

**UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES COMMODITY FUTURES)	
TRADING COMMISSION,)	
)	
Plaintiff,)	
)	Case No.: 1:12-cv-07127
v.)	
)	Hon. Edmond E. Chang
NIKOLAI SIMON BATTOO; BC CAPITAL GROUP)	
S.A.; BC CAPITAL GROUP INTERNATIONAL)	
LIMITED a/k/a BC CAPITAL GROUP LIMITED, a/k/a)	
BC CAPITAL GROUP GLOBAL; and BC CAPITAL)	
GROUP HOLDINGS S.A.,)	
)	
Defendants.)	
)	

NOTICE OF MOTION

PLEASE TAKE NOTICE that, on Tuesday, September 11, 2018, at 9:30 a.m., or as soon thereafter as counsel may be heard, the undersigned shall appear before the Honorable Edmond E. Chang, United States District Court for the Northern District of Illinois, Eastern Division, or such other judge as may be sitting in his place in Courtroom 2119, 219 S. Dearborn Street, Chicago, Illinois 60604, and shall present the **Receiver’s Motion to Approve Procedures for Noticing Its Proposed Plan of Distribution and to Set Deadlines to Object**, a copy of which is hereby served upon you.

Dated: September 7, 2018

Respectfully submitted,
**ROBB EVANS & ASSOCIATES LLC,
RECEIVER**

By: /s/ Blair R. Zanzig

(One of Its Attorneys)

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*Counsel for Robb Evans & Associates LLC in
its capacity as Receiver*

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NIKOLAI SIMON BATTOO; BC CAPITAL)	Hon. Edmond E. Chang
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INTERNATIONAL LIMITED a/k/a BC CAPITAL)	
GROUP LIMITED a/k/a BC CAPITAL GROUP)	
GLOBAL; AND BC CAPITAL GROUP)	
HOLDINGS S.A.,)	
)	
Defendants.)	

**RECEIVER’S MOTION TO APPROVE PROCEDURES FOR NOTICING ITS
PROPOSED PLAN OF DISTRIBUTION AND TO SET DEADLINES TO OBJECT**

Robb Evans & Associates LLC (the “Receiver”), the Court-appointed receiver of Defendants Nikolai Simon Battoo (“Battoo”) and the BC Common Enterprise¹ (collectively with Battoo, the “Defendants”), hereby moves (the “Motion”) for entry of an order approving the form and manner of notice of the Receiver’s Motion to Approve Its Plan of Distribution and Treatment of Claims (the “Distribution Motion”). In support of its Motion, the Receiver states:

BACKGROUND

1. In December 2015, the Court authorized a “Claims Verification Procedure” by which interested parties could assert potential claims against receivership assets. (*See* Order dated 12/10/2015 [Dkt. 486].) Pursuant to those procedures, during late January and February

¹ As defined in the Preliminary Injunction, the “BC Common Enterprise” consists of BC Capital Group S.A., BC Capital Group International Limited a/k/a BC Capital Group Limited a/k/a BC Capital Group Global, and BC Capital Group Holdings S.A.

2016, the Receiver served claims notices on all persons and entities for whom the Receiver had contact information either by electronic mail (if available), Federal Express, or U.S. Mail. The Receiver also posted notice on its website and published the Court-approved “Publication Notice” in the Wall Street Journal, International Edition.

2. Excluding certain claims submitted by the BVI Liquidators, the Receiver has identified or received 1100 claims from various individuals and entities.

3. In August 2018, the Receiver fully effectuated its settlement with the BVI Liquidators thereby resolving the BVI Liquidators’ asserted entitlement to substantially all receivership assets and related claims. Having otherwise completed its review of all other identified claims, the Receiver is concurrently with this motion filing its motion seeking final approval of its plan of distribution and treatment of claims.

4. Given the substantial number of claimants, many of whom are outside the United States, delivery of a physical copy of the Distribution Motion would be prohibitively expensive. Rather, following a similar procedure as the Court approved to provide notice of the Claims Verification Procedures and subsequently the proposed settlement with the BVI Liquidators, the Receiver proposes again to send notice principally via email while reserving other methods only where email addresses are unavailable.

RELIEF REQUESTED

5. A federal district court has broad powers in fashioning appropriate relief over an equity receivership. *Liberte Capital Group, LLC v. Capwill*, 462 F.3d 543, 551 (6th Cir. 2006); *see also* Fed. R. Civ. P. 66 (“The practice in the administration of estate by receivers . . . shall be in accordance with the practice heretofore followed in the courts of the United States or as provided in rules promulgated by the district court.”). In exercising its traditional powers of

equity, this Court has wide discretion concerning the way receivership estate is to be administered.

6. In the interests of full transparency and due process, the Receiver seeks to provide broad notice to all claimants of (a) the Receiver's proposed plan for distributing receivership assets, (b) its proposed final treatment of claims, and (c) the corresponding objection deadlines. At the same time, the Receiver seeks to provide such notice effectively but without incurring unnecessary expense.

7. Accordingly, the Receiver seeks approval of the following notice procedures and objection deadlines:

(a) All objections to the Distribution Motion shall be in writing and filed with the Clerk of the Court with copies served on the Receiver.

(b) The Receiver shall serve each party to the case and their counsel with a copy of the Distribution Motion as provided by the Federal Rules of Civil Procedure.

(c) The Receiver shall send a notice of the Distribution Motion by one of the means described below to all claimants as identified in Exhibit B to the Distribution Motion, consisting of all persons or entities who submitted claims through the Claims Verification Procedure or whom the Receiver otherwise identified as holding a claim to receivership assets (collectively, the "Claimants").

(d) The Receiver may provide notice to Claimants substantially in the form of Exhibit A (the "Summary Notice") via email. Among other things, the Summary Notice will provide each Claimant with their corresponding Claim ID that they may use to confirm the amount of their Allowed Claim listed in Exhibit B to the Distribution Motion. The Summary Notice will also provide the internet address (URL) for the location on the Receiver's website

where the recipient may, free of charge, obtain a copy of the Distribution Motion that is otherwise publicly available through the Court's ECF system.

(e) If providing notice via email, the Receiver shall use the email address, if any, reflected in the records of the receivership entities, or such other email address subsequently used by the Claimant to correspond with the Receiver regarding their claim.

(f) For persons or entities whom the Receiver does not provide notice via email, the Receiver shall deliver a copy of the Summary Notice via U.S. mail or other commercial carrier for delivery within seven days.

(g) For persons or entities who have contacted the Receiver through a representative, e.g., attorney, accountant, investment advisor, or family member, the Receiver shall direct notice to that representative and such notice shall be deemed sufficient and proper.

(h) Within five business days of receiving any actual notice that delivery of the Summary Notice via email failed, the Receiver shall attempt to: (i) send the Summary Notice to any alternative email address of which the Receiver is aware; or (ii) send a physical copy of the Summary Notice as provided in subparagraph (f) above.

(i) Additionally, the Receiver shall post a copy of the Distribution Motion on its website so that it is accessible to the public without charge.

(j) To allow the Receiver sufficient time to prepare notices for each Claimant with their respective claim identification number, the Receiver shall send all required notices by October 5, 2018.

(k) Any objections to the Distribution Motion shall be filed with the Clerk of Court in writing no later than November 5, 2018.

(l) The Court shall set a status hearing for November 15, 2018, or such later time as is convenient for the Court, for the Receiver to report on any objections received and address whether any further response to such objections are required.

8. In proposing the forgoing notice procedures, the Receiver does not propose publishing notice in any newspaper or other periodical of general circulation. The Receiver previously published notice of the claims bar date and related claims procedures in the international edition of the Wall Street Journal at a cost of over \$50,000. Notwithstanding such expense, the Receiver is unaware of any Claimant having contacted the Receiver because of such publication implying little benefit to providing publication notice again. Moreover, to the extent that such publication notice did have some unknown effect, it is reasonable to infer that any persons previously reached by such publication would have already contacted the Receiver or otherwise involved themselves in this case so that they will receive notice of the Distribution Motion via the means otherwise proposed here.

9. In the Receiver's experience, the procedures proposed here are reasonably calculated to provide actual notice to all Claimants and does so at substantially less cost to the receivership than attempting to deliver physical notices or some other means.

WHEREFORE, Robb Evans & Associates LLC, in its capacity as court-appointed Receiver, respectfully requests the Court enter an order: (a) granting the Motion; (b) approving

the form of the Summary Notice attached as Exhibit A; (b) approving the procedures for providing notice set forth in paragraph 7 of the Motion; (c) directing the Receiver to send all required notices no later than October 5, 2018; (d) setting November 5, 2018 as the deadline by which any objections to the Distribution Motion must be filed, in writing, with the Clerk of Court as provided in the Summary Notice; and (e) granting the Receiver such further relief as the Court may deem just and proper.

Dated: September 7, 2018

Respectfully submitted,
ROBB EVANS & ASSOCIATES LLC,
RECEIVER

By: /s/ Blair R. Zanzig
(One of Its Attorneys)

Blair R. Zanzig (No. 6273293)
John Hiltz (No. 6289744)
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EXHIBIT A

**UNITED STATES DISTRICT COURT
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GROUP S.A.; BC CAPITAL GROUP)	
INTERNATIONAL LIMITED a/k/a BC CAPITAL)	
GROUP LIMITED a/k/a BC CAPITAL GROUP)	
GLOBAL; AND BC CAPITAL GROUP)	
HOLDINGS S.A.,)	
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Defendants.)	

**NOTICE OF RECEIVER’S MOTION TO APPROVE
PLAN OF DISTRIBUTION AND TREATMENT OF CLAIMS
(Deadline to File Written Response: November 5, 2018)**

To: *[Insert Claimant’s Name]*

Robb Evans & Associates LLC (the “Receiver”) is the court-appointed receiver over the assets of Nikolai Battoo, and several companies he controlled, including BC Capital Group, S.A. You are receiving this notice because you submitted a claim to the Receiver or the Receiver otherwise identified you as an investor in one of the funds controlled by Battoo or BC Capital.

PLEASE TAKE NOTICE that the Receiver has filed a motion with the United States District Court for the Northern District of Illinois seeking final approval of the Receiver’s plan of distribution and treatment of claims (the “Distribution Motion”). You can obtain a complete copy of the Distribution Motion at no cost here:

[Insert URL Address]

The Receiver has assigned all claims that it received a claim identification number or “Claim ID.” Your Claim ID is _____. You may confirm the amount of your claim by looking up your Claim ID on the schedule of approved claims attached as Exhibit B to the Distribution Motion.

Keep in mind that the amount of your claim, if any, is not the amount you will receive. Instead, the Receiver is proposing to distribute receivership assets to each claimant *pro rata* based on the amount of their approved claim multiplied by the ratio of available funds to total approved claims. If the Receiver’s Distribution Motion is granted, the Receiver expects that claimants will

receive somewhere between 7 and 8 percent of their approved claim. Such estimate is subject to change. For more detailed information, you may review the Distribution Motion available through the Receiver's website as described above.

RESPONSE DEADLINE. IF YOU WISH TO OBJECT TO THE RECEIVER'S PLAN OF DISTRIBUTION AND TREATMENT OF CLAIMS, YOU MUST FILE A WRITTEN RESPONSE WITH THE COURT NO LATER THAN **NOVEMBER 5 AT 5:00 PM** (CST). YOU MUST INCLUDE THE FOLLOWING LANGUAGE AT THE TOP OF YOUR OBJECTION: "CFTC V. BATTOO, CASE NUMBER 12-CV-07127."

TO FILE YOUR RESPONSE, YOU MUST SEND IT VIA U.S. MAIL, OVERNIGHT COURIER OR HAND DELIVERY SO THAT THE CLERK OF THE COURT RECEIVES IT ON OR BEFORE THE DEADLINE AT THE FOLLOWING ADDRESS:

Clerk of the United States District Court
for the Northern District of Illinois
219 S. Dearborn
Chicago, Illinois 60604

With copies to the following:

Robb Evans and Associates LLC
Attn: BC Capital / Battoo Receiver
11450 Sheldon Street
Sun Valley, California 91352-1121

or via email to BCCapital@robbevans.com

or via fax to +1 (818) 768-8802

Any response you send will become part of the official court record and may become accessible by the public. You should redact or omit any sensitive information, including account numbers and social security numbers.

If you have any questions or need additional information, you are invited to contact the Receiver who will do its best to respond to your questions if it can. However, to have any objection to the Distribution Motion considered by the Court you must file it in writing as described above.