

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

COMMODITY FUTURES TRADING)	
COMMISSION,)	
)	
Plaintiff,)	
v.)	CIVIL ACTION
)	No. 03-2193-CM
WALL STREET UNDERGROUND,)	
INC., et al.,)	
)	
)	
Defendants.)	
)	

**ORDER GRANTING VERIFIED MOTION FOR ORDER SETTING BAR DATE FOR
FILING PROOFS OF CLAIMS AGAINST WALL STREET UNDERGROUND, INC.
AND APPROVAL OF NOTICE OF BAR DATE AND MANNER OF SERVICE AND
MEMORANDUM IN SUPPORT**

Upon consideration of the Verified Motion for Order Setting Bar Date for Filing Proofs of Claims and Approval of Notice of Bar Date and Manner of Service dated January 19, 2007, (the "Verified Motion") and it appearing that no objections were received to the Verified Motion, and based upon the sworn statement of the Receiver in the Verified Motion, **the Court finds as follows :**

A. On April 22, 2003 (the "Commencement Date"), the Commodity Futures Trading Commission ("CFTC"), filed this action against, among others, Wall Street Underground, Inc. ("WSU") alleging that WSU violated the Commodity Exchange Act, 7 U.S.C. §§ 1 et seq., and the regulations promulgated thereunder, 17 C.F.R. §§ 1 et esq. The CFTC alleged that from 1999 to the Commencement Date (the "Relevant Time Period") WSU, *inter alia*, fraudulently promoted, and sold to the public, several systems to be used for trading commodity futures and commodity options; fraudulently overstated the profit potential of the trading systems; and failed to adequately warn of the risks inherent to commodity trading.

B. During the Relevant Time Period, hundreds of investors (the "Investors") purchased the Trading Systems recommended by WSU.

C. On April 23, 2003, the Court entered a Statutory Restraining Order pursuant to 7 U.S.C. § 13a-1(a) (the "SRO") against WSU.

D. On July 18, 2003, this Court issued a preliminary injunction (the "Injunction") against WSU. On July 11, 2006, the Court entered default judgment and a permanent injunction against WSU (the "Permanent Injunction").

E. On March 18, 2004, the Court appointed Robb Evans and Associates LLC (the "Receiver") as the Receiver solely for WSU.

F. The Receiver determined that WSU maintained an account at Euro Bank Corporation ("Euro Bank") in the Cayman Islands and the Receiver sought to safeguard those assets during the liquidation of Euro Bank Corporation.

G. The Receiver has collected approximately \$1,200,707.37 from the liquidators of Euro Bank (the "WSU Funds").

H. On September 12, 2006, the Receiver mailed notice to 495 Investors with complete addresses, provided by the CFTC, a letter regarding future distribution of the WSU Funds to those Investors who paid money to WSU, but did not receive a complete refund from WSU. The Receiver requested that the Investors substantiate their claim for a distribution of the WSU Funds by providing the Receiver with written proof of payment to WSU in the form of a check (copy of front and back), wire transfer, or credit card charge within thirty days of the date of the letter (the "First Notice"). A copy of the form of the First Notice is attached to the Verified Motion as Exhibit A and incorporated herein by reference.

I. Many Investors failed to respond to the First Notice. Moreover, many of the First Notices with incorrect addresses were not returned to the Receiver. Based on the limited returned mail, the Receiver's staff searched for current addresses for the non-responding Investors.

J. On October 27, 2006, the Receiver mailed a second notice to 216 Investors who failed to respond to the First Notice (the "Second Notice"). A copy of the form of the Second Notice is attached to the Verified Motion as Exhibit B and is incorporated herein by reference.

K. On November 14, 2006, the Receiver mailed 244 notices to (a) Investors with incorrect addresses and (b) Investors who failed to respond to the First and Second Notices (the "Third Notice"). A copy of the form of the Third Notice is attached to the Verified Motion as Exhibit C and incorporated herein by reference.

L. In the Third Notice, the Receiver also requested that Investors notify the Receiver if they received a full refund of monies invested in WSU from WSU. (Collectively, the First Notice, Second Notice and Third Notice are hereinafter referred to as the "Notices").

M. Subsequent to November 14, 2006, the Receiver sent the Third Notice to four additional potential investors, based on a review of correspondence obtained from the CFTC (the "CFTC Correspondence").

N. The Receiver's staff received approximately 100 returned mail notices between September 12, 2006 to present (the "Returned Mail Investors"). The Receiver searched for current addresses for the Returned Mail Investors. Where current addresses could be found, the Receiver sent the Returned Mail Investors one of the Notices.

O. To date, 222 Investors responded to one of the Notices asserting claims totaling \$1,039,963.20 (the "Responding Investors"). A summary of the Responding Investors is set forth as Exhibit D to the Verified Motion and incorporated herein by reference.

P. Two hundred forty-one (241) Investors did not respond to the Notices, of which thirty-five (35) had incorrect addresses. Thirty-six (36) Investors notified the Receiver that they either received a full refund from WSU or that they were duplicates.

Q. This Court finds that the Receiver has made its best efforts to identify potential Investors and hereby approves the Receiver's efforts, the Notices and the method of identifying the Responding Investors.

R. The Receiver has identified other potential non-Investor creditors of WSU (the "Non-Investor Creditors") that may have a claim against the WSU Funds. The Non-Investor Creditors are set forth on Exhibit E of the Verified Motion and incorporated herein by reference.

S. The Receiver has identified potential taxing entities (the "Taxing Entities") that may have a claim against WSU. The Taxing Entities are set forth on Exhibit F of the Verified Motion and incorporated herein by reference.

T. The Receiver has identified non-WSU creditors (the "Non-WSU Creditors") who may claim an interest in the WSU Funds. The Non-WSU Creditors are set forth on Exhibit G of the Verified Motion and incorporated herein by reference.

U. Both counsel for the CFTC and counsel for the U.S. Attorney's Office have reviewed the Verified Motion and have consented to its procedures.

V. To complete the receivership and make distributions of the WSU Funds, the Receiver requires, among other things, complete and accurate information regarding the nature, validity and amount of all claims¹ that will be asserted against the WSU Funds.

W. The Court finds that the manner of serving notice as set forth in this Order is sufficient to protect the due process of potential creditors and Investors.

Having received no objections to the Verified Motion and for Good Cause Shown, the Verified Motion is Granted and **IT IS THEREFORE ORDERED THAT:**

1. The Receiver will serve the notice of the bar date and proof of claim form (the "Service Date") no later than ten (10) days after entry of this Order.
2. The bar date is the day thirty days from the Service Date (the "Bar Date").
3. The Bar Date shall apply to any and all claims against WSU that arose prior to the Commencement Date and shall serve to permanently enjoin any creditor or Investor from asserting a claim to the WSU Funds after the Bar Date.
4. Any creditor or Investor with a claim against WSU that fails to file a proof of claim on or before the Bar Date will be forever barred from receiving any distribution of the WSU Funds.²
5. The Receiver shall serve on all known entities holding potential claims against WSU, including, but not limited to, the Non-Investor Creditors, the Taxing Entities and the Non-WSU Creditors (except the Responding Investors): (a) a notice of Bar Date substantially in the form attached hereto as Exhibit 1 (the "Notice of Bar Date"); and (b) proof of claim form (the "Proof of Claim") substantially in the form attached hereto as Exhibit 2.

¹ "Claim" has the same meaning as set forth in 11 U.S.C. §101(5) of the Bankruptcy Code, and includes Investor claims.

² See Securities and Exchange Comm'n v. Hardy, 803 F.2d 1034, 1039 (9th Cir. 1986)(noting district court has broad discretion to establish procedures and establish bar dates that would bar untimely filed claims in a receivership); Callahan v. Moneta Capital Corp., 415 F.3d 114, 120 (1st Cir. 2005)(holding that district court acting as a receivership court has broad discretion in determining whether to permit a claimant to file a late filed claim).

6. The Receiver shall publish notice of the Bar Date substantially in the form attached hereto as Exhibit 3 (the "Publication Notice"), in the Daily Record serving Jackson County, Missouri; the Wyandotte Echo, serving Kansas City, Kansas; the Olathe Daily News, serving Johnson County, Kansas; The Kansas City Star, serving metropolitan Kansas City, and the national edition of the Wall Street Journal at least once, no less than twenty-five (25) days prior to the Bar Date. The Receiver may, in its sole discretion, publish the Publication Notice in other newspapers, trade journals or similar publications.

7. The Receiver may, in its sole discretion, also place a copy of the Notice of Bar Date on its website at www.robbevans.com and/or any other Internet websites that may be viewed by potential creditors or Investors.

IT IS SO ORDERED.

/s/ Carlos Murguia
United States District Judge

Dated: **March 5, 2007**

EXHIBIT 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

COMMODITY FUTURES TRADING)	
COMMISSION,)	
)	
Plaintiff,)	
v.)	CIVIL ACTION
)	No. 03-2193-CM
WALL STREET UNDERGROUND, INC.,)	
et al.,)	
)	
Defendants.)	
)	

NOTICE OF DEADLINES FOR FILING OF PROOFS OF CLAIM
(BAR DATE IS _____, 2007 AT 5:00 P.M., ET)

PLEASE TAKE NOTICE OF THE FOLLOWING:

On January __, 2007, the United States Bankruptcy Court for the District of Kansas (the "Court") entered an order (the "Bar Date Order") establishing certain deadlines for the filing of proofs of claim against Wall Street Underground ("WSU") in connection with receivership of WSU in the above captioned case.

By the Bar Date Order, the Court established _____, **2007 at 5:00 p.m. Central Time** (the "Bar Date") as the claims bar date for filing proofs of claim in WSU's receivership (as defined in the Bar Date Order). The Bar Date applies to all entities, persons (including individuals, partnerships, corporations, and limited liability company), estates, trusts, governmental units and the United States.

As used in this Notice, the term "claim" means, as to or against WSU including (a) any right to payment, including right to refund, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured; or (b) any right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured.

1. WHO MUST FILE A PROOF OF CLAIM

Unless you have previously filed a claim with the Receiver ("Responding Investors")³, you **MUST** file a proof of claim to share in distributions from the WSU Funds you have a claim

³ A list of the Responding Investors is set forth on exhibit D of the Verified Motion for Order Setting Bar Date for Filing Proofs of Claims Against Wall Street Underground, Inc. and Approval of Notice of Bar Date and Manner of Service and Memorandum in Support (the "Motion").

that arose or is deemed to have arisen prior to the Commencement Date⁴. Claims based on acts or omissions of WSU that occurred before the Commencement Date must be filed on or prior to the Bar Date, even if such claims are not now fixed, liquidated or certain or did not mature or become fixed, liquidated or certain before the Commencement Date.

2. WHAT TO FILE

All proof of claim forms (in substantially the form attached hereto) must be **signed** by the claimant or, if the claimant is not an individual, by an authorized agent of the claimant. The proof of claim form must be written in English and be denominated in the United States currency. You should attach to your completed proof of claim any documents on which the claim is based (or, if such documents are voluminous, attach a summary) or an explanation as to why the documents are not available.

3. WHEN AND WHERE TO FILE

All proofs of claim must be filed so as to be received **on or before the Bar Date**, at one of the following address:

IF SENT BY MAIL

**Stinson Morrison Hecker LLP
Attn: Greta McMorris
1201 Walnut Street, Suite 2700
Kansas City, MO 64106**

IF DELIVERED BY HAND OR OVERNIGHT COURIER

**Stinson Morrison Hecker LLP
Attn: Greta McMorris
1201 Walnut Street, Suite 2700
Kansas City, MO 64106**

Proofs of claim will be deemed filed only when **actually received** on or before the Bar Dates. **Proofs of claim may not be delivered by facsimile or electronic mail transmission.** Any facsimile or electronic mail submissions will not be accepted and will not be deemed filed until a proof of claim is submitted by one of the methods described above.

4. CONSEQUENCES OF FAILURE TO FILE A PROOF OF CLAIM BY THE APPLICABLE BAR DATE

ANY ENTITY THAT IS REQUIRED TO FILE A PROOF OF CLAIM, BUT THAT FAILS TO DO SO BY THE APPLICABLE BAR DATE DESCRIBED IN THIS NOTICE, SHALL BE FOREVER BARRED, ESTOPPED AND ENJOINED FROM ASSERTING SUCH CLAIM AGAINST THE RECEIVER OR WSU RECEIVING DISTRIBUTIONS FROM THE WSU FUNDS IN RESPECT OF SUCH CLAIM.

A HOLDER OF A POSSIBLE CLAIM AGAINST WSU SHOULD CONSULT AN ATTORNEY REGARDING ANY MATTERS NOT COVERED BY THIS NOTICE, SUCH AS WHETHER THE HOLDER SHOULD FILE A PROOF OF CLAIM.

BY ORDER OF THE COURT

⁴ April 22, 2003

EXHIBIT 2

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

COMMODITY FUTURES TRADING)	
COMMISSION,)	
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Plaintiff,)	
v.)	CIVIL ACTION
)	No. 03-2193-CM
WALL STREET UNDERGROUND,)	
INC., et al.,)	
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Defendants.)	
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PROOF OF CLAIM

1. Name and Address of Creditor/ Investor		DELIVER THIS PROOF OF CLAIM TO: Stinson Morrison Hecker LLP Attn: Greta A. McMorris 1201 Walnut Street, Suite 2900 Kansas City, Missouri 64106	
2. Phone Number:		3. E-mail address:	
4. Basis For Claim: ___ Investor ___ Goods sold ___ Services provided ___ Other (Explain) _____		5. Brief Description of Claim:	
6. Amount of Claim: _____		7. To receive an acknowledgement of the filing of your claim, enclose a self-addressed stamped envelop and copy of this proof of claim.	
8. <i>Attach copies of supporting documents</i> such as invoices or itemized statements summarizing the alleged liability. DO NOT SEND ORIGINALS.			
Date:		Sign and Print name and title, if any, of the creditor or other person authorized to file this claim.	

EXHIBIT 3

**IN THE UNITED STATES DISTRICT COURT
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claim that arose or is deemed to have arisen prior to the Commencement Date.⁶ Claims based on acts or omissions of WSU that occurred before the Commencement Date must be filed on or prior to the Bar Date, even if such claims are not now fixed, liquidated or certain or did not mature or become fixed, liquidated or certain before the Commencement Date.

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SUCH AS WHETHER THE HOLDER SHOULD FILE A PROOF OF CLAIM.**

BY ORDER OF THE COURT

⁶ April 22, 2003.