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January 18, 2011

VIA EMAIL AND U.S. MAIL

William F. Mohrman  
Gregory M. Erickson  
Morhman & Kaardal  
33 South Sixth, Suite 4100  
Minneapolis, MN 55402

**Re: CFTC v. Cook, et al., Court File No.: 09-cv-3332 (D. Minn.)  
SEC v. Cook, et al., Court File No.: 09-cv-3333 (D. Minn.)**

Dear Counsel:

I write regarding several issues related to discovery in this action.

**A. Protective Order**

Yesterday we circulated a draft stipulated Protective Order for this case. Please review and, if the provisions are agreeable, sign and return it. We would like to get a Protective Order in place as soon as possible so that both sides can move ahead with document production.

**B. Document Production – Mutual Exchange Date**

To facilitate document production, we propose that the parties agree to exchange documents responsive to discovery requests on Friday, January 21, 2011. Please let me know if you will agree to a mutual exchange of documents on this date.

**C. Document Production – Documents to be Produced**

As stated in the Receiver's Objections and Responses to the Investor Respondents' requests for production, many of the Investor Respondents' requests are overly broad and unduly burdensome or otherwise objectionable. We will not be producing, for example, "every

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document which discusses, reflects, refers or relates to Trevor Cook.” We will, however, produce documents related to each of the Investor Respondents and the claims and defenses in the summary proceeding action. Although the universe of relevant documents will be produced to you, we also will make additional documents available for inspection, as outlined below, in an effort to avoid needless—and expensive—discovery disputes.

### **1. Hard Drives Seized from Receivership Properties**

We are in possession of over sixty imaged hard drives that were seized from computers found at properties used by the Receivership entities. We have keyword-searched these drives for documents relating to the Investor Respondents and/or their interactions with Trevor Cook, Clifford Berg, or any Receivership Entity employee or agent, and we will produce, subject to a Protective Order, the documents and emails that this search produced. We consider this set of documents to be a complete set of the relevant information contained on the seized hard drives.

We note that these drives also contain hundreds of irrelevant spreadsheets and lists in which the names of the Investor Respondents appear among other names, as well as other documents that have no connection whatsoever to the Investor Respondents. Although these documents are wholly irrelevant to the claims and defenses in this action, we are willing to take the additional step of making the seized hard drives available for you to inspect under an Attorneys’ Eyes Only designation. If you choose to inspect the hard drives, you may set up a mutually convenient time to come to our offices, review the hard drives, and identify any additional documents you would like produced. We will then review those documents to (1) determine if we have any objection to their production and (2) to determine whether non-objectionable documents need to be produced under the Protective Order.

### **2. Seized Hard Copy Files**

The IRS is in possession of approximately 150 boxes of hard copy documents seized from the Receivership properties. As with the seized computer drives referenced above, we have reviewed these hard copy files for documents relating to the Investor Respondents and/or their interactions with Trevor Cook, Clifford Berg, or any Receivership Entity employee or agent, and we will produce, subject to a Protective Order, the documents that this search produced. Here again, any documents beyond these parameters simply are not relevant to the claims or defenses in this action. Nevertheless, if you wish to inspect these hard copy files, we will make appropriate arrangements with the IRS to allow your inspection under the same Attorneys’ Eyes Only process outlined above, *e.g.*, if you identify any further hard copy files from that collection that you would like produced we will then review them to (1) determine if we have any objection to their production and (2) to determine whether non-objectionable documents need to be produced under the Protective Order.

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### **3. Receiver's Investigative Files**

In addition to the seized hard copy and electronic files, the Receiver has investigative files that have been collected in fulfillment of his mandate under Chief Judge Davis's Receivership Orders. *See, e.g.*, SEC Docket No. 68, CFTC 96. We have also searched these files with the same parameters described above and will produce the results subject to a Protective Order. To the extent they exist, documents in this set will include relevant, non-privileged notes from interviews of the Investor Respondents; relevant, non-privileged notes and transcripts from interviews of Trevor Cook; subpoenaed bank records from Receivership accounts showing Investor Respondents' transactions; correspondence between the Receiver and the Investor Respondents; and any documents provided to the Receiver by the Investor Respondents in response to subpoenas served on the Investor Respondents. If after reviewing the production you believe there are additional documents from the Receiver's investigative files that are relevant to the claims and defenses in this action, we are willing to discuss that issue with you. However, due to the highly sensitive and confidential nature of the Receiver's ongoing duties under Chief Judge Davis's Orders, we will not make the Receiver's investigative files available for your inspection.

### **4. Files Obtained From the SEC**

In furtherance of his duties and obligations under Chief Judge Davis's Receivership Orders the Receiver also has obtained certain investigative and other non-public documents from the SEC. The Receiver is not at liberty to produce these documents without prior approval by the SEC. We are in the process of reviewing the documents we have from the SEC to determine whether any are responsive to this action. If any such documents are located, we will work with the SEC to determine whether they object to their production and if not, the proper designation under the Protective Order.

#### **D. Subpoena Served on the Mauzy Firm**

We are in the process of reviewing approximately six boxes of hardcopy documents from the Mauzy firm and a hard drive that the Receiver provided to the Mauzy firm under Chief Judge Davis's Order in preparation for investigative interviews of Trevor Cook. We will let you know whether and what objections we have to production of those documents when our review is complete. We anticipate that we will object to the production of some but not all of that material and that you will be able to inspect or copy the non-objectionable material while the parties, and if necessary, the Court, parse through the objections.

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**E. Deposition schedule**

Given the number of depositions that must take place in this case between now and the close of fact discovery on July 1, 2011, we would like to plan a mutually convenient schedule to conduct the depositions of at least the following individuals: Steven and Pamela Cheney; Walter Defiel; Terry Frahm; Steven and Jenene Fredell; Michael Heise; Michael and Cynthia Hillesheim; Larry Hopfenspirger; Steven Kautzman; James McIntosh; George and Karen Morrisset; and Reynold Sundstrom. We propose to schedule the depositions of these eleven individuals beginning the week of February 28, 2011. Please advise of your clients' availability beginning in and around that date.

Very truly yours,



Peter M. Kohlhepp

PMK/dr

c: Daniel Gerds (via e-mail)  
Adam Huhta (via e-mail)