its pool, the Aurora Investment Fund; and (b) Lake Dow/CET was using an outdated disclosure document from 2002 for the Fund, which failed to disclose material administrative and civil actions against Edwards and contained hypothetical performance results which are not permitted if a pool has three months of actual performance.

25. The NFA informed Edwards that it was unwilling to wait until he returned from vacation to commence its audit and insisted that Edwards make himself available at Lake Dow/CET's offices no later than 1:00 p.m. (EST) on September 7, 2005. The NFA further requested that Edwards produce all of Lake Dow/CET's books and records and those of the Aurora Investment Fund, including but not limited to those set forth in a



letter issued to Edwards by the NFA, dated September 6, 2005. The books and records the NFA requested from Edwards and Lake Dow/CET included a “list of all pool participants in each pool operated by Lake Dow, including full name, address and phone number.”

26. As of the filing of this Complaint, Lake Dow/CET and Edwards have failed to produce to the NFA the Annual Reports for fiscal years 2003 and 2004 for the Aurora Investment Fund.

27. On September 12 and 13, 2004, NFA representatives met with Edwards in Atlanta, Georgia. At these meetings Edwards produced a limited number of records, however, he did not produce all of the records requested by NFA. Among the records produced by Edwards were statements prepared by Edwards and distributed to Aurora Investment Fund investors showing profitable trading performance results of over 13% during the period of January 1st to June 30, 2005. Edwards admitted to NFA representatives that these statements were not derived from underlying trading and bank records but were based on his recollection of entry and exit prices. Edwards had no underlying documentation or support for the purported Aurora Investment Fund performance calculations.

28. NFA representatives, in furtherance of their duties, questioned Edwards about certain large deposits made to Lake Dow/CET’s bank account. Edwards stated that these deposits were investments made by participants in the Aurora Investment Fund which were inadvertently sent to Lake Dow/CET’s account. However, during a later conversation on September 12, 2005, Edwards inconsistently stated that these deposits were capital contributions from another class of investors who were actually investing in

Lake Dow/CET, claiming that the purpose of such investments were to provide funding for Lake Dow/CET and to “help grow the Aurora investment.”

29. Notwithstanding Edwards’ alternative explanations, Lake Dow/CET investors understood that their funds would be combined together and then constitute a portion of Lake Dow/CET’s investment into the Aurora Investment Fund. In short, Lake Dow/CET investors were indirectly investing in the Aurora Investment Fund.

30. NFA representatives, in furtherance of their duties, asked Edwards how many individuals or entities had invested in Lake Dow/CET and requested that Edwards identify these individuals. Edwards replied that he did not know and that he could not even estimate the number. He also stated that he was unaware of who the investors were. He stated that he would provide the NFA with the identities of the Lake Dow/CET investors and the size of their investments.

31. Beginning on September 6, 2005, Edwards willfully concealed from the NFA the identities of Lake Dow/CET investors. For example, Edwards was personally aware of a group of 11 investors in Lake Dow/CET, who collectively invested \$693,000 in Lake Dow/CET. The identity of Lake Dow/CET investors is material to the NFA for it will assist them in determining whether Edwards or Lake Dow/CET have complied with the CEA and Commission Regulations. On or about October 7, 2005, legal counsel for Edwards disclosed this information to the NFA.

**VIOLATIONS OF THE COMMODITY EXCHANGE ACT  
AND COMMISSION REGULATIONS**

**COUNT I**

**VIOLATIONS OF SECTION 4o(1) OF THE CEA:  
FRAUD BY A CPO AND CTA AND ASSOCIATED PERSON OF A CPO AND CTA**

32. Paragraphs 1 through 31 are realleged and incorporated herein.

33. During the relevant period, Lake Dow/CET acted as a CPO in that it engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise and in connection therewith, has solicited, accepted or received funds, securities or property from others for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility.

34. During the relevant period, Lake Dow/CET acted as a CTA in that it, for compensation or profit, advised others as to the value of or the advisability of trading in commodity futures.

35. During this time period, Edwards acted as an AP and principal of Lake Dow/CET, a registered CPO and CTA, and his conduct alleged above occurred during the scope of his employment with Lake Dow/CET.

36. From at least August 2002 to the present, defendants Lake Dow/CET and Edwards have violated Section 4o(1) of the CEA, 7 U.S.C. § 6o(1), in that they directly or indirectly employed or are employing a device, scheme, or artifice to defraud commodity pool participants, or have engaged or is engaging in transactions, practices or a course of business which operated as a fraud or deceit upon commodity pool participants by means of the acts and practices described above. Lake Dow/CET is also liable for Edwards' conduct pursuant to Section 2(a)(1)(B) of the CEA. 7 U.S.C. § 2(a)(1)(B).

37. Edwards, directly or indirectly, controlled Lake Dow/CET and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting Lake Dow's/CET's

violations alleged in this count. Edwards is thereby liable for Lake Dow's/CET's violations of Section 4o(1), pursuant to Section 13(b) of the CEA, 7 U.S.C. § 13c(b).

38. Each act of making false reports, false statements, and material omissions that occurred during the relevant period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4o(1) of the CEA, 7 U.S.C. § 6o(1).

## **COUNT II**

### **VIOLATIONS OF SECTION 9(a)(4) OF THE CEA: WILLFUL CONCEALMENT OF MATERIAL INFORMATION AND MAKING USE OF A FALSE WRITING TO A REGISTERED ENTITY**

39. Paragraphs 1 through 31 are realleged and incorporated herein.

40. During the relevant period, Edwards willfully concealed material information from a national futures association acting in furtherance of its duties, thereby violating Section 9(a)(4) of the CEA.

41. Because Edwards was an agent of Lake Dow/CET and was acting within the scope of his employment in violating Section 9(a)(4) of the CEA, 7 U.S.C. § 13(a)(4), Lake Dow/CET is liable for Edwards' conduct pursuant to Section 2(a)(1)(B) of the CEA. 7 U.S.C. § 2(a)(1)(B).

42. Each act of willful concealment from a national futures association that occurred during the relevant period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 9(a)(4) of the CEA, 7 U.S.C. § 13(a)(4).

## **COUNT III**

### **VIOLATION OF COMMISSION REGULATION 4.22(c): FAILING TO SUBMIT ANNUAL REPORTS**

43. Paragraphs 1 through 31 are re-alleged and incorporated herein.

44. Pursuant to Commission Regulation 4.22(c), Lake Dow/CET is required to submit to the NFA Annual Reports for the pools it operated. 7 C.F.R. § 4.22(b) (2004).

Lake Dow/CET has never filed an Annual Report to the NFA, thereby violating Commission Regulation 4.22(c).

45. Edwards, directly or indirectly, controlled Lake Dow/CET and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting Lake Dow/CET's violations alleged in this count. Edwards is thereby liable for Lake Dow/CET's violations of Commission Regulation 4.22(c), 17 C.F.R. § 4.22(c) (2004), pursuant to Section 13(b) of the CEA, 7 U.S.C. § 13c(b).

46. Each failure to submit an annual report during the relevant period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Commission Regulation 4.22(c), 17 C.F.R. § 4.22(c) (2004).

#### **RELIEF REQUESTED**

WHEREFORE, the Commission respectfully requests that this Court, as authorized by Section 6c of the CEA, 7 U.S.C. § 13a-1, and pursuant to its own equitable powers:

- A. Find Defendants liable for violating Sections 4o(1) and 9(a)(4) of the CEA, 7 U.S.C. §§ 6o(1) and 13(a)(4), and Commission Regulations 4.22(c), 17 C.F.R. § 4.22(c);
- B. Enter a permanent injunction prohibiting the Defendants and any other person or entity associated with them, or any successor thereof, from engaging in conduct violative of the provisions of the Act and Regulations as alleged in this Complaint, and from engaging in any activity relating to commodity interest

trading, including but not limited to, soliciting, accepting or receiving funds, revenue or other property from any person, giving advice for compensation, or soliciting prospective clients, participants or customers, related to the purchase and sale of any commodity futures or options on commodity futures contracts;

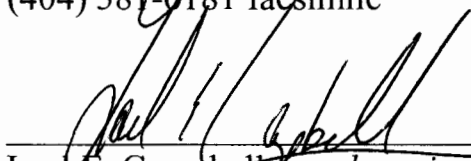
- C. Enter an order directing the Defendants and any successors thereof, to disgorge, pursuant to such procedure as the Court may order, all benefits received from the acts or practices which constituted violations of the Act, as described herein, and interest thereon from the date of such violations;
- D. Enter an order directing the Defendants to make full restitution to every client, participant or customer whose funds were received by them as a result of acts and practices which constituted violations of the Act, as described herein, and interest thereon from the date of such violations;
- E. Enter an order directing the Defendants to pay a civil monetary penalty in the amount of not more than the higher of (i) triple the monetary gain to Defendants for each violation of the CEA and Regulations or (ii) \$120,000 for each violation of the CEA and Regulations prior to October 23, 2004 or \$130,000 for violations occurring after October 23, 2004;
- F. Enter an order requiring Defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2); and
- G. Enter an order providing such other and further remedial ancillary relief as the Court may deem appropriate.

Respectfully Submitted,



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