

Exhibit A

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October 27, 2011

BY E-MAIL

Brian W. Hayes
Carlson Caspers Vandeburgh & Lindquist PA
225 South Sixth Street, Suite 3200
Minneapolis, MN 55402

Re: SEC v. Cook, Civ. No. 09-cv-3333 (D. Minn.)
CFTC v. Cook, Civ. No. 09-cv-3332 (D. Minn.)
SEC v. Beckman, Civ. No. 11-cv-547 (D. Minn.)
Subpoena to Associated Bank, N.A. dated June 24,
2011

Dear Mr. Hayes:

I write in regards to R.J. Zayed's subpoena to Associated Bank dated June 24, 2011, in the above-referenced matters. As you know, Associated Bank objected to this subpoena on the grounds that (1) it constitutes an improper "fishing" expedition to find new claims against Associated Bank; and (2) it inappropriately inverts the proper order of a lawsuit's progression, requesting discovery before a complaint is filed. *See* Associated Bank Responses and Objections (July 15, 2011), Gen. Obj. 1, 2 (citing applicable authority). In a gesture of good faith, however, Associated Bank began producing documents responsive to the subpoena, without prejudice to those objections.

Recent events have heightened Associated Bank's concerns regarding the improper nature of this subpoena. We understand that the Receiver has moved the Court for permission to hire outside counsel specifically for the purpose of evaluating and pursuing claims against third-parties.¹ On October 19, 2011, the Court granted this motion. *See* Dkt. No. 867, *CFTC v. Cook*, No. 09-cv-3332 (D. Minn.). We further understand, based on our conversations with you, that

¹ As I noted in our phone conversation earlier this week, the Protective Order prohibits the Receiver from providing to newly retained counsel documents produced in response to the subpoena. The Protective Order only permits disclosure to "attorneys . . . retained by the Receiver and/or compensated by the Receiver, for substantially assisting the Receiver in performing his duties *in this litigation*." Dkt. No. 834 at ¶ 6(a) (emphasis added). Outside counsel has been retained for the purpose of evaluating and pursuing *other* litigation against *other* parties, such as Associated Bank, and therefore the Protective Order prohibits disclosure to these firms of the documents that Associated Bank has produced.

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the above-referenced counsel anticipates making a decision whether to bring suit against Associated Bank in the next few weeks.

In light of these new developments, we request that you inform us whether the Receiver and/or its outside counsel intends to file suit against Associated Bank. If the Receiver intends to do so, this would confirm that Associated Bank's objection to the subpoena is valid. *See* Fed. R. Civ. P. 26(b)(1), 2000 Advisory Committee Note ("[T]he parties . . . have no entitlement to discovery to develop new claims or defenses that are not already identified in the pleadings."). We are confident that any such suit would lack merit and that a Court would grant Associated Bank's motion to dismiss, obviating the need for discovery. If the Receiver confirms that he (and outside counsel) will not be filing suit against Associated Bank, we will continue to assist in providing documents to the Receiver. We look forward to your reply.

If you have any questions, please do not hesitate to contact me.

Sincerely,



Alex C. Lakatos