

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

JOSEPH S. FORTE and  
JOSEPH FORTE, L.P.,

Defendants.

No. 09-CV-0063

COMMODITY FUTURES TRADING  
COMMISSION,

Plaintiff,

v.

JOSEPH S. FORTE,

Defendant.

No. 09-CV-0064

ORDER APPOINTING A RECEIVER

AND NOW, this 30th day of March, 2009, upon consideration of Plaintiffs' unopposed Motions for appointment of a joint receiver to assume control of, marshal, pursue, and preserve the assets of defendants Joseph Forte, L.P. (the "Limited Partnership") and Joseph S. Forte ("Forte"), as well as any other assets that may be collected in the captioned matters, and to protect those assets pending further order of the Court, it is **ORDERED** that the Motions (09-63, Doc. Nos. 22, 23, 24; 09-64, Doc. Nos. 21, 22) are **GRANTED. IT IS THEREFORE**

A TRUE COPY CERTIFIED TO FROM THE RECORD  
DATED: 4-6-09  
ATTEST: [Signature]  
DEPUTY CLERK, UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

**ORDERED as follows:**

**I.**

This Court hereby takes exclusive jurisdiction and possession of the assets, monies, securities, choses in action, and properties, real and personal, tangible and intangible, of whatever kind and description, wherever situated, of the Limited Partnership and Joseph S. Forte (collectively, the "Defendants") and/or any entities that the Limited Partnership or Forte own or control or in which either of them have an interest ("Receivership Assets").

This Court hereby further takes exclusive jurisdiction and possession of the books, records, computers, and documents, including without limitation, every writing of any kind, type, and description or other instrument or device by which, through, or upon which information has been recorded or preserved, including without limitation memoranda, notes, letters, bank records, statements, checks, wire instructions and confirmations, tape recordings, electronic and digital media of all types, audio and video recordings, and photographs of the Limited Partnership and/or any and all entities the Limited Partnership or Forte owns or controls, or in which either of them has an interest, including without limitation, trusts, limited liability companies, corporations, partnerships, and joint ventures ("Receivership Records"); provided, however, that the CFTC and the SEC may retain copies of any such records in their possession, custody, or control.

**II.**

**IT IS FURTHER ORDERED THAT** Marion A. Hecht, CPA, CFE, CIRA, CFF, and MBA, Managing Director of the forensic litigation and valuation division of Goodman & Company, LLP ("Goodman Forensic Division"), is hereby appointed Receiver for the

Receivership Assets and the Receivership Records. The goal and purpose of the Receivership is to assume control of, marshal, pursue, and preserve the Receivership Assets with the objective of maximizing the recovery of defrauded investors and, to the extent that the assets recovered may be inadequate to make them whole, ensuring that the distribution of those assets is as just and equitable as practicable. No bond shall be required to assure her conscientious performance of the duties and responsibilities imposed by this Order. Ms. Hecht may be assisted in carrying out her duties by other directors and employees of her firm. Ms. Hecht (the "Receiver") is authorized to retain the law firm of Hoyle, Fickler, Herschel & Mathes LLP (the "Hoyle Law Firm") as her counsel in connection with this appointment. With the Court's approval, the Receiver and the Hoyle Law Firm shall be compensated from the Receivership Assets for all reasonable fees and costs.

The agreed upon fee schedules for the Goodman Forensic Division and the Hoyle Law Firm are as follows, which hourly fee rates are hereby found to be reasonable:

**Goodman Forensic Division**

<u>Position</u>	<u>Rate</u>
Managing Director	400
Senior Manager	300
Manager	250
Supervisor	200
Staff Accountant	150

**Hoyle Law Firm**

<u>Name</u>	<u>Position</u>	<u>Rate</u>
L. Hoyle	Partner	425
A. Fickler	Partner	350
J. Gough	Special Counsel	325
E. Briggs	Senior Attorney	250

A. Helfer	Associate	250
G. Podolin	Associate	250
T. Markowitz	Associate	250
J. Timmer	Associate	245
B. Field	Associate	225
V. Amaral	Associate	160
M. LaPalombara	Paralegal	100

The Hoyle Law Firm may add or substitute other professionals with comparable experience at comparable rates, with the written approval of the Receiver, the SEC and CFTC.

### III.

**IT IS FURTHER ORDERED THAT** the Receiver is hereby authorized on behalf of the Court to take possession of the Receivership Assets and Receivership Records. Until further order of the Court, the Receiver shall have complete and exclusive control, possession, and custody of all Receivership Assets and Receivership Records.

### IV.

**IT IS FURTHER ORDERED THAT** all persons, including without limitation the Defendants, their past or present officers, agents, servants, employees, brokers, facilitators, trustees, escrow agents, attorneys, accountants, partners, and all persons in active concert or participation with them, and all other entities or persons who receive actual notice of this Order by personal service or otherwise, and specifically including without limitation any past or present bank or other financial or depository institution holding accounts for or on behalf of the Limited Partnership or Forte, or any entities the Limited Partnership or Forte own or control or in which they have an interest or for which either of them is an authorized signatory, shall promptly deliver to the Receiver all Receivership Assets in the possession or under the control of any one

or more of them and shall promptly surrender all Receivership Records. No separate subpoena shall be required. Upon presentment of this Order, all persons, including without limitation financial institutions, shall provide account balance information, transaction histories, all account records, and any other Receivership Records to the Receiver or her agents, in the same manner as they would be provided if the Receiver were the signatory on the account.

**V.**

**IT IS FURTHER ORDERED THAT** all persons, including without limitation the Limited Partnership and Forte, their past or present partners, officers, agents, servants, employees, brokers, bankers, facilitators, trustees, escrow agents, attorneys, accountants, creditors, claimants, and all persons in concert or participation with them, and all other entities or persons who receive actual notice of this Order by personal service or otherwise, are enjoined from interfering in any way with the operation of the Receivership or in any way destroying, concealing, disposing of or disturbing the Receivership Assets and Receivership Records, specifically including without limitation, any proceeding initiated pursuant to the United States Bankruptcy Code, except with the prior permission of this Court. All claims against and all actions to determine disputes relating to Receivership Assets or Receivership Records shall be filed in this Court. This provision shall not apply to any criminal proceedings against the Limited Partnership or Forte.

**VI.**

**IT IS FURTHER ORDERED THAT** the Limited Partnership and Forte, including without limitation their past or present partners, officers, agents, servants, employees, brokers, bankers, facilitators, trustees, escrow agents, attorneys, accountants, and all persons in concert or

participation with them, are ordered to cooperate fully with the Receiver and the Hoyle Law Firm, by, among other things, (1) delivering to the Receiver all Receivership Assets and Receivership Records, together with any related documents, records, names and contact information for persons who may be custodians or otherwise involved with or knowledgeable of the Receivership Assets or Receivership Records; (2) providing to the Receiver information regarding the location of and access to any and all documents, computer files and databases in their possession, custody or control relating to the Receivership Assets or Receivership Records, including without limitation documents relating to the business operations of the Limited Partnership, the offer or sale of securities, the allegations of the Complaint in this action, and the disposition of investor funds; (3) providing a full accounting regarding the same; (4) providing all related financial records, computers, computer files, e-mail, passwords, keys, security cards, access codes for premises, vehicles, vessels, and aircraft; (5) granting access to safes or safe deposit boxes or any other facility containing Receivership Assets or Receivership Records; (6) upon the request of the Receiver, executing any consent, authorization, resolution, or other document as may be required by any person to confirm the authority of the Receiver; (7) upon the request of the Receiver, executing any consent, authorization, resolution, or other document as may be necessary to recover from federal, state, and local tax authorities any assets belonging to the Receivership Estate, including any overpayments of taxes; and (8) upon the request of the Receiver, and subject only to the good faith assertion of privilege, providing to the Receiver complete and responsive answers under oath or under penalty of perjury to all questions posed by the Receiver or the Hoyle Law Firm.

**VII.**

**IT IS FURTHER ORDERED THAT** any and all civil actions or other proceedings, other than the within Receivership proceeding and any additional charges in the captioned actions brought by the SEC and CFTC, against the Limited Partnership, Forte, or involving the Receivership Assets or Receivership Records, are hereby stayed. Any person or entity wishing to continue to pursue or initiate a civil action or other proceeding against the Limited Partnership, Forte, Receivership Assets, Receivership Records, or the Receiver may do so only after obtaining express permission from this Court to do so. Any claim or suit that seeks recovery from Receivership Assets, or that is hereinafter filed against the Limited Partnership, Forte, Receivership Assets, Receivership Records, or the Receiver, shall be filed in this Court in the within Receivership proceedings. This provision shall not apply to any criminal proceedings against the Limited Partnership or Forte.

**VIII.**

**IT IS FURTHER ORDERED THAT**, upon the request of the Receiver, the United States Marshal's Office shall assist the Receiver in carrying out her duties to take possession, custody, or control of, or identify the location of, any Receivership Assets or Receivership Records.

**IX.**

**IT IS FURTHER ORDERED THAT**, to enable the Receiver to carry out her duties hereunder, the Receivership Assets are released from the Asset Freeze imposed by this Court by Order dated January 7, 2009 in the captioned cases and placed in the possession and custody of, and under the control of the Receiver.

**X.**

**IT IS FURTHER ORDERED THAT**, without further Court order unless specifically stated otherwise herein, the Receiver is authorized to:

- A.** Use reasonable efforts to determine the nature, location, and value of all Receivership Assets and Receivership Records, including without limitation to locate assets that may have been conveyed to partners of the Limited Partnership or to third parties, or otherwise concealed;
- B.** Have exclusive control of, and be made the sole authorized signatory for, all accounts at any bank, brokerage firm, or financial institution that has possession or control of any Receivership Assets;
- C.** Without breaching the peace, but if necessary with the assistance of local peace officers or U.S. Marshals, enter and secure any premises, wherever located or situated, in order to identify the location or existence of and take possession, custody, or control of Receivership Assets or Receivership Records, and take all steps that in her judgment she deems necessary or advisable to secure and protect Receivership Assets and Receivership Records, including without limitation, the premises, files, and information systems;
- D.** Make appropriate notification to the United States Postal Service or any post office or other mail depository to forward delivery to herself of any mail addressed to the Limited Partnership or Forte or any company or entity under the direction or control of the Limited Partnership or Forte, and open, inspect, and take possession and control all such mail to determine the location or identity of assets or the existence and amount of claims;
- E.** Make from Receivership Assets such ordinary and necessary payments, distributions and



disbursements as she deems advisable or proper for collecting, marshaling, maintaining, maximizing the value of, or preserving the Receivership Assets or Receivership Records, or for the operation of the Receivership;

- F.** Liquidate, windup, and terminate the business and affairs of the Limited Partnership, but, with authority, in aid of such liquidation, windup, and termination of the Limited Partnership, conduct the business operations of the Limited Partnership and the entities controlled by the Limited Partnership or in which the Limited Partnership has an interest, but only to the extent that the Receiver, in the exercise of her discretion, determines such continued conduct of the business to be advisable in the interest of maximizing the value of the Receivership Estate, including without limitation the collection of rents; the continuation or termination of any employment arrangement, lease, or contract; and the sale, abandonment, rental, lease, pledge, hypothecation, or other disposition of the Receivership Assets; provided, however, that any such action shall be described in the next filed Receiver's Report or in the Receiver's Final Report, whichever in the Receiver's discretion is more practicable;
- G.** Compromise or settle any claim of any creditors of the Limited Partnership, including those instances in which Receivership Assets serve as collateral to secured creditors; and, in connection therewith, surrender such assets to secured creditors upon such conditions as the Receiver determines are appropriate, including the waiver of any deficiency of collateral and release of any underlying obligation secured by the collateral;
- H.** Renew, cancel, terminate or otherwise adjust any pending lease agreement to which the Limited Partnership or Forte is a party;

- I.** As soon as reasonably practicable, evaluate the claim of TD Bank, N.A. (the "Bank") with respect to certain property in Sea Isle City, New Jersey, discuss the same with the Bank, and determine the best way to preserve, liquidate, and/or otherwise maximize the value of such property for the benefit of the Receivership Estate;
- J.** With written approval of the SEC and the CFTC, engage or retain such additional persons, including without limitation securities traders, investments advisers, experts or other contractors, that the Receiver determines are necessary or advisable to assist her in carrying out her duties and responsibilities hereunder, provided, however, that any such action shall be described in the next filed Receiver's Report;
- K.** Open and close bank accounts or other depository accounts, and open, close, and manage securities accounts or register them in the name of the Receiver on behalf of the Receivership Estate;
- L.** Receive, collect, and maintain any and all sums of money due or owing to the Limited Partnership or Forte, whether the same are now due or are hereafter to become due and payable;
- M.** During the pendency of the Receivership and prior to the final implementation of any Distribution Plan, receive, maintain, and include in any distribution, any additional sums ordered or paid to compensate victims of the fraud alleged in this matter of which the Receiver has notice and which are directed to the Receiver for distribution in this manner;
- N.** Determine the identity of all partners in and investors with the Limited Partnership or Forte, the amounts invested, and previous payments to, or for the benefit of, such parties;
- O.** Issue subpoenas for testimony under oath or for documents and other tangibles, engage in

formal discovery under the Federal Rules of Civil Procedure on Court-approved shortened notice;

- P.** Institute, prosecute, defend, compromise, or adjust any actions or proceedings based on law or equity now pending or hereinafter instituted in this Court, as may in her discretion be necessary or advisable in order to carry out her duties as set forth herein and to effectuate the Court's orders, including, in the event that it is not practicable to recover Receivership Assets from third parties (such as investors in the Limited Partnership or recipients of gifts or donations from the Defendants) on a consensual basis without litigation, to institute and pursue, on behalf of and for the benefit of the Receivership estate, in this Court or in any court of competent jurisdiction such actions or proceedings to impose a constructive trust, obtain possession and/or recover judgment with respect to persons or entities that hold, control, and/or received, directly or indirectly, assets or funds or proceeds from the Limited Partnership or Forte; provided, however, that prior to filing any action against any investor in the Limited Partnership, the Receiver will determine whether the SEC or the CFTC objects to the filing of the action, and if so, shall seek, under seal, leave from the Court to file the action, with the SEC and/or the CFTC having five business days in which to file their objection(s), under seal, to the filing of the action;
- Q.** Take any action that the Limited Partnership would be authorized to take, and make reasonable expenditures on behalf of the Limited Partnership, close or maintain the Limited Partnership's bank accounts and securities accounts and register such accounts in the name of the Receiver on behalf of the Receivership Estate; purchase, sell or retain

- securities in any such account of the Limited Partnership and register such securities in the name of the Receiver on behalf of the Receivership Estate; and execute checks or otherwise disburse money from those bank or securities accounts of the Limited Partnership to pay obligations of the Receivership in the normal course of business;
- R.** Remove from any premises or real estate constituting a Receivership Asset any person who attempts to interfere with the Receiver or her attorneys or agents in the performance of their duties;
- S.** Change any locks, computer access codes, or other security mechanisms with respect to any premises or other equipment or assets that constitute or contain Receivership Assets or Receivership Records;
- T.** Prepare and submit to the Court, the SEC, the CFTC, and the Defendants a Plan of Distribution providing for interim and/or final distributions with respect to the Receivership Assets and, as ordered, any other assets collected in this matter or any related matter for approval by the Court;
- U.** Comply with all income tax reporting requirements, including the preparation and filing of tax returns, with respect to Receivership Assets and business and, as ordered, any other assets collected in this matter or any related matter; and be designated the administrator of any Distribution Fund, pursuant to section 468B(g) of the Internal Revenue Code (IRC), 26 U.S.C. § 468B(g), and related regulations, and satisfy the administrative requirements imposed by those regulations, including but not limited to (a) obtaining a taxpayer identification number, (b) filing applicable federal, state, and local tax returns and paying taxes reported thereon out of the Receivership Assets and/or the Distribution

