

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE:) CHAPTER 11
)
SENTINEL MANAGEMENT GROUP, INC.) CASE NO. 07-14987
)
)
DEBTOR.) HONORABLE JOHN H. SQUIRES
_____)

NOTICE OF MOTION

TO: SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that on January 5, 2009, at 9:30 a.m., we shall appear before the Honorable John H. Squires, United States Bankruptcy Judge, the Northern District of Illinois, Eastern Division, Everett McKinley Dirksen Courthouse, 219 South Dearborn Street, Chicago, Illinois 60604, Courtroom 680 and shall then and there present MOTION OF AD HOC COMMITTEE OF SEG 1 CREDITORS, IPGL LTD., FARR FINANCIAL, INC. PENSON GHCO AND PENSON FINANCIAL FUTURES, INC. TO AMEND AND CLARIFY THE FINDINGS OF FACT AND CONCLUSIONS OF LAW SET FORTH IN THE COURT'S MEMORANDUM OPINION ISSUED IN SUPPORT OF ITS ORDER CONFIRMING THE PLAN, a copy of which is attached and served upon you.

Dated: December 23, 2008

Respectfully submitted,

**Ad Hoc Committee of SEG 1 Creditors of
Sentinel Management Group, Inc.**

By: /s/ Stephen P. Bedell
One Of Their Attorneys

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CERTIFICATE OF SERVICE

I, Geoffrey S. Goodman, an attorney, certify that on December 23, 2008, I caused a true and correct copy of MOTION OF AD HOC COMMITTEE OF SEG 1 CREDITORS, IPGL LTD., FARR FINANCIAL, INC. PENSON GHCO AND PENSON FINANCIAL FUTURES, INC. TO AMEND AND CLARIFY THE FINDINGS OF FACT AND CONCLUSIONS OF LAW SET FORTH IN THE COURT'S MEMORANDUM OPINION ISSUED IN SUPPORT OF ITS ORDER CONFIRMING THE PLAN to be served on the following ECF participants by electronic mail through the Court's ECF filing system:

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In addition, the undersigned certifies that a copy of the aforementioned document was served, by facsimile if a fax number is listed, if no fax number is listed then by overnight delivery, on the 22nd day of December, 2008, to the following manual notice list individuals (non-ECF participants):

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**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE:)	CHAPTER 11
)	
SENTINEL MANAGEMENT GROUP, INC.)	CASE NO. 07-14987
)	
DEBTOR.)	HONORABLE JOHN H. SQUIRES
)	HEARING DATE: JANUARY 5, 2009 AT
)	9:30 A.M.

**MOTION OF AD HOC COMMITTEE OF SEG 1 CREDITORS, IPGL LTD., FARR
FINANCIAL, INC. PENSON GHCO AND PENSON FINANCIAL FUTURES, INC. TO
AMEND AND CLARIFY THE FINDINGS OF FACT AND CONCLUSIONS OF LAW
SET FORTH IN THE COURT'S MEMORANDUM OPINION ISSUED IN SUPPORT OF
ITS ORDER CONFIRMING THE PLAN**

The Ad Hoc Committee of SEG 1 Creditors (the "Ad Hoc Committee")¹ of Sentinel Management Group, Inc. (the "Debtor") Penson GHCO ("Penson"), Penson Financial Futures, Inc., Farr Financial, Inc. and IPGL Ltd. (collectively, the "SEG 1 Creditors" or "SEG 1 Defendants") respectfully move this Court, pursuant to Federal Rule of Bankruptcy Procedure ("Bankruptcy Rule") 9023, to amend its findings of fact and conclusions of law (the "Findings") as set forth in its Memorandum Opinion dated December 8, 2008 (the "Opinion" or "Op.") issued in support of its order confirming the Debtor's Fourth Amended Chapter 11 Plan of Liquidation (the "Plan") dated December 15, 2008 (the "Confirmation Order"). Such relief is necessary because while the SEG 1 Creditors believe it is unintentional, the Findings as presently written appear to make determinations as to issues that this Court previously stated were not to

¹ The Members of the Ad Hoc Committee are FC Stone, LLC; Frontier Futures, Inc.; Fortis Clearing Americas, LLC; Country Hedging, Inc.; Alaron Trading Corporation, Cadent Financial Services, LLC; Rand Financial Services, Inc.; Velocity Futures, LP; Crossland Customer Segregated; and Peregrine Financial Group, Inc.

be decided as part of the confirmation (“Confirmation”) of the Plan, including issues of tracing, property of the Estate, alleged commingling and whether the SEG 1 Creditors received funds from the Debtor. Clarification of the Findings is necessary because certain Findings, if not corrected, might be misused or cause confusion in a series of adversary proceedings pending against the SEG 1 Creditors (the “Adversary Proceedings”) or in other matters in this Bankruptcy or on possible appellate review. In further support of this Motion, the SEG 1 Creditors state the following.

INTRODUCTION

The questions of tracing, what constitutes property of the Debtor’s estate, alleged commingling and whether any of the SEG 1 Creditors received any funds from the Debtor are key and critical issues upon which there is major disagreement between the SEG 1 Creditors and the Trustee. However, prior to the hearing on confirmation of the Plan (the “Confirmation Hearing”), this Court stated that those critical questions would not be at issue in or determined by the Confirmation Hearing but would instead be decided in the Adversary Proceedings. Relying on this Court’s assurances, the SEG 1 Creditors submitted no evidence and made no argument on these issues at the Confirmation Hearing.²

In the last paragraph of its 67-page Opinion, this Court concludes that “[t]his Opinion constitutes the Court’s finding of facts and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052.” (Op. 67). However, the Court does not exclude from its Findings statements in the Opinion which the SEG 1 Creditors understand to be mere

² That is not because they lacked such evidence or argument. Indeed, the SEG 1 Creditors are prepared at the appropriate time to submit evidence, including expert testimony, that establishes, for example, that no SEG 1 Creditor was a transferee of any such funds.

summaries or reiterations of the Trustee's arguments or allegations and upon which no evidence was requested or adduced.

As a result, there are several instances in the Opinion where, in the absence of clarification, this Court could appear to have made findings regarding tracing, property of the estate, alleged commingling and/or whether any SEG 1 Creditor received funds from the Debtor, notwithstanding that the Opinion, at other places, reaffirms the earlier rulings that the Court would not adjudicate these issues as part of Plan Confirmation.

Moreover, the Court makes certain statements in its Opinion that are simply erroneous. The Court states that no SEG 1 Creditor had submitted any evidence or otherwise alleged that it had "failed to receive funds that it was allowed to receive from Sentinel via BNY in the August 2007 Transfers." (Op. 55). To the contrary, the SEG 1 Creditors have repeatedly argued that they were *not* transferees of any Sentinel withdrawals (which, in fact, were wired directly to their customers' segregated accounts). Indeed, the SEG 1 Creditors submitted numerous affidavits to this effect. Importantly, this Court's Order dated August 20, 2007 (the "August 2007 Order") expressly provides that the transfers were to go to customer-segregated accounts of the FCMs and not the FCMs themselves. (*See* August 2007 Order, Docket ("Dkt.") No. 19, attached as Ex. 1).

In order to prevent confusion or the inadvertent misuse of the Court's statements in the Adversary Proceedings or in other matters in this Bankruptcy or on possible appellate review, it is important that this Court amend and clarify its Findings to indicate that it has made no finding of fact or issued any conclusion of law binding on any party on the issues of tracing, property of the estate, alleged commingling or whether the SEG 1 Creditors received any funds directly from the Debtor. Such amendment and clarification is important because these issues

are contested issues of fact and law on which the SEG 1 Creditors will submit evidence, expert testimony and argument at the appropriate time in the Adversary Proceedings.³

ARGUMENT

This Court Committed That It Would Not Decide Issues Related To Property Of The Estate As Part Of Confirmation

Prior to the Confirmation Hearing, this Court ruled that it would not decide questions of tracing, property of the estate, alleged commingling and whether the SEG 1 Creditors received funds from the Debtor as part of the Confirmation Hearing.⁴ In several places in the Opinion, this Court confirmed that it was not, in fact, intending to decide or deciding these issues. For example, on page 13 of the Opinion, this Court prefaces its conclusion as to “catch-up” with the following statement:

Assuming for the sake of argument, **which the Court is not deciding, nor is it before the Court to decide at this juncture,** that the August 21 Transfers were transfers of **property of the estate...**

* * *

At page 49, footnote 16, this Court reiterates this point:

The Court notes that **whether the Customer Property can be traced is not before the Court, and the Court will not address the matter** as it is not central to the requirements of confirmation. Rather, the issues related to tracing are reserved for adjudication in

³ While the SEG 1 Creditors disagree with other rulings of this Court in the Opinion, they are not now moving to alter, amend or clarify any other issues but reserve the right to challenge the Confirmation Order and the Opinion in their entirety in any appeal.

⁴ For example, at the Disclosure Statement Hearing, the Plan Proponents argued that they could litigate the “property of the estate issue” at the Confirmation Hearing. This Court disagreed. This Court stated that “I’m not going to litigate whether something is or is not part of the property of the estate” at the Confirmation Hearing. *See* June 16, 2008 Transcript at 81. The Trustee’s counsel acknowledged in response at that time that he “hear[d] [the Court] loud and clear on that, Judge.” *Id.* at 73.

the pending Adversary Proceedings. *See supra* n. 8 [identifying adversary proceedings].

* * *

Again, at page 55, this Court repeats:

Whether individual Citadel Beneficiary Customers actually received the distributions is not a confirmation issue. Instead, whether those distributions were received will be decided in the context of the claims allowance process and the pending Adversary Proceedings. The issue of receipt of the Citadel distributions does not come into play here. . . .**If those funds were not received by the appropriate FCMs, then the issue can be determined at a later stage.**

(Emphasis supplied).

Such statements were consistent with the Court's earlier pronouncements and were the basis upon which the SEG 1 Creditors refrained from presenting any argument or evidence on these issues in connection with the Confirmation Hearing.

Despite Its Prior Ruling, This Court Appears To Make Findings In The Opinion On Issues That It Stated Would Not Be Decided As Part Of Confirmation

Despite this Court's prior ruling and the portions of the Opinion quoted above, in several places in the Opinion, there are statements which, in the absence of the relief requested herein, could be misconstrued as findings relating to issues of tracing, property of the estate, alleged commingling and whether the SEG 1 Creditors received funds from the Debtor. This Court made the following statements in its Opinion which could be construed as findings of fact or conclusions of law on these issues:⁵

From page 5:

⁵ The portions of the Opinion noted here are mere examples and there may be other statements that should be similarly amended and clarified.

In fact, however, it [Sentinel] did not segregate customer funds. Rather, Sentinel commingled customer funds with its own funds and used the customers funds as collateral for its loans from BNY.

From page 7:

On the petition date, Sentinel transferred \$22,542,942 in cash to certain SEG 1 Creditors from a SEG 1 account at Sentinel (the “August 17 Transfers”). (Disclosure Statement p. 14).⁶

From page 8:

On August 21, 2007, certain SEG 1 Creditors (the “Citadel Beneficiary Customers”) received the BNY Transfer of \$297,050,808 (the “August 21 Transfers”) (the “August 17 Transfers and August 21 Transfers, collectively referred to as the “August 2007 Transfers”). The August 2007 Transfers were made to a specific set of FCMs.

From page 13:

The difficulty with this, however, lies in the fact that \$297 million and the August 17 Transfers were distributed to certain SEG 1 Creditors at the beginning of this case.

and

This section of the Plan is simply an effort to delay distribution to the SEG 1 Creditors that received a post-petition transfer from the Debtor in relation to the August 21 Transfers.

From page 46:

Essential to this analysis is a basic understanding of the rules and regulations by which Sentinel was required to abide by as an FCM (but apparently did not).

Finally, in the context of making an aside, this Court at page 55 of the Opinion makes a statement that is simply erroneous, noting:

(As an aside, the Court notes that, to date, no FCM/Customer of Sentinel has informed the Court, or otherwise alleged, that it failed

⁶ This statement also appears to accept an unsupported averment in Debtor’s Disclosure Statement as though it were fact and appears to treat the Disclosure Statement as though it were evidence.

to receive the funds that it was allowed to receive from Sentinel via BNY in the August 2007 Transfers).

First, the evidence makes clear that all transfers – pre- or post-petition – were wired to segregated accounts of the customers of the SEG 1 Creditors. For example, the August 2007 Order specifically lists the accounts receiving transfers and shows that these are customer-segregated accounts. (Ex. 1). Second, as a matter of law, the accounts into which the money was transferred are the sole and exclusive property of the FCMs customers. This implicates the viability of the Trustee’s claims under 11 U.S.C. § 547 and 549, and it is important to the SEG 1 Creditors that there be no suggestion in the Opinion either that the Trustee has established any elements of these claims or that the SEG 1 Creditors have waived any argument or taken any inconsistent position as to these issues.

Third, the SEG 1 Creditors have repeatedly informed the Court that they did *not* receive these funds. For example, in the SEG 1 Creditors’ Post-Confirmation Hearing Submission dated September 5, 2008 (the “Post-Confirmation Submission”) (Dkt. No. 1037), the SEG 1 Creditors included a six-page section of argument entitled “The Plan Opponents Have Not Established That The SEG 1 Creditors Received The August 21 Transfers” (Post-Confirmation Submission at 22-27). That section included the following specific arguments:

45. The Plan is premised on the Plan Proponents’ assertion that the Bank of New York, at Sentinel’s direction, distributed \$319.5 million of estate property to the SEG 1 Creditors on August 2007 shortly before and after Sentinel filed its bankruptcy petition. As will be discussed, the Plan Proponents presented no evidence at the Confirmation Hearing that the \$319.5 million was distributed to the SEG 1 Creditors as opposed to bank accounts in which the SEG 1 Creditors had no ownership interest that held funds belonging to clients of the SEG 1 Creditors. The Plan Proponents have thus failed to establish a key premise of the Plan; that the SEG 1 Creditors received the \$319.5 million. Because of this failure, the Plan Proponents have not satisfied § 1123(a)(4) of the Bankruptcy Code.

46. The simple fact is that the SEG 1 Creditors did not receive the \$319.5 million. . . .

(Post-Confirmation Submission at 22-23).

Again, in support of their various objections filed on October 2, 2008 in response to the Trustee's Motion to Clarify or Modify The Court's August 20, 2007 Order (collectively the "Rule 60(b) Objections"), the SEG 1 Creditors each submitted affidavits which confirmed that all or virtually all pre- and post-petition transfers went to customer-segregated accounts of the SEG 1 Creditors and not to the FCMs themselves.

For example, the Ad Hoc Committee submitted at least nine such supporting affidavits in support of its Rule 60(b) Objection (Dkt. No. 1101). The Affidavit of William C. Floersch of Fortis Clearing Americas LLC, is representative of the unequivocal proof submitted on this issue and states, in relevant part:

On August 21, 2007, pursuant to the Distribution Order, BONY wired the sum of \$55,526,354.37 to a customer segregated account that customers maintained with Fortis at Harris Bank (the "Customer Distribution"). From a compliance, accounting and regulatory perspective, Fortis treated the full amount of the Customer Distribution, which was distributed pursuant to the Distribution Order, as customer property. Fortis has never asserted any ownership rights over the Customer Distribution. In my view, Fortis would not have any regulatory basis to do so.

Floersch Aff. ¶ 20. Affidavits on behalf of eight other FCMs contain similar attestations, including:

Frontier Futures, Inc.: Theodore Johnson Aff. ¶ 18

Rand Financial Services, Inc.: Michael A. Manning Aff. ¶ 20

FCStone LLC: Clarence C. Delbridge III Aff. ¶ 31

Velocity Futures, L.P.: Jack E. Earnest, Jr. Aff. ¶ 18

Crossland, LLC: Lee Ann Clary Aff. ¶ 19

Cadent Financial Services, LLC: Thomas J. Konopiots Aff. ¶ 18

Peregrine Financial Group, Inc.: Rebecca J. Wing Aff. ¶ 31

Country Hedging Inc.: Julie Streit Aff. ¶ 19

Likewise, in support of their Joint Rule 60(b) Objection (Dkt. No. 1100), IPGL, Ltd. and Farr Financial Inc. submitted the Affidavit of Omid M. Farr (“Farr Aff.”) of Farr Financial and William Borden James of IFX Markets, Inc. (“James Aff.”) that made similar sworn statements. *See* Farr Aff. ¶ 18; James Aff. ¶ 6.

Similarly, in support of their Rule 60(b) Objection (Dkt. No. 1105), Penson GHCO and Penson Financial Futures, Inc. submitted the Affidavit of Carl William Gilmore (“Gilmore Aff.”) as proof on these issues. Gilmore Aff. ¶¶ 32-33.

Further, all SEG 1 Creditors filed identical motions to stay the Adversary Proceedings which contained essentially identical language on these issues. By way of example, in Fortis Clearing Americas LLC’s Motion to Stay Adversary Proceeding dated October 24, 2008 in Case No. 08-00743 (the “Fortis Motion”), Fortis argued:

CFTC Regulations expressly confirm that all funds deposited or accrued by a customer with its FCM to margin or guarantee its trading activity on the U.S. futures exchanges, *are the property of the customer*. See CFTC Rules 1.3(gg), 1.20(a) and 1.20(c).

(Fortis Motion at 3)

Later in the Fortis Motion, Fortis states:

On August 17, 2007, JP Morgan, at the Debtor’s direction, wired \$22,524,942 in cash in a SEG 1 account maintained by JP Morgan *directly to the Customer Accounts* (the “August 17 Transfers”). On August 21, 2007, pursuant to the Distribution Order, BONY wired a total of \$297,050,808 from the SEG 1 Account *directly to the Customer Accounts* (the “August 21 Transfers”). From a compliance, accounting and regulatory perspective, all of the SEG

1 FCMs have, at all times, treated the full amounts of these payments (and, for that matter, all prepetition withdrawals) as Customer Funds – which, in fact, they were.

(Fortis Motion at 5).

These are uncontroverted facts. Both in the context of Confirmation and throughout the Bankruptcy, the Trustee has never offered any evidence that the withdrawals of funds from Sentinel were *not* wired to the segregated accounts of the customers of the SEG 1 Creditors – as opposed to any proprietary account of the SEG 1 Creditors.

Thus, in at least 12 affidavits, numerous motions to stay and other pleadings, the SEG 1 Creditors pressed these arguments and submitted uncontested proof. Such facts and argument demonstrate the importance of amendment and clarification here.

Because facts related to the issues of tracing, property of the estate, alleged commingling and whether any SEG 1 Creditors received funds from Sentinel may have a profound impact on the Trustee’s § 547 and § 549 claims – which remain to be litigated – it is important that the record be clear as to these issues that: 1) this Court is not making any findings; 2) the Trustee has yet to establish any fact necessary to meet his burden; and 3) the SEG 1 Creditors have not waived any argument or defense.

It Is Necessary To Amend And Clarify The Findings

The SEG 1 Creditors do not believe that this Court intended for any of the actual “recitations” in the Opinion relating to issues of tracing, property of the estate, alleged commingling or the SEG 1 Creditors’ purported “receipt” of Sentinel transfers to be actual findings of fact or conclusions of law which could be invoked in the Adversary Proceedings or elsewhere in this Bankruptcy or a possible appeal. However, because of the ambiguities that currently exist in the Opinion, it is necessary for this Court to make clear (through amendment or clarification) that it has made absolutely no findings on these issues.

Such clarification is necessary so that these issues are not muddled or confused in the Adversary Proceedings. The Trustee bears the burden of proof on these issues, and it is important to the SEG 1 Creditors that the Trustee be put to his proof on these issues in the Adversary Proceedings. Fairness and justice also require that the SEG 1 Creditors be given full opportunity to submit whatever testimony, evidence and arguments they have in their defense on these issues at the appropriate time.

CONCLUSION

For the foregoing reasons, this Court should grant SEG 1 Creditors' Motion to Amend and Clarify its Findings as set forth in this Motion.

December 23, 2008

Respectfully submitted,

**Ad Hoc Committee of SEG 1 Creditors of
Sentinel Management Group, Inc.**

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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE:)	Chapter 11
)	
SENTINEL MANAGEMENT GROUP,)	Case No. 07-14987
INC.,)	
)	
Debtor.)	

**ORDER APPROVING TURNOVER AND DISTRIBUTION OF CERTAIN THIRD
PARTY ASSETS**

Upon the motion of the debtor and debtor-in-possession (the "**Debtor**") in the above-captioned chapter 11 case (the "**Case**"), for entry of an Order approving the turnover and distribution of certain third party assets (the "**Motion**")¹; it appearing that the Court has jurisdiction over the Motion pursuant to 28 U.S.C. § 1334; it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A); due and adequate notice of the Motion having been given; it appearing that no other or further notice need be given; this Court having determined that granting the relief requested in the Motion is in the best interests of the Debtor, its estate and its creditors; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is granted.
2. BONY ^{IMM} ~~shall~~ immediately distribute the Proceeds to Debtor's clients (the "Distributees") in accordance with the pro rata percentages listed on Exhibit A attached hereto, less \$15,600,000 (together with accruing interest thereon, the "Holdback") to be held

¹ All capitalized terms used herein but not defined herein shall have the meanings given them in the Motion.

by BONY pending further order of this Court in a segregated interest bearing account not subject to any lien or right of setoff or recoupment by BONY.

3. This Order is without prejudice to the right of each and every Distributee to pursue any and all of its rights, remedies, claims and/or causes of action, if any, that it had, has or may have against the Debtor, against any third parties, or with respect to the Holdback, or the right to assert that any claim for any shortfall in the distribution authorized by Paragraph 2 above is entitled to priority under the Bankruptcy Code, including Sections 761-767 thereof, or other applicable law. This Order is without prejudice to all rights, defenses, claim and/or causes of action, if any, of the Debtor or any such third parties (including Citadel) against any Distributee, with respect to the Holdback and/or with respect to any claim for priority under Section 761-767, or other applicable law.

4. The entry of this Order and the receipt of the distribution authorized by Paragraph 2 above shall not affect the obligations of any party having notice of the temporary restraining orders granted in favor of the TRO Parties (the "Notice Parties"). This Order and the distribution authorized by Paragraph 2 above is without prejudice to all rights, defenses and claims of the Notice Parties as against any one or more of the TRO Parties.

5. Nothing in this Order shall affect any rights and claims of the National Futures Association, the Securities and Exchange Committee and the Commodities Futures Trading Commission.

6. The Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

Dated: 8/20/07

AUG 20 2007

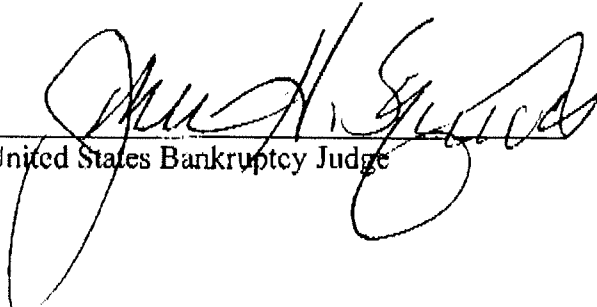

United States Bankruptcy Judge

Exhibit A

Account Name	% of total
American National Trading Corp Cust Seg Funds	0.030316254
Alaron Trading Corp. Customer Segregated Funds	0.000386124
Crossland Customer Segregated	0.017930501
Cadent Financial Services, LLC Customer Seg 1	0.074934027
Country Hedging, Inc. Customer Seg Funds	0.036965267
Capital Market Services LLC Forex Customer Funds	0.000343001
Farr Financial Inc. Customer Segregated Funds	0.03390277
Frontier Futures	0.045159889
FC Stone, LLC Customer Seg Funds	0.048742636
Gain Capital Group, LLC	0.002253409
IFX Markets Inc-Forex Client Account	0.044165869
IFX Markets Inc-Forex Client Account (No 2)	0.070997732
Fortis Clearing Americas LLC-Customer Segregated	0.151126501
Fortis Clearing Americas LLC Cross Margin Cust Seg	0.026472126
Penson Financial Futures, Inc. Customer Seg Funds	0.001149891

Account Name	% of total
Peregrine Financial Group, Inc Customer Seg Funds	0.01122293
Penson GHCO Customer Segregated Account	0.078299018
Rand Financial Services, Customer Segregated Funds	0.006559501
SMW Trading Company, Inc. Cust Seg Funds	0.018288688
TransAct Futures - Customer Seg Funds	0.030530543
Velocity Futures LP Customer Segregated Funds	0.035174939
Vision Financial Markets LLC Cust Seg Funds	0.117470419
Kottke Associates, LLC Customer Segregated Funds	0.117607964