

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION**

**U.S. COMMODITY FUTURES TRADING  
COMMISSION,**

**Plaintiff,**

v.

**BARKI, LLC, a North Carolina limited  
liability company;  
BRUCE C. KRAMER, an individual,**

**Defendants, and**

**RHONDA A. KRAMER, an individual, and  
FOREST GLEN FARM, LLC, a North  
Carolina limited liability company,**

**Relief Defendants.**

**CASE NO. 3:09-CV-106 (GCM)**

**SUPPLEMENT TO RECEIVER’S MOTION RELATIVE TO  
PROPOSED CLAIMS DISTRIBUTION METHOD**

Joseph W. Grier, III, the Court-appointed receiver (“Receiver”) in this action (the “Receiver”), through counsel, hereby presents this *Supplement to Receiver’s Motion Relative to Proposed Claims Distribution Method* and respectfully represents as follows:

1. On June 23, 2009, the Receiver filed his *Receiver’s Motion for (1) Approval of Proposed Claims Verification Procedures, Claims Bar Date, and Proposed Distribution Method; and (2) for Authority to Make Interim Distributions to Investors* (the “Motion”) (D.E. 67).<sup>1</sup> The Motion included a request for approval of the Receiver’s proposal to employ the rising tide

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<sup>1</sup> On August 5, 2009, the Court granted the Motion in part by entering its *Order Granting Receiver’s Motion Relative To (1) Approval Of Proposed Claims Verification Procedures And Claims Bar Date; And (2) For Authority To Make Interim Distributions To Customers; And Reserving Judgment As To Receiver’s Proposed Claims Distribution Method*. (D.E. 97). The issue of the distribution method to be used in this case was not determined in that Order. *Id.*

method for calculating distributions to customers (the “Customers”) of Barki, LLC (“Barki”). (Mot. at 8-12).

2. The Motion drew eight responses expressing support for the rising tide method. (D.E. 74, 77, 78, 79, 80, 81, 82, 83).

3. The Motion also drew nine objections to the rising tide method from Customers who support the net investment method instead. (D.E. 76, 84, 85, 86, 87, 88, 89, 90, and 93). One such objection requested that the Court conduct a hearing on the Motion. (*See* D.E. 76).

4. The Court has since requested a comparison on how Customers would be impacted if either of these two methods were used for calculating distributions.

5. Attached here as Exhibit A are a spreadsheet and graph depicting Customers’ capital contributions and withdrawals during the life of the Barki scheme; the estimated amount each Customer would receive under the net distribution method; and the estimated amount each Customer would receive under the rising tide method. The estimated distributions illustrated on Exhibit A assume an interim distribution of \$3 million. Customers are identified only by Barki account numbers on Exhibit A. Exhibit B, filed under seal, is an additional copy of the information included in Exhibit A that identifies Customers by name.

6. The figures used in Exhibits A and B are presented for illustrative purposes only. The capital contributions and total withdrawal assumptions on these Exhibits are subject to change based on the results of a forensic accounting. In addition, these figures are subject to adjustment based on the analysis of Claim Verification Forms filed by Customers.<sup>2</sup>

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<sup>2</sup> Claim Verification Forms were distributed to Customers on August 5, 2009; the deadline for filing Claim Verification Forms is September 8, 2009. (*See* D.E. 99).

WHEREFORE, the Receiver respectfully requests that the Court will enter an Order approving the rising tide method for calculating claims distributions in this case and granting such further relief as may be just and proper.

This is the 6<sup>th</sup> day of August, 2009.

*/s/ A. Cotten Wright*

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# **EXHIBIT A**

**COMPARISON BETWEEN NET INVESTMENT AND RISING TIDE DISTRIBUTION METHODS ASSUMING A \$3 MILLION TOTAL DISTRIBUTION**

Overview:  
 Net Distribution method provides each customer with a set percentage of the customer's net investment.  
 Rising Tide method provides a distribution that takes previous withdrawals into account.

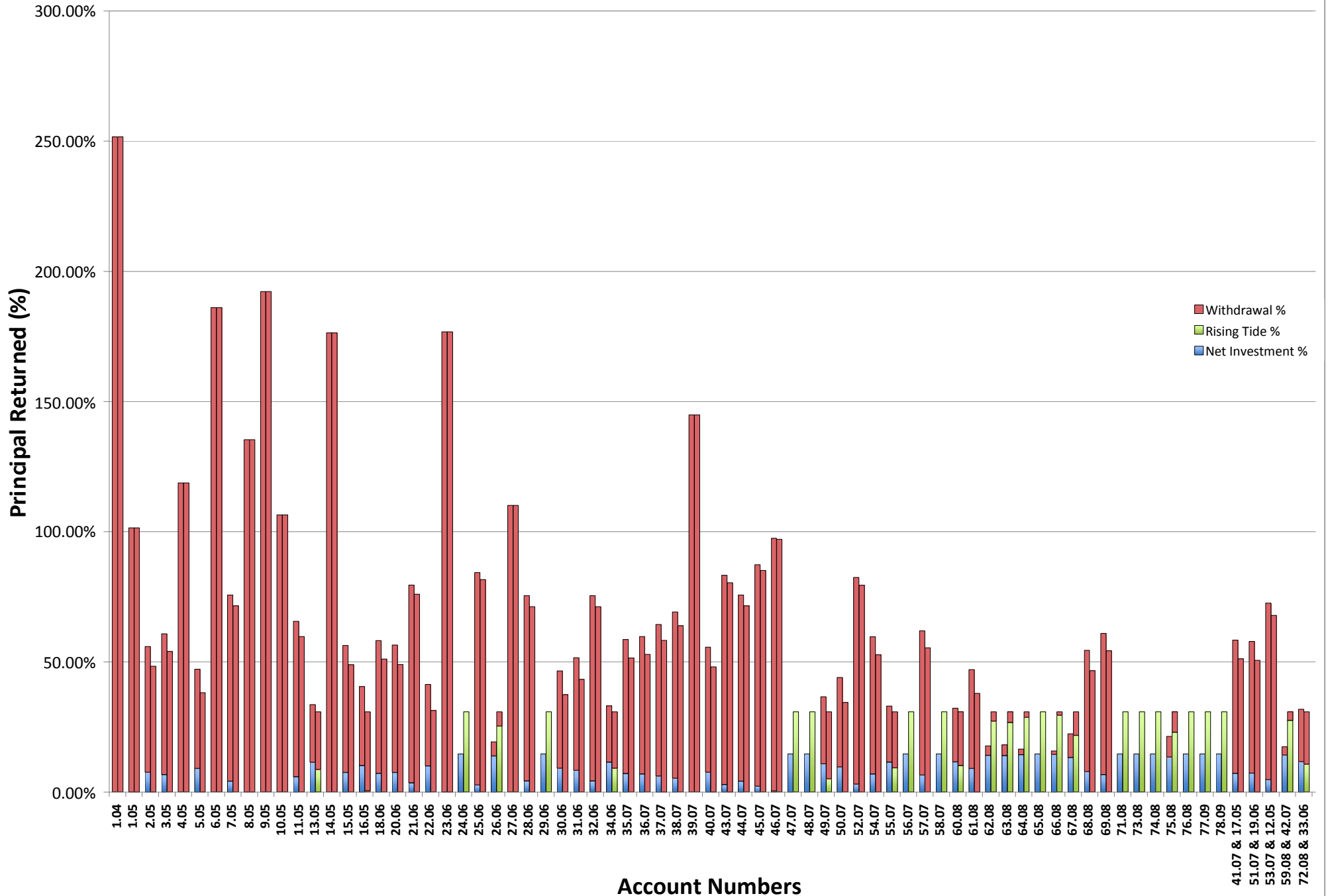
Figures presented here are for illustrative purposes only. Capital contributions, total withdrawal assumptions, and account transfers are subject to change based on further review and on the results of a forensic accounting.

Account #	Total Capital Contributed	Total Withdrawals	Net Sum	Notes	Net Investment (Net Sum * 14.61%)	Rising Tide % of Contribution Previously Withdrawn (Total Withdrawals/ Total Capital Contributed)	Rising Tide 30.85% Multiplier (Capital Contributed x 30.85%) - Withdrawals
1.04	\$331,000.00	\$832,996.00	(\$501,996.00)		\$0.00	251.66%	\$0.00
1.05	\$2,700,000.00	\$2,740,000.00	(\$40,000.00)		\$0.00	101.48%	\$0.00
2.05	\$1,853,000.00	\$895,483.75	\$957,516.25		\$139,887.95	48.33%	\$0.00
3.05	\$526,400.00	\$284,500.00	\$241,900.00		\$35,340.28	54.05%	\$0.00
4.05	\$810,000.00	\$962,066.00	(\$152,066.00)		\$0.00	118.77%	\$0.00
5.05	\$300,000.00	\$114,500.00	\$185,500.00		\$27,100.55	38.17%	\$0.00
6.05	\$125,000.00	\$232,591.00	(\$107,591.00)		\$0.00	186.07%	\$0.00
7.05	\$75,000.00	\$53,670.00	\$21,330.00		\$3,116.20	71.56%	\$0.00
8.05	\$260,000.00	\$351,820.00	(\$91,820.00)		\$0.00	135.32%	\$0.00
9.05	\$75,000.00	\$144,200.00	(\$69,200.00)		\$0.00	192.27%	\$0.00
10.05	\$465,000.00	\$495,000.00	(\$30,000.00)		\$0.00	106.45%	\$0.00
11.05	\$670,000.00	\$400,000.00	\$270,000.00		\$39,445.54	59.70%	\$0.00
12.05	\$1,735,000.00	\$2,623,301.00	\$0.00	Transferred to 53.07	\$0.00	151.20%	\$0.00
13.05	\$270,000.00	\$60,000.00	\$210,000.00		\$30,679.87	22.22%	\$23,285.28
14.05	\$97,389.67	\$171,800.00	(\$74,410.33)		\$0.00	176.40%	\$0.00
15.05	\$900,000.00	\$440,000.00	\$460,000.00		\$67,203.52	48.89%	\$0.00
16.05	\$329,431.00	\$100,000.00	\$229,431.00		\$33,518.63	30.36%	\$1,617.60
17.05	\$300,000.00	\$392,696.00	\$0.00	Transferred to 41.07	\$0.00	130.90%	\$0.00
18.06	\$230,000.00	\$117,500.00	\$112,500.00		\$16,435.64	51.09%	\$0.00
19.06	\$351,000.00	\$551,182.00	\$0.00	Transferred to 51.07	\$0.00	157.03%	\$0.00
20.06	\$452,984.00	\$222,000.00	\$230,984.00		\$33,745.52	49.01%	\$0.00
21.06	\$927,000.00	\$705,000.00	\$222,000.00		\$32,433.00	76.05%	\$0.00
22.06	\$300,000.00	\$94,000.00	\$206,000.00		\$30,095.49	31.33%	\$0.00
23.06	\$270,209.00	\$477,592.00	(\$207,383.00)		\$0.00	176.75%	\$0.00
24.06	\$425,000.00	\$0.00	\$425,000.00		\$62,090.21	0.00%	\$131,097.20
25.06	\$240,000.00	\$196,000.00	\$44,000.00		\$6,428.16	81.67%	\$0.00
26.06	\$400,000.00	\$22,000.00	\$378,000.00		\$55,223.76	5.50%	\$101,385.60
27.06	\$335,000.00	\$369,000.00	(\$34,000.00)		\$0.00	110.15%	\$0.00
28.06	\$410,000.00	\$292,000.00	\$118,000.00		\$17,239.16	71.22%	\$0.00
29.06	\$409,054.00	\$0.00	\$409,054.00		\$59,760.58	0.00%	\$126,178.43
30.06	\$225,839.00	\$84,500.00	\$141,339.00		\$20,648.86	37.42%	\$0.00
31.06	\$300,000.00	\$130,009.00	\$169,991.00		\$24,834.77	43.34%	\$0.00
32.06	\$1,200,000.00	\$855,000.00	\$345,000.00		\$50,402.64	71.25%	\$0.00
33.06	\$596,500.00	\$1,020,112.00	\$0.00	Transferred to 72.08	\$0.00	171.02%	\$0.00
34.06	\$244,000.00	\$53,000.00	\$191,000.00		\$27,904.07	21.72%	\$22,265.22
35.07	\$660,000.00	\$340,000.00	\$320,000.00		\$46,750.27	51.52%	\$0.00
36.07	\$785,900.00	\$415,500.00	\$370,400.00		\$54,113.44	52.87%	\$0.00
37.07	\$308,733.00	\$180,000.00	\$128,733.00		\$18,807.20	58.30%	\$0.00
38.07	\$950,000.00	\$607,322.00	\$342,678.00		\$50,063.41	63.93%	\$0.00
39.07	\$360,500.00	\$522,271.00	(\$161,771.00)		\$0.00	144.87%	\$0.00
40.07	\$1,349,997.00	\$649,152.61	\$700,844.39		\$102,389.58	48.09%	\$0.00
41.07	\$408,206.00	\$161,500.00	\$0.00	Combined with 17.05	\$0.00	39.56%	\$0.00
42.07	\$203,000.00	\$271,689.00	\$0.00	Transferred to 59.08	\$0.00	133.84%	\$0.00
43.07	\$535,000.00	\$430,000.00	\$105,000.00		\$15,339.93	80.37%	\$0.00
44.07	\$250,000.00	\$178,816.95	\$71,183.05		\$10,399.46	71.53%	\$0.00
45.07	\$475,600.00	\$405,000.00	\$70,600.00		\$10,314.28	85.16%	\$0.00
46.07	\$427,000.00	\$414,620.00	\$12,380.00		\$1,808.65	97.10%	\$0.00
47.07	\$100,000.00	\$0.00	\$100,000.00		\$14,609.46	0.00%	\$30,846.40
48.07	\$370,000.00	\$0.00	\$370,000.00		\$54,055.00	0.00%	\$114,131.68
49.07	\$329,248.00	\$85,000.00	\$244,248.00		\$35,683.31	25.82%	\$16,561.16
50.07	\$469,248.00	\$161,500.00	\$307,748.00		\$44,960.32	34.42%	\$0.00
51.07	\$679,733.00	\$242,800.00	\$0.00	Combined with 19.06	\$0.00	35.72%	\$0.00
52.07	\$344,878.00	\$274,000.00	\$70,878.00		\$10,354.89	79.45%	\$0.00
53.07	\$3,707,867.00	\$1,914,943.12	\$0.00	Combined with 12.05	\$0.00	51.65%	\$0.00
54.07	\$275,000.00	\$145,000.00	\$130,000.00		\$18,992.30	52.73%	\$0.00
55.07	\$250,000.00	\$54,000.00	\$196,000.00		\$28,634.54	21.60%	\$23,116.00

56.07	\$200,000.00	\$0.00	\$200,000.00		\$29,218.92	0.00%	\$61,692.80
57.07	\$250,000.00	\$138,500.00	\$111,500.00		\$16,289.55	55.40%	\$0.00
58.07	\$250,000.00	\$0.00	\$250,000.00		\$36,523.65	0.00%	\$77,116.00
59.08	\$977,989.00	\$30,000.00	\$0.00		\$0.00	3.07%	\$0.00
60.08	\$450,000.00	\$93,000.00	\$357,000.00		\$52,155.77	20.67%	\$45,808.80
61.08	\$513,836.00	\$195,000.00	\$318,836.00		\$46,580.22	37.95%	\$0.00
62.08	\$950,000.00	\$35,108.86	\$914,891.14		\$133,660.66	3.70%	\$257,931.94
63.08	\$1,230,000.00	\$51,000.00	\$1,179,000.00		\$172,245.53	4.15%	\$328,410.72
64.08	\$725,000.00	\$16,000.00	\$709,000.00		\$103,581.07	2.21%	\$207,636.40
65.08	\$425,000.00	\$0.00	\$425,000.00		\$62,090.21	0.00%	\$131,097.20
66.08	\$260,136.00	\$3,637.00	\$256,499.00		\$37,473.12	1.40%	\$76,605.59
67.08	\$383,773.00	\$35,000.00	\$348,773.00		\$50,953.85	9.12%	\$83,380.15
68.08	\$750,000.00	\$350,000.00	\$400,000.00		\$58,437.84	46.67%	\$0.00
69.08	\$604,620.00	\$328,000.00	\$276,620.00		\$40,412.69	54.25%	\$0.00
70.08	\$348,000.00	\$140,000.00	\$208,000.00		\$30,387.68	40.23%	\$0.00
71.08	\$500,000.00	\$0.00	\$500,000.00		\$73,047.30	0.00%	\$154,232.00
72.08	\$1,001,612.00	\$102,000.00	\$0.00	Combined with 33.06	\$0.00	10.18%	\$0.00
73.08	\$336,525.00	\$0.00	\$336,525.00		\$49,164.49	0.00%	\$103,805.85
74.08	\$250,000.00	\$0.00	\$250,000.00		\$36,523.65	0.00%	\$77,116.00
75.08	\$800,000.00	\$63,473.79	\$736,526.21		\$107,602.50	7.93%	\$183,297.41
76.08	\$75,000.00	\$0.00	\$75,000.00		\$10,957.10	0.00%	\$23,134.80
77.09	\$262,500.00	\$0.00	\$262,500.00		\$38,349.83	0.00%	\$80,971.80
78.09	\$659,052.17	\$0.00	\$659,052.17		\$96,283.96	0.00%	\$203,293.87
41.07 & 17.05	315,510.00	161,500.00	154,010.00		\$22,500.03	51.19%	\$0.00
51.07 & 19.06	479,551.00	242,800.00	236,751.00		\$34,588.04	50.63%	\$0.00
53.07 & 12.05	2,819,566.00	1,914,943.12	904,622.88		\$132,160.52	67.92%	\$0.00
59.08 & 42.07	909,300.00	30,000.00	879,300.00		\$128,460.98	3.30%	\$250,486.32
72.08 & 33.06	596,500.00	120,500.00	476,000.00		\$69,541.03	20.20%	\$63,498.78
<b>Total</b>	<b>\$39,741,279.84</b>	<b>\$20,676,873.08</b>			<b>\$3,000,000.61</b>		<b>\$3,000,000.99</b>

**Note:** In cases of transfers, only combined accounts counted in Totals

## Comparison of Total Withdrawals and Distributions under the Net Investment Method with Total Withdrawals and Distributions under the Rising Tide Method



**EXHIBIT B**

**FILED UNDER SEAL**

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that copies of the *Supplement to Receiver's Motion Relative to Proposed Claims Distribution Method* were served by CM/ECF system upon the following parties:

Investors by email

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Anne M. Termine  
Gretchen L. Lowe  
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This the 6<sup>th</sup> day of August, 2009.

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