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CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

COMMODITY FUTURES TRADING  
COMMISSION,

Plaintiff,

vs.

WHITE PINE TRUST CORPORATION, a  
California corporation, and RICHARD  
MATTHEWS, an individual,

Defendants

Case No. 04-CV-2093 J(NLS)

~~Proposed~~ Order of Preliminary Injunction

This matter came on for hearing on October 28, 2004 on the Order to Show Cause why an order for Preliminary Injunction should not be granted to prohibit further violations and why the other relief requested should not be granted pending trial on the merits of this action. On October 21, 2004, this Court issued a Statutory Restraining Order which included a freeze of defendants' assets, appointment of a receiver, and other ancillary relief.

1           The Court, having considered the arguments of counsel, the Plaintiff U.S. Commodity  
2 Futures Trading Commission's ("CFTC") complaint, memorandum of points and authorities, and  
3 other evidence/ exhibits presented and filed herein, finds that:

4           1.       This Court has jurisdiction over the parties and over the subject matter of this action  
5 pursuant to Section 6c of the Commodity Exchange Act, as amended (the "Act") 7 U.S.C. § 13a-1  
6 (2002).

7           2.       Venue lies properly within this District pursuant to Sections 6c(e) of the Act, 7  
8 U.S.C. § 13a-1(c) (2001).

9           3.       There is good cause to believe that the Defendants have engaged, are engaging and  
10 are about to engage in acts and practices constituting violations of the Act, Section 4c(b) of the  
11 Act, 7 U.S.C. § 6c(b) (2002), and Commission Regulations 1.1, 32.9(a) and (c) and 32.11, 17  
12 C.F.R. §§ 1.1, 32.9(a) and (c), and 32.11 (2004), and substantial likelihood that the CFTC will  
13 prevail on the merits.

14           4.       There is good cause to believe that immediate and irreparable damage to the Court's  
15 ability to grant effective final relief for investors in the form of monetary redress will occur from the  
16 sale, transfer, assignment, or other disposition by Defendants of assets or records unless Defendants  
17 are immediately restrained and enjoined by Order of this Court.

18           5.       Good cause exists for the freezing of Defendants' assets and for entry of an order  
19 prohibiting Defendants from destroying records and denying agents of the Commission access to  
20 inspect and copy records.

21           6.       Good cause exists to permit discovery regarding assets of the defendants before  
22 the early meeting of counsel pursuant to Rule 26(d) of the Federal Rules of Civil Procedure.  
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## DEFINITIONS

For the purposes of this Order, the following definitions apply:

7. The term "document" is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes, but is not limited to, writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term.

8. "Assets" means any legal or equitable interest in, right to, or claim to, any real or personal property, including but not limited to: chattels, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, mail or other deliveries, inventory, checks, notes, accounts including bank accounts and accounts at financial institutions, credits, receivables, lines of credit, contracts including spot and futures contracts, insurance policies, and all cash, wherever located.

9. "Defendants" means White Pine Trust Corporation/ Pinnacle Capital Fund ("White Pine"), Richard R. Matthews, Jr. ("Matthews"), and any person insofar as he or she is acting in the capacity of an officer, agent, servant, employee, or attorney of White Pine or Matthews, and any person who receives actual notice of this Order by personal service or otherwise insofar as he or she is acting in concert or participation with White Pine or Matthews

**IT IS HEREBY ORDERED** that

### PROHIBITED CONDUCT

10. Defendants, along with any of their agents, servants, employees or assigns and persons in active concert or participation with any of them who receives actual notice of this Order by personal service or otherwise, and all other persons or entities served with a copy of this

1 Order, are restrained and enjoined, directly or indirectly, from violating Section 4c(b) of the Act,  
2 7 U.S.C. § 6c(b), and the Commission Regulations 32.11, 17 C.F.R. 32.11(a), by offering to enter  
3 into, entering into, executing, confirming the execution of, or conducting business for the  
4 purpose of soliciting, accepting any order for, or otherwise dealing in any transaction in, or in  
5 connection with, a commodity option when: (a) such transactions have not been executed, (b)  
6 such transactions, if executed, have not been conducted on or subject to the rules of a board of  
7 trade which has been designated by the Commission as a "contract market" for such commodity,  
8 and (c) such contracts, if executed, have not been executed or consummated by or through a  
9 member of such contract market.  
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11 11. Defendants, along with any of their agents, servants, employees or assigns and  
12 persons in active concert or participation with any of them who receives actual notice of this  
13 Order by personal service or otherwise, and all other persons or entities served with a copy of this  
14 Order, are restrained and enjoined, directly or indirectly, from violating Section 4c(b) of the Act,  
15 7 U.S.C. § 6c(b), and the Commission Regulations 1.1 and 32.9, 17 C.F.R. §§1.1 and 32.9(a), by  
16 cheating or defrauding investors or potential investors by making material misrepresentations,  
17 among other means; and employing devices, schemes or artifices to defraud investors or  
18 prospective investors, or engaging in transactions, practices or courses of business that operate as  
19 a fraud or deceit upon investors or prospective investors.  
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21 12. Defendants, along with any of their agents, servants, employees or assigns and  
22 persons in concert or participation with any of them who receives actual notice of this Order by  
23 personal service or otherwise, are restrained and enjoined from, directly or indirectly, soliciting  
24 or accepting any customers for commodity futures or commodity options trading and soliciting or  
25 accepting any deposits of funds from existing customers.  
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ASSET FREEZE AND DOCUMENT RETENTION

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2           13. Defendants are restrained and enjoined from directly or indirectly transferring,  
3 selling, alienating, liquidating, encumbering, pledging, leasing, loaning, assigning, concealing,  
4 dissipating, converting, withdrawing, or otherwise disposing of any assets, including those held  
5 in the name of White Pine or Richard R. Mathews Jr., wherever located, including assets held  
6 outside the United States. The assets affected by this paragraph shall include both existing assets  
7 and assets acquired after the effective date of this Order.  
8

9           14. Defendants, and their agents, servants, employees, attorneys, and persons in active  
10 concert or participation with them who receive actual notice of this Order by personal service  
11 except as otherwise ordered by this Court, are restrained and enjoined from directly or indirectly  
12 transferring, selling, alienating, liquidating, encumbering, pledging, leasing, loaning, assigning,  
13 concealing, dissipating, converting, withdrawing, or otherwise disposing of any assets, including  
14 those held in the name of White Pine or Richard R. Mathews, Jr., wherever located, including  
15 assets held outside the United States, except as directed by further order of the Court, or as  
16 directed by the receiver. The assets affected by this paragraph shall include both existing assets  
17 and assets acquired after the effective date of this Order.  
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19           15. Defendants, their officers, agents, servants, employees, and attorneys, and those  
20 persons in active concert or participation with their who receive notice of this Order by personal  
21 service or otherwise are restrained and enjoined from directly or indirectly destroying, mutilating,  
22 erasing, altering, concealing, or disposing of, in any manner, directly or indirectly, any  
23 documents that relate to the business practices or the business or personal finances of  
24 Defendants.  
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26           16. Defendants and all other persons are restrained and enjoined from directly or  
27 indirectly opening or causing to be opened any safe deposit boxes titled in the name or subject to  
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1 access by the Defendants. Notwithstanding this paragraph, the receiver shall be provided with  
2 access to any safe deposit box titled in the name of, or subject to access by Defendants.

3 **APPOINTMENT OF RECEIVER**

4 17. Robb Evans and Associates, LLC is appointed the receiver ("Receiver") for  
5 defendants, and all of the funds, properties, premises, accounts; and other assets directly or  
6 indirectly owned, beneficially or otherwise, by her with the full powers of an equity Receiver.

7 The Receiver shall be the agent of this Court in acting as Receiver under this Order.

8 18. The Receiver shall accomplish the following:

- 9
- 10 A. Assume full control of White Pine by removing any officer, independent  
11 contractor, employee, or agent of the defendants, from control and  
12 management of the affairs of White Pine;
- 13 B. Take exclusive custody, control, and possession of all the funds, property,  
14 mail and other assets of, in the possession of, or under the control of the  
15 defendants, wherever situated. The Receiver shall have full power to sue  
16 for, collect, receive and take possession of all goods, chattels, rights,  
17 credits, moncys, effects, land, leases, books, records, work papers, and  
18 records of accounts, including computer-maintained information, and  
19 other papers and documents of the defendants, including documents  
20 related to customers or clients whose interests are now held by or under  
21 the direction, possession, custody or control of the defendants. The  
22 Receiver shall have discretion to determine that certain personal property  
23 or other assets of the defendants shall be under the Recciver's control, but  
24 shall remain in the possession or custody of the defendants;
- 25 C. Take all steps necessary to secure the business premises of the defendants  
26 and any and all other premises under the control of the defendants;
- 27 D. Preserve, hold and manage all receivership assets, and perform all acts  
28 necessary to preserve the value of those assets, in order to prevent any  
loss, damage or injury to customers or clients;
- E. Prevent the withdrawal or misapplication of funds entrusted to the  
defendants, and otherwise protect the interests of customers or clients;
- F. Manage and administer the defendants by performing all acts incidental  
thereto that the receiver deems appropriate, including hiring or dismissing  
any and all personnel or suspending operations;
- G. Collect all money owed to the defendants;

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- 2 H. Initiate, defend, compromise, adjust, intervene in, dispose of, or become a
- 3 party to any actions or proceedings in state, federal or foreign court
- 4 necessary to preserve or increase the assets of the defendants or to carry
- 5 out his or her duties pursuant to this Order;
- 6
- 7 I. Choose, engage and employ attorneys, accountants, appraisers, and other
- 8 independent contractors and technical specialists, as the Receiver deems
- 9 advisable or necessary in the performance of duties and responsibilities
- 10 under the authority granted by this Order;
- 11
- 12 J. Issue subpoenas to obtain documents and records pertaining to the
- 13 receivership, and conduct discovery in this action on behalf of the
- 14 receivership estate;
- 15
- 16 K. Open one or more bank accounts as designated depositories for funds of
- 17 the defendants. The Receiver shall deposit all funds of the defendants in
- 18 such designated accounts and shall make all payments and disbursements
- 19 from the receivership estate from such accounts; and
- 20
- 21 L. Make payments and disbursements from the receivership estate that are
- 22 necessary or advisable for carrying out the directions of, or exercising the
- 23 authority granted by, this Order. The Receiver shall apply to the Court for
- 24 prior approval of any payment of any debt or obligation incurred by the
- 25 defendants prior to the date of entry of this Order, except for payments that
- 26 the Receiver deems necessary or advisable to secure assets of the
- 27 defendants.
- 28
- M. Take control of any internet sites operated by the Defendants or for the
- Defendants' benefit.
- N. Liquidate any assets of the Defendants which may depreciate during the
- course of this litigation, and hold the proceeds of such liquidation until
- further order of this Court.
19. The Receiver shall have authority to accomplish the following:
- A. Determine that certain personal property or other assets of Defendants
- shall be under the Receiver's control, but shall remain in the possession or
- custody of Defendants;
- B. Initiate, defend, compromise, adjust, intervene in, dispose of, or become a
- party to any actions or proceedings in state, federal or foreign court
- necessary to preserve or increase the assets of Defendants or to carry out
- the Receiver's duties pursuant to this Order;
- C. Choose, engage, and employ attorneys, accountants, appraisers, and other
- independent contractors and technical specialists, as the Receiver deems

1                   advisable or necessary in the performance of duties and responsibilities  
2                   under the authority granted by this Order; and

3                   D.     Issue subpoenas to obtain documents and records pertaining to the  
4                   receivership, and conduct discovery in this action on behalf of the  
5                   receivership estate.

6                   20.   Immediately upon service of this Order upon the Defendants, Defendants, their  
7                   officers, agents, servants, employees, and attorneys, and those persons in active concert or  
8                   participation with them, and any other person or entity served with a copy of this Order, shall  
9                   immediately or within such time as permitted by the Receiver in writing, deliver over to the  
10                  Receiver:

11                  A.     Possession and custody of all funds, assets, property, and all other assets,  
12                  owned beneficially or otherwise, wherever situated, of Defendants;

13                  B.     Possession and custody of documents of Defendants, including but not  
14                  limited to, all books and records of accounts, all financial and accounting  
15                  records, balance sheets, income statements, bank records (including  
16                  monthly statements, canceled checks, records of wire transfers, and check  
17                  registers), client lists, title documents and other papers;

18                  C.     Possession and custody of all funds and other assets belonging to members  
19                  of the public now held by Defendants;

20                  D.     All keys, computer passwords, entry codes, and combinations to locks  
21                  necessary to gain or to secure access to any of the assets or documents of  
22                  Defendants, including, but not limited to, access to the business premises  
23                  of Defendants, telephone systems, voicemail, telephone answering  
24                  devices, computer systems, computer software, or other property; and

25                  E.     Information identifying the accounts, employees, properties, or other assets  
26                  or obligations of Defendants.

27                  21.   Defendants shall cooperate fully with and assist the Receiver. The cooperation  
28                  and assistance of Defendants shall include, but not be limited to, transferring funds at the  
29                  receiver's direction, providing any information to the Receiver that the Receiver deems necessary  
30                  to exercising the authority and discharging the responsibilities of the Receiver under this Order,  
31                  and advising all persons who owe money to Defendants that all debts should be paid directly to

1 the Receiver.

2 22. Except by leave of this Court, during the pendency of the receivership ordered  
3 herein, Defendants and all other persons and entities in active concert or participation with them,  
4 shall be and hereby are stayed from taking any action to establish or enforce any claim, right, or  
5 interest for, against, on behalf of, or in the name of, Defendants, the Receiver, receivership  
6 assets, or the Receiver's duly authorized agents acting in their capacities as such, including but  
7 not limited to, the following actions:  
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- 9 A. Commencing, prosecuting, litigating, or enforcing any suit, except that  
10 actions may be filed to toll any applicable statute of limitations;
- 11 B. Accelerating the due date of any obligation or claimed obligation,  
12 enforcing any lien upon, or taking or attempting to take possession of, or  
13 retaining possession of, property of Defendants or any property claimed by  
14 Defendants, or attempting to foreclose, forfeit, alter, or terminate any  
15 interests of Defendants in property, whether such acts are part of a judicial  
16 proceeding or otherwise;
- 17 C. Using self-help or executing or issuing, or causing the execution or  
18 issuance of any court attachment, subpoena, replevin, execution, or other  
19 process for the purpose of impounding or taking possession of or  
20 interfering with, or creating or enforcing a lien upon any property,  
21 wherever located, owned by or in the possession of Defendants, or the  
22 Receiver, or any agent of the Receiver; and
- 23 D. Doing any act or thing to interfere with the Receiver taking control,  
24 possession, or management of the property subject to the receivership; to  
25 in any way interfere with the Receiver or the duties of the Receiver; or to  
26 interfere with the exclusive jurisdiction of this Court over the property and  
27 assets of Defendants.

28 This Paragraph does not stay the commencement or continuation of an action or proceeding by a  
governmental unit to enforce such governmental unit's civil, criminal, police, statutory, or  
regulatory power.

29 23. The Receiver and all personnel hired by the Receiver as herein authorized,  
30 including counsel to the Receiver, are entitled to reasonable compensation for the performance of  
31 duties pursuant to this Order and for the cost of actual out-of-pocket expenses incurred by them,  
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1 from the assets now held by, or in the possession or control of, or which may be received by  
2 Defendants. The Receiver shall make reports to the Court upon Order of the Court and serve on  
3 the parties periodic requests for the payment of such reasonable compensation, with the first such  
4 request filed no more than sixty (60) days after the date of this Order and, thereafter, every ninety  
5 (90) days. The requests for compensation shall itemize the time and specific nature of services  
6 rendered by the Receiver and all personnel hired by the Receiver. The Receiver shall not  
7 increase the hourly rates used as the bases for such fee applications without prior approval of this  
8 Court. The CFTC shall have the opportunity to review and to object to each such request for  
9 compensation.  
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11         24. Each firm, corporation, partnership, association, or other person or entity with  
12 notice which holds or which is a depository of funds, securities, assets, or other property of  
13 Defendants is prohibited, until further order of this Court, from transferring, withdrawing,  
14 removing, or disposing of any such funds, securities, assets, or other property except for the  
15 purpose of transferring such assets to the custody, control, and possession of the Receiver in  
16 accordance with this Court's October 21, 2004 *Statutory Ex Parte Restraining Order Freezing*  
17 *Assets, Preserving Books and Records, Allowing Access To Books and Records, and Appointing*  
18 *Temporary Receiver, and Order Granting Expedited Discovery.*  
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21         25. This Court will entertain application for reasonable and necessary living expenses  
22 upon proper written submission. Proper submission requires that Defendants file such  
23 application under oath with the Clerk of the Court and set forth in detail, fully substantiated by  
24 all relevant financial documentation, the amount of funds necessary to pay reasonable and  
25 necessary living expenses, a description of the expenses for which those funds are to be applied,  
26 a description of the assets sought to be used to pay such expenses, and a description of the  
27 derivation of such assets. The CFTC may object or otherwise respond to such application.  
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