

**ROBB EVANS**  
**Receiver of**  
**D.W. Heath & Associates, Inc.;**  
**PCM Fixed Income Fund I, LLC;**  
**Private Capital Management, Inc.;**  
**Private Collateral Management, Inc.**  
**and the Schlarmann Interests**

11450 Sheldon Street  
Sun Valley, California 91352-1121  
Telephone No.: (818) 768-8100  
Facsimile No.: (818) 768-8802

**Securities and Exchange Commission v. D. W. Heath & Associates Inc., et al.**  
**CASE No. CV-04-02949 JFW (Ex)**

**Notice of Motion and of Hearing on Motion by Receiver for Order:**

- (1) Approving Final Report and Accounting;**
- (2) Approving Modified Treatment of Troxler Enterprises Claim;**
- (3) Approving Final Distribution of Receivership Assets;**
- (4) Approving Receiver's and Attorneys' Fees and Expenses from March 1, 2008 Through Closing;**
- (5) Discharging the Receiver;**
- (6) Relieving Receiver of All Duties and Liabilities;**
- (7) Exonerating Receiver's Bond; and**
- (8) Authorizing Abandonment and Destruction of Records and Wind-Up of Receivership Estate**

**Filed July 1, 2009**

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**ROBB EVANS**

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8 **UNITED STATES DISTRICT COURT**

9 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

10 SECURITIES AND EXCHANGE  
11 COMMISSION,

12 Plaintiff,

13 v.

14 D.W. HEATH & ASSOCIATES, INC.,  
etc., et al.,

15 Defendants.  
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CASE NO. CV 04-02949 JFW (Ex)

**NOTICE OF MOTION AND OF  
HEARING ON MOTION BY  
RECEIVER FOR ORDER (1)  
APPROVING FINAL REPORT AND  
ACCOUNTING; (2) APPROVING  
MODIFIED TREATMENT OF  
TROXLER ENTERPRISES CLAIM;  
(3) APPROVING FINAL  
DISTRIBUTION OF RECEIVERSHIP  
ASSETS; (4) APPROVING  
RECEIVER'S AND ATTORNEYS'  
FEES AND EXPENSES FROM  
MARCH 1, 2008 THROUGH  
CLOSING; (5) DISCHARGING  
RECEIVER; (6) RELIEVING  
RECEIVER OF ALL DUTIES AND  
LIABILITIES; (7) EXONERATING  
RECEIVER'S BOND; (8)  
AUTHORIZING ABANDONMENT  
AND DESTRUCTION OF RECORDS  
AND WIND-UP OF RECEIVERSHIP  
ESTATE**

Date: July 27, 2009  
Time: 1:30 p.m.  
Place: Courtroom 16  
312 N. Spring Street  
Los Angeles, CA

1 PLEASE TAKE NOTICE that on July 27, 2009, at 1:30 p.m., or as soon  
2 thereafter as counsel may be heard in Courtroom 16 of the above-entitled court  
3 located at 312 N. Spring Street, Los Angeles, California, Robb Evans, as permanent  
4 receiver of D. W. Heath & Associates, Inc., Private Capital Management, Inc.  
5 (“PCM”), Private Collateral Management, Inc. and PCM Fixed Income Fund I,  
6 LLC and their subsidiaries and affiliates (collectively, the “Heath Receivership  
7 Defendants”) and as Receiver over the Schlarmann Interests (“Receiver”), will  
8 and does hereby move the Court for the following relief:

9 1. An order approving the Receiver’s Final Report and Accounting  
10 attached to the Declaration of Brick Kane as Exhibit 1 (“Final Report”) filed  
11 concurrently herewith;

12 2. An order approving a modified claim amount for the investor claim of  
13 Troxler Enterprises, Inc./Rocco Troxler, reducing the claim from an allowed claim  
14 of \$179,700 to a net claim of \$46,142.78 after taking into account an offsetting  
15 claim of the Receiver against Troxler Enterprises, Inc. based on an outstanding,  
16 unsatisfied loan made by Receivership Defendant PCM to Troxler Enterprises with  
17 an unpaid principal balance of \$133,557.22 as of the date of commencement of the  
18 receivership. The Receiver does not seek to offset against the Troxler claim any  
19 accrued and unpaid interest, whether at the note rate or the legal rate, or any other  
20 fees, costs or charges that may be due under the loan made by PCM to Troxler  
21 Enterprises;

22 3. An order authorizing the Receiver to distribute pro rata, along with the  
23 final distribution to holders of Allowed Investor Claims and Allowed Non-Investor  
24 Claims, the proceeds of assets transferred to the Receiver from defendant Daniel  
25 Heath (“forfeited assets”) in connection with the action entitled People of the State  
26 of California v. Daniel William Heath, et al., Case No. RIF 117775 pending in the  
27 Superior Court of California, County of Riverside (“Criminal Action”);  
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1           4.     An order approving the Receiver's final distribution of all remaining  
2 receivership assets, including the forfeited assets, to be distributed pro rata among  
3 the holders of all Allowed Investor Claims and Allowed Non-Investor Claims after  
4 payment or reserve for payment from such assets of all remaining administrative  
5 expenses of the receivership as set forth in the Receiver's Final Report. In  
6 connection therewith, and in the interests of completing the closing and wind up of  
7 the estate expeditiously and cost-effectively, the Receiver proposes that (a) all  
8 distribution checks issued on account of the final distribution to holders of Allowed  
9 Investor Claims and Allowed Non-Investor Claims be required to be negotiated  
10 within 60 days of the date of issuance ("stale date deadline") and that checks  
11 returned without a valid forwarding address or checks uncashed after the stale date  
12 deadline be deemed void, (b) the Receiver be authorized to turn over and escheat to  
13 the State of California any distribution payments on Allowed Investor and Allowed  
14 Non-Investor Claims that are uncashed after such stale date deadline, and (c) for the  
15 32 investor claimants who to date have not cashed their distribution checks and  
16 who the Receiver has been unable to locate, the Receiver be authorized to turn over  
17 and escheat to the State of California those distributions, in an amount which to  
18 date totals approximately \$51,000. As to distributions paid on Allowed Investor  
19 and Non-Investor Claims to be escheated, the Receiver proposes to take the  
20 necessary steps to escheat those funds to the State of California in the name of the  
21 party to whom the distributions are due so that those persons, or potentially their  
22 heirs or successors, may claim those funds in the future;

23           5.     An order approving and confirming all actions and activities taken by  
24 or on behalf of the Receiver and all payments made by the Receiver in connection  
25 with the administration of the receivership estate;

26           6.     An order approving all receivership administrative expenses, including  
27 the Receiver's fees and expenses and those of his professionals incurred in  
28 connection with the receivership proceeding, including those previously paid to the

1 Receiver and its counsel, and approving and authorizing payment of all  
2 administrative expenses and Receiver's and professionals' fees and expenses  
3 through the conclusion of this proceeding and the discharge of the Receiver, as  
4 reflected in the Final Report, to the extent any such administrative expenses and  
5 Receiver's and counsel's fees and expenses remain unpaid, including Receiver's  
6 and counsel's fees and expenses incurred and unpaid from the period from March 1,  
7 2008 through the closing of the estate. Further, the Receiver seeks an order that to  
8 the extent there are any other miscellaneous funds remaining in the estate after  
9 payment of all remaining administrative expenses and distributions, the Receiver be  
10 authorized to turn over those funds to the Department of the Treasury;

11 7. An order authorizing the Receiver to abandon records of the Heath  
12 Receivership Defendants and records pertaining to the Schlarmann Interests, and to  
13 destroy all records of the Heath Receivership Defendants and the Schlarmann  
14 Interests and any other corporations or businesses under the control of any of the  
15 Heath Receivership Defendants and the Schlarmann Interests in the possession,  
16 custody or control of the Receiver if, within 30 days after service of written notice  
17 to plaintiff Securities and Exchange Commission, the Securities and Exchange  
18 Commission does not take custody of such records;

19 8. An order discharging the Receiver, its agents, employees, members,  
20 officers, independent contractors, attorneys and representatives and relieving the  
21 Receiver, its agents, employees, members, officers, independent contractors,  
22 attorneys and representatives of all duties, liabilities and responsibilities pertaining  
23 to the receivership previously established in this action effective upon the  
24 completion of the Receiver's wind up of the estate, payment of administrative  
25 expenses and final distribution of funds as provided herein;

26 9. An order exonerating the Receiver's bond effective upon the  
27 completion of the Receiver's wind up of the estate, payment of administrative  
28 expenses and final distribution of funds as provided herein; and

1           10. An order for any other and further relief as may be reasonable or  
2 appropriate in connection with the wind up and closure of the receivership estate.

3           PLEASE TAKE FURTHER NOTICE that the Motion is made pursuant  
4 to Local Rules 66-7 and 66-8, and is based upon this separate notice of hearing on  
5 the Motion served pursuant to the Court's prior order limiting notice in the matter,<sup>1</sup>  
6 the notice of motion and motion, memorandum of points and authorities and  
7 declarations of Gary Owen Caris and Robb Evans in support of the Motion, upon  
8 the pleadings, records and files of this Court in connection with this matter of  
9 which the Receiver requests the Court take judicial notice, and upon such further  
10 oral and documentary evidence and argument as may be presented at or before the  
11 time of the hearing on the Motion.

12           PLEASE TAKE FURTHER NOTICE that the Motion is served in  
13 accordance with the Limited Notice Order. Pursuant to the Limited Notice Order,  
14 the Motion, exclusive of voluminous exhibits, is posted on the Receiver's website  
15 at [www.heath-receiver.com](http://www.heath-receiver.com), where it may be viewed. Copies of the Motion will be  
16 provided to any interested party upon receipt of a written request which may be sent

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26 <sup>1</sup> Order: (1) Approving Receiver's Report for the Period July 12, 2004 through  
27 December 31, 2004; (2) Approving Receiver's Proposed Claims Filing and  
28 Allowance Procedures; and (3) Granting an Order Limiting Notice Under Local  
Rule 66-7 in Connection with Administrative and Similar Motions Under Local  
Rule 66-7 entered March 4, 2005.

1 to: Robb Evans & Associates LLC, 11450 Sheldon Street, Sun Valley, California  
2 91352-1121, facsimile number (818) 768-8802.

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DATED: July 1, 2009

McKENNA LONG & ALDRIDGE LLP  
GARY OWEN CARIS  
LESLEY ANNE HAWES

By:  /s/ Gary Owen Caris  
GARY OWEN CARIS  
Attorneys for Permanent Receiver,  
ROBB EVANS