

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

**SECURITIES EXCHANGE COMMISSION )**

**Plaintiff, )**

**vs. )**

**DAVID TANNER, et al., )**

**Civil Action No.: 05-4057-RDR**

**Defendants, )**

**and )**

**MARGARET F. SPENCER, et al., )**

**Relief Defendants. )**

**RECEIVER’S EIGHTH STATUS REPORT TO THE COURT**

Receiver, Larry E. Cook, reports to the Court as directed, respectfully stating:

**I. Introduction**

1. The United States Securities and Exchange Commission (the “Commission”) initiated this securities fraud enforcement action on May 4, 2005. At the request of the Commission and based upon a preliminary showing of securities fraud, the Court issued a Temporary Restraining Order (the “TRO”) and ordered an asset freeze and appointed Larry E. Cook as Receiver.

2. To date, the Receiver has recovered approximately \$6.1 million in investor funds. The Receiver has also identified and obtained orders directing the return of an additional \$8 million<sup>1</sup> in investor funds deposited in US and European Banks. Furthermore, the Receiver has pending motions for the turnover of approximately \$1.4

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<sup>1</sup> The \$8 million amount includes a balance of \$4.9 million still owed by Seaforth Meridian. Seaforth Meridian is a defendant in a separate securities fraud receivership (Case No. 06-4107) pending before the Court. Recovery of this \$4.9 million balance will be contingent on recovering assets in the Seaforth case. The \$4.9 million amount will increase to \$6.9 million if the Court directs the Receiver to transfer \$1.5 million to the Seaforth case (Doc. # 363) (\$1.5 million plus \$500,000 of expenses will be shifted to the Seaforth case).

million in investor funds transferred to a foreign bank. The Receiver has also recovered two properties in Dayton, Nevada which have been listed for sale with a Nevada real estate agent.

3. As of the Sixth Interim Report, the Commission had obtained judgment against, or entered into settlement agreements with, all Defendants and Relief Defendants.

## **II. Receiver's Activity Since the Seventh Status Report**

4. Intensive efforts have been required to locate and to recover Receivership Assets and Receivership Records, and to independently determine the nature of, and the appropriate course of action to be taken with respect to, Receivership Assets and the location of investor funds. To assist in these efforts, the Receiver has retained the legal services of Lathrop & Gage, L.C. in Kansas City, Missouri, Jones Vargas in Reno, Nevada, and Sorainen Law Offices in Riga, Latvia.

5. In addition to the problems created by the lack of cooperation from most of the defendants and relief defendants, the accounting for Receivership Assets and identification of victims is difficult because a majority of investor funds were deposited into financial institutions located outside the United States. The fund transfers were facilitated by several "electronic currency" services which are unregulated internet commerce escrow and currency exchange operations. These operations refer to themselves as "e-currency" firms.

6. Furthermore, most of the CEC investors who deposited funds with U.S. financial institutions did so via cashier's or certified checks without noting any "remitter" or other identification indicating for whose benefit the investment was made.

7. The Receiver has subpoenaed thousands of pages of bank records and other documents related to the e-currency firms in order to trace the flow of investor funds into CEC and back out to various individuals and companies. The Receiver has deposed several e-currency firms and payment processors related to CEC, several of whom have asserted a Fifth Amendment right not to answer any of the Receiver's questions.

8. The Receiver and the Commission have determined that Mr. Tucker's real name is Scott Klion and that he also uses the alias David Tanner (Docket #'s 376-377). However, as of the date of this Status Report, Mr. Klion has refused to engage in meaningful settlement discussions or provide the information needed for the Receiver to recover additional investor funds.

9. On August 11, 2005, the Court entered a Stipulated Order (Docket # 84) which provided, in part, for the return of approximately \$3 million of investor funds transferred to Cedax Limited's account at VEF Banka. Since that time, the Receiver has been working with the Commission, the Commission's Office of International Affairs ("OIA"), and the U.S. Department of Justice to obtain a return of the Cedax funds via a Mutual Legal Assistance Treaty ("MLAT") between the United States and Latvia. On October 4, 2006, the Receiver obtained a Supplemental Order related to the Cedax funds at VEF Banka. The Receiver, in conjunction with the Commission and Latvian counsel obtained a certified and Apostilled copy of the Supplemental Order which was filed in the City of Riga Urban District Court (the "Latvian Court") on December 18, 2006 to effectuate the return of the Cedax funds to the Receiver for distribution to the investors.

10. On January 2, 2007, the Latvian Court entered its Order directing the Cedax funds be transferred from VEF Banka to the Receiver. Pursuant to Latvian Civil Procedure Law, the January 2, 2007 Order must be translated into English and served on the last known address for Cedax (in Gibraltar) and upon the expiration of a sixty day appeals period, the Cedax funds are to be transferred to the Receiver.

11. The Latvian Ministry of Justice was unable to effect service of the January 2, 2007 Order on Cedax's Gibraltar address. The Receiver coordinated with this Court and the Latvian Court to obtain alternate service on Mark D. Zarubi's counsel. This was completed on April 17, 2007. On May 10, 2007, the Receiver's Latvian counsel advised the Latvian Court had received confirmation of service of the January 2, 2007 Order on Zarubi's counsel. Pursuant to Latvian civil procedure, and assuming there is no appeal of the Order, the Cedax funds should be returned to the Receiver soon after June 12, 2007. The Receiver does not anticipate an appeal because Cedax previously agreed to the funds being returned to the Receiver. However, because VEF Banka is currently prohibited from transacting business with the United State, the Cedax funds will be transferred from VEF Banka to the Receiver's Latvian counsel and then to the Receiver—all of which will most likely require a few days' time to accomplish.

12. The Receiver initiated a turnover action against Worldplaza Corporation in the United States District Court for the District of Nevada (the "Nevada Court"). WorldPlaza is a Panamanian corporation that used approximately \$286,000 in investor funds to purchase two tracts of land near Reno, Nevada. On January 12, 2006, the Nevada Court granted the Receiver's Motion for Turnover against WorldPlaza Corporation.

13. Subsequent to the entry of that Order, Worldplaza filed several Motions to Modify the Order of Turnover to prohibit the Receiver from liquidating the subject properties. Following extended negotiations, the Receiver and Worldplaza reached an agreement whereby the Receiver has listed the properties for sale with a Nevada real estate agent. The proceeds of the sale of these properties will be deposited in the Receiver's accounts for distribution to investors and, if the proceeds from the sale of the properties exceed the amount of investor funds used to purchase the properties, the excess will be divided between Worldplaza and the Receiver in accordance with the agreement. On January 19, 2007, the Receiver received a full-price offer (\$199,000) for one of the two properties, contingent on the purchaser selling his current residence. On April 19, 2007, the Receiver agreed to extend the contract date through June 19, 2007, albeit without the purchaser's contingency of selling his current residence. The second property, on which the Receiver has not yet received an offer, is still listed for sale.

14. On March 7, 2006, the Receiver filed a Motion for Turnover of approximately \$5 million in investor funds transferred to Server to Go, Inc. ("STG"). The Receiver engaged in extensive discovery of STG, its officers, employees, and accountants. Following extensive discovery and settlement negotiations, the Receiver and STG agreed to settle the turnover motion by payment of \$600,000 by STG to the Receiver.<sup>2</sup> This amount was paid on January 26, 2007.

**A. Pending Motions**

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<sup>2</sup> As set forth in greater detail in the Joint Motion for Order Approving Settlement (Doc. # 361) filed on January 5, 2007, the settlement, while only a fraction of the total investor funds transferred to STG, avoided further litigation expense and provided funds for the benefit of the estate and avoided the possibility of the Receiver taking ownership of a partially-developed software program which he may not have been able to market.

15. The Receiver has initiated a turnover action against iPTS, Inc. (Docket # 117), the last e-currency company used by CEC. The Receiver believes iPTS received up to US\$978,684.31 and €329,226.31 of investor funds. However, these funds are located at VEF Banka in Riga, Latvia. The Latvian Prosecutor General's Office froze these funds, among others, upon the initiation of this case at the request of the Commission and the United States Department of Justice. The Receiver and the Commission believe they have determined a procedure by which the iPTS funds at VEF Banka can be returned to the Receiver for distribution to the investors as set forth above with respect to the Cedax funds at VEF Banka. Once the Receiver has confirmation that VEF Banka will return the Cedax funds to the Receiver in accordance with the procedure set forth above, the Receiver will follow a similar procedure for a return of the iPTS funds.

**B. Recovery of Investor Funds.**

16. Despite the lack of cooperation of most of the defendants and relief defendants, through the intensive efforts of the Receiver, his counsel, and the Commission, the Receiver has recovered approximately \$6.1 million in investor funds. A significant portion of this recovery came from a Stipulated Order (Docket # 84) pursuant to which Seaforth Meridian, Limited ("Seaforth") agreed to turnover \$8.9 million to the Receiver on or before October 15, 2005. After paying \$4.1 million, Seaforth defaulted on its payment plan to the Receiver alleging its funds were illiquid. Following discussions with Seaforth's principals, the Receiver filed his Motion for Order to Show Cause as to why Seaforth should not be held in contempt of court for failure to make the remaining payments.

17. The Receiver has devoted significant time and expense working to enforce the terms of the Stipulated Order and recover the \$4.9 million balance Seaforth owes to the Receivership Estate. On September 14, 2006, the Commission commenced a separate action against Seaforth and its principals in a case number 06-4107 pending before the Court. On January 17, 2007, the Receiver filed a Motion for Instructions Regarding Transfer of Funds from CEC to Seaforth (Doc. # 363) in which the Receiver requested the Court's instructions on whether a one-time transfer of a portion of the funds recovered from Seaforth should be returned to Seaforth. On February 5, 2007, the Court Ordered \$1.5 million be transferred to the Seaforth receivership estate (Doc. # 367).

18. On September 15, 2006, the Commission informed counsel for "David Tanner" of its intention to move the Court for a return of approximately \$500,000 of attorney fees. The Commission's primary position is that the fees were paid in violation of the initial asset freeze. Following negotiations with Tanner's counsel, the parties settled this dispute by which Tanner's counsel agreed to return \$200,000 to the Receiver. On May 7, 2007, the Receiver's counsel received confirmation that Tanner's counsel had mailed the final installment payment.

19. The Receiver has also identified approximately \$9 million of investor funds transferred to forty two individuals and companies. The Receiver has issued demand letters for the return of these funds and is evaluating the recipients' defenses to the Receiver's demands.

**C. Claims**

20. The Receiver's primary goal in this case is to return the recovered funds to the defrauded investors.

21. In addition to responding to numerous individual investor inquiries, the Receiver has developed and updated the receivership website ([www.ceclubreceiver.com](http://www.ceclubreceiver.com)) to serve as a reference for investors. The website also provides a central claims registration database where investors may submit a claim for their lost investment in the Capital Enhancement Club scheme.

22. On March 9, 2006, the Receiver filed his Motion for Order: (i) Approving Claims Solicitation Procedure; (ii) Approving Claim Form; and (iii) Establishing Claims Bar Date for Investors and Others. On March 28, 2006, the Court entered its Order granting the Motion and establishing April 28, 2006 as the deadline by which investors and others must file a claim via the Receiver's website.

23. As of the claims bar date, the Receiver had received approximately 1,200 claims totaling over \$18 million. The Receiver spent considerable time reviewing the filed claims, contacting investors for information to support their claim, and verifying filed claims. On November 20, 2006, the Court convened a hearing on the Receiver's Continued Motion to Allow and Disallow Investor Claims. Following the hearing, the Court entered an Order allowing approximately \$19,800,000 in claims (Doc. # 358).

24. On April 13, 2007, the Receiver filed his Motion to Approve Plan of General Distribution to Allowed Claims (Doc. # 372). The Plan provides for distribution of recovered funds, net of expenses, to the holders of allowed claims. On April 30 and May 5, 2007, thirteen individuals filed objections to the Distribution Plan. The distribution to investors planned for April 27, 2007 is on hold pending the Court's ruling on the objections. In the event the Court approves the Distribution Plan, the Receiver

estimates it will take one to two days to print the distribution checks and deposit them in the mail.

**D. Miscellaneous.**

25. The Receiver is continuing to work with the Commission, other U.S. law enforcement agencies, and government officials of several foreign jurisdictions in obtaining banking records to trace the source and disposition of CEC funds, as well as to take possession of CEC victim funds identified at the VEF Bank and Krajabank in Latvia, and frozen by the Latvian government.

**III. Receiver's Intended Course of Action**

26. Because defendant David Tanner/James Tucker/Scott Klion has refused to provide the accounting ordered by the Court, the Receiver must continue the costly and time consuming effort required to locate and subpoena the numerous CEC related bank and electronic currency accounts within and outside the U.S. and reconstruct the source and disposition of funds. Although the Receiver has examined thousands of pages to date, this represents a small portion of the total records the Receiver anticipates reviewing in order to determine the current location of additional CEC investor funds.

27. The Receiver's immediate focus is on reviewing the investor claims, recommending the claims to be allowed, proposing a plan of distribution, and making an interim distribution to the investors.

28. In addition, the Receiver remains committed to recovering the balance of funds Seaforth Meridian, Limited owes the receivership estate, the repatriation of the approximately \$3 million in VEF Banka, and obtaining either an agreement or an order

directing the return of approximately \$1.3 million in investor funds held by iPTS, Inc. at VEF Banka.

29. The Receiver's forensic examination of the CEC related financial records to date has identified individuals who have received large sums of investor money under questionable circumstances. The Receiver will continue to evaluate recovery actions against these individuals.

30. In addition, the Receiver is continuing his investigation into additional transfers of CEC investor funds into US and foreign institutions and will evaluate appropriate recovery actions for these transfers.

31. The Receiver will continue to keep investors apprised of the status of his efforts via his website.

32. This Eighth Status Report has been reviewed by counsel for the Commission who concurs with its contents.

Dated: May 10, 2007

Respectfully submitted,

LATHROP & GAGE L.C.

By: /s/ Brian M. Holland

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 10th day of May, 2007 I electronically filed the foregoing, with the Clerk of the Court for the District of Kansas, Topeka Division, by using the CM/ECF system which will send a notice of electronic filing to the following CM/ECF participants:

J. Kevin Edmundson, SEC

/s/ Brian M. Holland  
An attorney for Larry E, Cook,  
Receiver