

**ROBB EVANS & ASSOCIATES LLC**

**Receiver of**

**White Pine Trust Corporation**

**Richard R. Matthews, Jr.**

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**Commodity Futures Trading Commission v. White Pine Trust Corporation, Inc, et al.**  
**CASE No. 04-CV-2093 J (NLS)**

**Order:**

- (1) Approving Proposed Claims Filing and Allowance Procedures; and**
- (2) Approving Procedure for Limited Notice**

**Filed January 27, 2006**

FILED

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CLERK US DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY Calumet DEPUTY

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

COMMODITY FUTURES TRADING  
COMMISSION,

Plaintiff,

v.

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

Defendants,

LUCIA MATTHEWS, an individual,  
Relief Defendant.

CASE NO. 04cv2093 J (NLS)

**ORDER:**

- 1) APPROVING PROPOSED CLAIMS FILING AND ALLOWANCE PROCEDURES; AND
- 2) APPROVING PROCEDURE FOR LIMITED NOTICE

This matter comes before the Court on the Motion of Permanent Receiver Robb Evans & Associates, LLC, ("Recciver") for an order approving its proposed claims filing and allowance procedures, and approving the procedurc for limited notice of the Motion. [Doc. No. 84.] None of the parties have opposed. The Court decides the matter on the papers submitted and without oral argument pursuant to Civil Local Rule 7.1.d.1. See S.D. Cal. Civ. R. 7.1.d.1.; (Order Re: Oral Argument at 1.) For the reasons set forth below, the Court **GRANTS** Receiver's Motion.

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1 **Background**

2 Plaintiff Commodity Futures Trading Commission alleges that since at least August 2000,  
3 Defendants White Pine Trust Corporation ("White Pine"), Richard Matthews and Stephan Baere  
4 (collectively, "Defendants") have been illegally operating a foreign currency trading firm out of  
5 San Diego, California.<sup>1</sup> (See Compl. at 1.) Plaintiff claims that through direct solicitation and a  
6 Web site, Defendants invited retail customers to trade purported foreign-currency contracts and  
7 foreign-currency options contracts. (See *id.*) Furthermore, Plaintiff contends that since at least  
8 February 2003, Defendants have solicited at least \$650,000 in customer funds from at least three  
9 customers, and solicited millions of additional dollars from hundreds of other retail customers.  
10 (See *id.* at 1-2.) Plaintiff also alleges that Defendants misappropriated customer funds by  
11 depositing the money into Defendant White Pine's operating accounts and using it for personal  
12 expenses. (See *id.* at 2.)

13 The Plaintiff claims that when questioned under oath, Defendant Matthews lied about  
14 soliciting customers, stating he had no customers and held no customer funds. (See *id.* at 3.) He  
15 also claimed Defendant White Pine's Web site was only a business proposal and was actually  
16 fictitious. (See *id.*) Plaintiff alleges that Defendant Matthews was engaged in misappropriation  
17 and fraudulent solicitation of customer funds, and dealing in illegal off-exchange options  
18 contracts. (See *id.*) Plaintiff also contends that Defendant White Pine is vicariously liable for  
19 these acts because Defendants Matthews and Baere were agents of Defendant White Pine when  
20 they engaged in the above-specified conduct. (See *id.*; First Am. Compl. at 3.)

21 On October 20, 2004, pursuant to Section 6c(a) of the Commodity Exchange Act, 7  
22 U.S.C. § 13a-1, the Plaintiff instituted an action against the Defendants to enjoin their unlawful  
23 actions and compel compliance with the provisions of this Act. [Doc. No. 1.] Also, on October  
24 20, 2004, the Plaintiff filed an Ex Parte Motion for Statutory Restraining Order, Appointment of  
25 a Temporary Receiver and Other Ancillary Relief. [Doc. No. 4.] On October 28, 2004, the  
26 Receiver was designated Permanent Receiver for the Defendants by Order of this Court, stating  
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28 <sup>1</sup> On November 19, 2004, the Plaintiff filed a First Amended Complaint, adding Stephan  
Baere as a defendant. (See First Am. Compl. at 1-2, 6.)

1 that all of the funds, properties, premises, accounts and other assets owned by the Defendants  
2 were under the power of the Receiver. (See Order of Prelim. Inj. at 7.) On February 23, 2005,  
3 the Receiver filed a Motion for Order Approving Sale of Defendant's Real and Personal  
4 Property by Private Sale and Approving Procedure for Limited Notice.<sup>2</sup> [Doc. No. 46.] The  
5 Court denied the Receiver's request for order approving sale of real property because the sale  
6 was not in compliance with requirements under 28 U.S.C. § 2001(b), but approved the sale of  
7 Defendant's gold coins and jewelry. (See Order Granting in Part Receiver's Mot. for Approval  
8 of Sale of Real and Personal Property at 2-3.) Subsequently, on August 11, 2005, the Court  
9 approved the sale of real property. (See Order Granting Mot. for Sale of Real Property at 3.)

10 On June 6, 2005, the Receiver filed a Motion for Order Approving Payment of  
11 Administrative Fees and Expenses Incurred from October 21, 2004, through April 30, 2005.  
12 [Doc. No. 71.] On July 22, 2005, the Receiver's request was granted. (See Order Granting  
13 Receiver's Request for Payment of Fees at 2-3.) Another Motion for Order Approving Payment  
14 of Administrative Fees and Expenses Incurred from May 1, 2005, through August 31, 2005, was  
15 filed on October 20, 2005, and is still pending. [Doc. No. 98.]

### 16 17 *Legal Standard*

18 The "primary purpose of equity receiverships is to promote orderly and efficient  
19 administration of the estate by the district court for the benefit of creditors." *S.E.C. v. Hardy*,  
20 803 F.2d 1034, 1038 (9th Cir. 1986). Generally, reasonable procedures instituted by the district  
21 court that serve this purpose are upheld. *See id.* Furthermore, "a district court's power to  
22 supervise an equity receivership and to determine the appropriate action to be taken in the  
23 administration of [it] is extremely broad ...." *Id.* at 1037. The complex nature of receiverships  
24 warrants such treatment and it is "a recognized principle of law that the district court has broad  
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<sup>2</sup> The Motion pertained to the "sale of personal and real property ... owned by  
[Defendant Matthews] and/or his wife, Relief Defendant Lucia Matthews." (See Order Granting  
in Part Receiver's Mot. for Approval of Sale of Real and Personal Property at 1.)

1 powers and wide discretion to determine the appropriate relief in an equity receivership.” *S.E.C.*  
2 *v. Lincoln Thrift Association*, 577 F.2d 600, 606 (9th Cir. 1978).

### 4 *Discussion*

#### 5 **I. Claims Filing and Allowance Procedures**

6 The Receiver now asks the Court to approve its proposed claims filing and allowance  
7 procedures. The Receiver has analyzed the financial records of the receivership and determined  
8 the amount each investor paid to the receivership for investment purposes and the amount the  
9 receivership paid to the investors on account of their investments. (*See* Receiver’s Mot. for  
10 Order Approving Proposed Claims Filing at 4.) The Receiver contends that the interest  
11 payments made to the investors were disbursed with funds paid into the entire investment  
12 scheme by later investors and therefore were not profits. (*See id.*) As a remedy, the Receiver  
13 seeks approval of the following: 1) crediting investor account balances for funds actually paid to  
14 the Defendants; 2) reversing interest payments made to the investors; and 3) treating actual  
15 payments of interest as a return of the original capital invested. The Receiver seeks approval to  
16 make distributions to claimants on a pro rata basis.

17 The pro rata distribution procedure proposed by the Receiver is reasonable and efficient  
18 because it treats all investors’ claims equally. This kind of distribution plan was approved by the  
19 U.S. Court of Appeals for the Ninth Circuit in *S.E.C. v. Capital Consultants, LLC*, 397 F.3d 733  
20 (9th Cir. 2005). In that case, the U.S. Securities and Exchange Commission and the U.S.  
21 Department of Labor brought suit to place defendant, an investment management company, in a  
22 receivership, claiming that it had invested client funds into valueless loans. *See id.* at 736. The  
23 defendant was placed in receivership and the district court subsequently approved the receiver’s  
24 plan to pool the private assets of the defendant receivership and give each client a pro rata  
25 distribution of those assets. *See id.* at 737. The plan also provided that any third-party claim by  
26 a client would reduce the client’s claim by fifty percent. *See id.* at 738. The clients objected, but  
27 the Court of Appeals affirmed the district court’s approval of the receiver’s plan, finding that the  
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1 district court had broad discretion in determining the appropriate relief in an equity receivership.  
2 *See id.* at 750.

3 In the instant Motion, the Receiver proposes a distribution scheme and allowance  
4 procedures similar to those above, where all funds paid to the investors will be considered a  
5 return of capital, any interest credited will be reversed and investors will be entitled to share in  
6 all receivership assets subject to the proceeding. (*See Receiver's Mem. in Support of Mot. for*  
7 *Order Approving Proposed Claims Filing at 4.*) When distributions are made, payment on  
8 approved investor claims shall be made on a pro rata basis, with payment on each such claim  
9 calculated according to the ratio of the amount of the approved investor claim to the total amount  
10 of all approved investor claims. This method of repayment is reasonable and it is within the  
11 Court's broad discretion to approve it. *See S.E.C. v. Hardy*, 803 F.2d 1034, 1037 (9th Cir.  
12 1986). It is equitable that any funds the Defendant receivership already paid the investors in the  
13 form of repayments or phantom interest payments be deducted from any claims or awards they  
14 may receive by virtue of these proceedings against the Defendant receivership. This payment  
15 scheme also promotes judicial efficiency by consolidating all investors' claims into one  
16 proceeding. Therefore, the Court **APPROVES** the Receiver's proposed claims filing and  
17 allowance procedures.

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### 19 **II. Limited-Notice Procedure**

20 The Receiver also seeks approval of the procedure for limited notice of its Motion. (*See*  
21 *Receiver's Mot. for Order Approving Proposed Claims Filing at 6.*) The Receiver states that it  
22 would be unduly burdensome to copy and serve the Motion on all parties. (*See id.*)  
23 Alternatively, the Receiver proposes the following: 1) serving the Motion on all the parties  
24 named in the action; 2) serving the Notice of Motion on all known investors and creditors by  
25 mail; and 3) posting the Motion in its entirety on its Web site (at  
26 <http://www.robbevans.com/html/whitepine/html>). (*See id.* at 7.) The Notice of Motion states  
27 that the Receiver will provide a copy of the Motion to any interested party upon request. (*See*  
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1 *id.*) On August 5, 2005, the Receiver filed with the Court a Notice to investors and creditors of  
2 the instant Motion. [Doc. No. 88.]

3 Rule 5(a) of the Federal Rules of Civil Procedure states that every document required by  
4 its terms to be served, such as a motion, shall be served pursuant to Rule 4 of the Federal Rules of  
5 Civil Procedure. *See* Fed. R. Civ. P. 5(a). Rule 5(c) is an exception to the above rule and allows  
6 a court to modify service procedure if there is an unusually large number of defendants. *See* Fed.  
7 R. Civ. P. 5(c). Some courts have held that Rule 4 is a flexible rule that should be liberally  
8 construed as long as the party receives sufficient notice. *See Direct Mail Specialists, Inc. v. Eclat*  
9 *Computerized Technologies, Inc.*, 840 F.2d 685, 688 (9th Cir. 1988).

10 It would not be cost effective for the Receiver to serve the Motion on all of the parties  
11 because there is large number of interested parties. There are approximately 200 known investors  
12 and 31 known creditors implicated by the Receiver's Motion. (*See* Receiver's Mot. for Order  
13 Approving Proposed Claims Filing at 6.) Mailing the Notice of Motion to all the known  
14 investors and creditors, providing a copy of the Motion upon request and posting the Motion on  
15 the Receiver's Web site are reasonable and sufficient alternatives that will provide adequate  
16 notice. Therefore, the Receiver's procedure for limited notice of its Motion is **APPROVED**.

### 17 18 **Conclusion**

19 In light of the discussion above and the fact that there is no opposition to the Motion, the  
20 Court **GRANTS** the Receiver's Motion for Order Approving Proposed Claims Filing and  
21 Allowance Procedures, and Approving Procedure for Limited Notice Thereof. Accordingly, the  
22 Court **RULES** as follows:

- 23 (1) The claims of all investors identified on the databascs of the Receivership  
24 Defendants shall be treated similarly by entitling said investors to share in all  
25 receivership assets subject to this receivership proceeding;<sup>3</sup>

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27 <sup>3</sup> Receivcrship Defendants include Defendants White Pine, Matthews and Baere, and all  
28 of the funds, properties, premises, accounts, and other assets directly or indirectly owned,  
beneficially or otherwise, by them. (*See* Order of Prelim. Inj. at 6; Order Denying Mot. to  
Dismiss and Granting CFTC's Prelim. Inj. in Part at 15.)

- 1 (2) Investor account balances shall be credited for funds actually deposited or paid by  
2 the investor to the Receivership Defendants;
- 3 (3) Credits characterized as interest and applied by the Receivership Defendants to  
4 increase investor account balances shall be reversed;
- 5 (4) Actual payments of interest and actual payments for any other purposes, such as  
6 withdrawals from investment accounts, shall be treated as a return of capital and the  
7 investor account balance shall be reduced accordingly. "Paper" transfers from one  
8 account to another or to another account holder shall be disregarded;
- 9 (5) The Receiver shall provide written notice to each investor of the Receiver's  
10 calculation of the investor's account balance and the amount the Receiver  
11 calculates as the claim of the investor based on the treatment of the account and  
12 payments and adjustments as required herein;
- 13 (6) Each investor claimant shall be provided thirty days from the date of service of  
14 written notice of the calculation of the claim to object to the proposed claim  
15 amount. The objection of the investor must be in writing and received by the  
16 Receiver within the thirty-day notice period. If the investor creditor fails to timely  
17 object to the notice and the Receiver's calculation of the investor claim amount,  
18 then the amount set forth in the notice shall become such investor's approved  
19 investor claim upon which future distributions in the case shall be based;
- 20 (7) Non-investor claimants shall be provided with written notice of the amount the  
21 Receiver calculates is owed to the creditor based on the records of the receivership.  
22 Non-investor creditors shall have thirty days from the date of service of the notice  
23 to object to the proposed allowed amount of such creditor's claim. If no timely  
24 written objection is received by the Receiver within said thirty-day period, the  
25 amount stated in the notice shall become such creditor's approved creditor claim;
- 26 (8) As to any proposed investor claim or creditor claim for which the Receiver receives  
27 a timely objection, the Receiver shall attempt to resolve the claim dispute through  
28 negotiation. If the parties are unable to resolve the dispute through negotiation, the

1 Receiver shall resolve claims objections by motion filed by the Receiver for  
2 determination by this Court as to the proper allowed amount of the claim; and


3 (9) As and when distributions are made, payment on approved investor claims shall be  
4 made on a pro rata basis, with payment on each such claim calculated based on the  
5 ratio of the amount that the approved investor claim bears to the total amount of all  
6 approved investor claims.

7 The Court does not presently make any determination as to whether and the extent to  
8 which approved creditor claims shall be subordinated to approved investor claims.

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10 **IT IS SO ORDERED.**

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13 Dated: 1-27-06

14 cc: Magistrate Judge Stormes  
15 All Counsel of Record

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NAPOLEON A. JONES, JR.  
United States District Judge