

**ROBB EVANS & ASSOCIATES LLC**  
**Receiver of**  
**Longboat Global Funds Management, LLC, et al.**  
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**Commodity Futures Trading Commission v. Longboat Global Funds Management, LLC**  
**CASE No. 05-CV-2142 PJH**

**Receiver's Motion for Approval of Claims Distribution Procedure and  
Initial and Final Distribution on Allowed Investor Claims**

**Filed November 12, 2008**

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 8 UNITED STATES DISTRICT COURT  
 9 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION  
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11 COMMODITY FUTURES TRADING ) 12 COMMISSION, ) 13 Plaintiff, ) 14 vs. ) 15 ROBERT JOSEPH BEASLEY, ) LONGBOAT GLOBAL FUNDS ) 16 MANAGEMENT, LLC, ) 17 Defendants. ) 18 ) 19 ) 20 ) 21 )	Case No.: No. 05-2142 PJH ) ) <b>RECEIVER’S MOTION FOR</b> ) <b>APPROVAL OF CLAIMS</b> ) <b>DISTRIBUTION PROCEDURE AND</b> ) <b>INITIAL &amp; FINAL DISTRIBUTION ON</b> ) <b>ALLOWED INVESTOR CLAIMS</b> ) ) <b>Date: December 17, 2008</b> ) <b>Time: 9:00 a.m.</b> ) <b>Place: Courtroom 3, 17<sup>th</sup> Floor</b> ) <b>450 Golden Gate Ave.</b> ) <b>San Francisco, CA 94102</b> ) <b>Judge: Hon. Phyllis J. Hamilton</b> ) ) ) )
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 23 Pursuant to L.R. 66-5, the Receiver, Robb Evans and Associates, LLC, submits this  
 24 Motion for Approval of a Plan of Distribution and Proposed Pro Rata Distribution to Investors  
 25 of Longboat Global Funds Management LLC, Piranha Capital L.P. and Piranha Capital  
 26 Investment (Bahamas). In support of this request, Receiver’s Deputy, Kenton Johnson,  
 27 (attached with Receiver’s Final Report filed concurrently). The Receiver is willing for this  
 28 Court to rule on this Motion without oral argument unless requested by either of the parties, or

1 by any interested party.

2

3 ***Appointment of Receiver in the CFTC Action***

4 1. On May 25, 2005, the Commodity Futures Trading Commission (CFTC) filed a  
5 Complaint against Robert Joseph Beasley and Longboat Global Funds Management, LLC.  
6 Thereafter on August 19, 2005 this Court appointed Robb Evans and Associates LLC (REA)  
7 as Temporary Receiver for Beasley and Longboat with respect to matters involving Piranha,  
8 with full powers of an equity receiver. The August 19, 2005 Order appointed the Receiver as  
9 the agent of this Court in acting as Receiver under this Order.

10 2. The August 19, 2005 Order directed, in part, the Receiver to do the following  
11 things:

- 12 • Take exclusive custody, control and possession of all the funds, property, mail  
13 documents, books, records and other assets of, in the possession of, or under the  
14 control of the Longboat, that relate to Piranha, wherever situated...The Receiver  
15 shall have full power to sue for, collect, receive and take possession of all  
16 goods, chattels, rights, credits, moneys, effects, land, leases, documents, books,  
17 records, work papers, and records of accounts, including computer-maintained  
18 information, and other papers of the defendants relating to Piranha, including  
19 documents related to customers, clients or limited partners of Piranha whose  
20 interests are now held by or under the direction, possession, custody or control  
21 of Longboat...;
- 22 • Preserve, hold and manage all receivership assets, and perform all acts  
23 necessary to preserve the value of those assets, in order to prevent any loss,  
24 damage or injury to customers or clients;
- 25 • Collect all money owed to Longboat arising out of its position as general  
26 Partner of Piranha;
- 27 • Initiate, defend, compromise, adjust, intervene in, dispose of, or become a party  
28 to any actions or proceedings in state, federal or foreign court necessary to  
preserve or increase the assets of Longboat relating to Piranha or to carry out his  
or her duties pursuant to this Order.

26 3. On October 3, 2005, the CFTC filed an Amended Complaint for Permanent  
27 Injunction (“Amended Complaint”) in the CFTC case. In the Amended Complaint, the CFTC  
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1 seeks an order directing Beasley and Longboat to disgorge all of the assets and benefits  
2 received from pool participants, including the Movants in this case.

3 4. In addition, the Amended Complaint sought an order directing the Defendants  
4 to make full restitution to every pool participant whose funds were received by them as a  
5 result of acts or practices which constituted violations of the Act.

6 5. Defendant Beasley entered into a Settlement Agreement with the CFTC, which  
7 was approved by the CFTC on June 15, 2007. It was filed with this Court on August 16,  
8 2007, and was approved on August 27, 2007. On that date, this Court entered an Order of  
9 Permanent Injunction and Order Appointing Robb Evans & Associates LLC as Permanent  
10 Receiver over Longboat Global Funds, and its affiliates or subsidiaries or related entities,  
11 solely with respect to matters involving Piranha Capital LP (“Piranha Capital”) and Piranha  
12 Capital Investment (Bahamas) (“Piranha Offshore”) (“receivership defendants”), with full  
13 powers of an equity Receiver.

14 6. The Order of Permanent Injunction requires defendant Beasley to make  
15 restitution in the sum of \$4,500,000 and imposed a \$500,000 civil monetary penalty. The  
16 Order of Permanent Injunction imposed a restitution order against Longboat in the amount of  
17 \$13,817,183.28, and a civil monetary penalty of \$1,000,000. The restitution is to be paid to  
18 the Receiver. To date, Defendant Beasley and Defendant Longboat have not paid anything  
19 towards the restitution order, nor have any arrangements been made with the Receiver to make  
20 restitution to the Piranha pool participants. Instead, as set out in the Receiver’s Report, filed  
21 concurrently herewith, Defendant Beasley has taken additional withdrawals totaling \$500,000  
22 against a home equity loan and has attempted to place that loan ahead of a recorded security  
23 interest in favor of Piranha Capital LP. Paragraph 10 F, Section II, of the Order of Permanent  
24 Injunction specifically provides that “Defendant shall not transfer or cause others to transfer  
25 funds or other property to the custody, possession, or control of any other person for the  
26 purpose of concealing such funds from the Court, the Commission or any investor until the  
27 restitution amounts have been paid in full.”  
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1           ***Status of the Liquidation and Recovery of Assets***

2           7.       The Receiver now has \$925,000.00 available for distribution to approved  
3 claimants of Piranha Capital and Piranha Offshore. This net amount was funded from the sale  
4 of real estate, proceeds from repayment of the Sterling Promissory Notes, and balances of  
5 accounts held at Pershing Securities. As previously reported, this does not include a \$1  
6 million deposit at Pershing Securities that was distributed to the Illinois plaintiffs in the Mazza  
7 litigation pursuant to an Order of the Seventh Circuit Court of Appeals dated July 25, 2007. In  
8 addition to these liquidated assets, the Receiver may recover and add to the distribution fund  
9 about \$175,000.00 from the sale of a Sterling Promissory Note that is currently uncollectible.  
10 The Receiver's Final Report, filed concurrently herewith, sets forth in detail the status of all  
11 asset collection activity.

12           8.       In the course of its appointment as Receiver, REA has identified investors that  
13 have 58 claims in the Piranha Capital pool and 29 claims in the Piranha Offshore pool.

14           9.       The Piranha Capital pool participants, according to outside accountants, have a  
15 collective balance of \$20,109,873. The Piranha Offshore pool participants, according to  
16 outside accountants, have a collective balance of \$3,561,795.

17           10.      REA has taken depositions of several individuals, including defendant Beasley,  
18 and subpoenaed numerous financial records and other documents to identify assets of the  
19 receivership. As set out in previous Reports to the Court, and as set out in the Report filed  
20 with this Motion, this process is concluded and this proposed distribution is now presented.

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22           ***Proposed Distribution***

23           The Receiver proposes to make an initial and final distribution of \$477,436.33 on  
24 Allowed Investor Claims for Piranha Capital LP pool participants, on a pro rata basis, or  
25 2.22% of the Allowed Investor Claims ("Distribution"). The Receiver proposes to make an  
26 initial and final distribution of \$447,563.67 on Allowed Investor Claims for Piranha Offshore  
27 pool participants, on a pro rata basis, or 12.56% of Allowed Investor Claims. As set out in the  
28 attached Declaration of Kenton Johnson, the Receiver has taken the following steps to identify

1 the Piranha Capital and Piranha Offshore pool participants.

2 1. All investors identified on the databases maintained by Longboat Global Funds  
3 for Piranha Capital LP and Piranha Offshore have been included in the proposed Distribution  
4 Plan. The Receiver has worked with the outside accountant for Piranha and obtained and  
5 verified the investor database for Piranha Offshore participants. The Receiver has obtained  
6 the investor list from former counsel for Defendant Beasley and Longboat Global Funds for  
7 Piranha Capital LP. These databases and client lists include the amount of each participants  
8 investment in the pool, as well as the distributions made prior to the Receiver's appointment.  
9 Thus, the Receiver has been able to verify the balances due to each pool participant from the  
10 records previously maintained by Longboat Global Funds and its accountant. In his  
11 deposition, Defendant Beasley confirmed the amounts on the spreadsheet provided by  
12 Longboat for distributions made to Piranha Capital pool participants prior to the Receiver's  
13 appointment.

14 2. The Receiver proposes to provide written notice to each investor, based on the  
15 above calculations, of their net investment, which is the approved claim amount. The investor  
16 shall have thirty days to object to the Receiver's calculations. If no objection is received, the  
17 Receiver seeks an Order approving the payment to each agreed investor claim in the pro rata  
18 formula set forth above. The Receiver also seeks an Order permitting the Receiver to close  
19 the estate following this final distribution, and transfer any residual funds, including any  
20 investor checks not cashed, to the CFTC.

21 3. Each investor claimant will be advised in writing that they have a period of 30  
22 days from the date of service of written notice of the calculation of the claim to object to the  
23 approved claim amount. Any objection of the investor shall be required to be in writing and  
24 received by the Receiver within the 30-day notice period. If the investor creditor failed to  
25 timely object to the notice and the Receiver's calculation of the investor's approved claim  
26 amount, then the amount set forth in the Receiver's notice is deemed to be such investor's  
27 Approved Investor Claim upon which distributions in the case shall be based.

28 4. Similar procedures shall be applied to Non-Investor Claimants. However, the

1 Receiver is not aware of any Non-Investor Claimants at this time.

2 5. As to any proposed investor claim or creditor claim for which the Receiver  
3 received a timely objection, the Receiver will attempt to resolve the claim dispute through  
4 negotiation. If this is unsuccessful, the Receiver will file a Motion with this Court seeking a  
5 determination of the disputed claim prior to the payment of any claims.

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7 ***Points and Authorities***

8 The Order of Permanent Injunction requires that any amounts collected towards  
9 restitution shall be paid to the Receiver, and the Receiver is directed to submit a restitution  
10 plan for distribution. This proposed plan should include: the persons entitled to restitution,  
11 the amount each person shall receive, the procedure for notice, and the manner in which  
12 distribution shall be made.

13 The Receiver is appointed to protect the claims of all investors. The proposed plan for  
14 restitution is to pay each investor, as identified from the books and records of Longboat for  
15 Piranha Capital and Piranha Offshore, on a pro rata basis. All investors will receive written  
16 notice of the Receiver's calculation of their net balance, and the proposed distribution. Each  
17 investor will be given thirty days in which to file a written notice of objection. Any disputed  
18 claim, if not resolved through negotiation, will be submitted to the Court for verification and  
19 resolution. Following the thirty day notice period, the Receiver proposes to pay each investor  
20 claim on a pro rata basis by check, mailed to the address of record, unless an investor requests  
21 a different form of payment.

22 As this Court noted in its Order granting the Receiver's previous Petition for  
23 Instructions, "a primary purpose of equity receiverships is to promote orderly and efficient  
24 administration of the estate by the district court for the benefit of creditors." Securities and  
25 Exchange Comm'n v. Hardy, 803 F.2d 1034, 1037, 1038 (9<sup>th</sup> Cir. 1986). The Receiver  
26 proposes a pro rata distribution plan, to be paid out of the funds held by the Receiver for each  
27 pool: Piranha Capital LP, and Piranha Capital Investment (Bahamas). As indicated, each pool  
28 participant is identified from the books and records provided by Longboat Global Funds and

1 its representatives. Each pool participant should receive a percentage of the funds recovered  
2 for each pool. The Receiver is holding \$477,436.33 for Piranha Capital and \$447,563.67 for  
3 Piranha Offshore. The Receiver's proposed distribution plan is consistent with each  
4 participant's Limited Partnership Agreement, which provides that each Limited Partner's  
5 capital account allocation shall take into account any increase or decrease in the Fund's net  
6 asset value and distributions are to be made to the Limited Partners according to their Fund  
7 Percentages. This, the Limited Partnership Agreement provides that if the net asset value of  
8 the fund decreases, the limited partners are only entitled to their fund percentage on a pro rata  
9 basis.

10 a. Courts Have Broad Authority To Adopt Distribution Plans of  
11 Receivership Assets

12 "[A] primary purpose of equity receiverships is to promote orderly and efficient  
13 administration of the estate by the district court for the benefit of creditors." S.E.C. v. Hardy,  
14 803 F.2d 1034, 1038 (9<sup>th</sup> Cir. 1986); See also, S.E.C. v. Wencke, 783 F.2d 829, 837 (9<sup>th</sup> Cir.  
15 1986) ("The primary purpose of allowing courts to establish receiverships in securities fraud  
16 actions is to prevent further dissipation of the assets of the defrauded investors . . .").  
17 Accordingly, courts are granted "broad powers" and "wide discretion" in supervising and  
18 fashioning appropriate relief in an equity receivership to achieve this purpose. S.E.C. v.  
19 Elliott, 953 F.2d 1560, 1566 (11<sup>th</sup> Cir. 1992); S.E.C. v. Hardy, 803 F.2d at 1037; Liberte  
20 Capital Group v. Capwill, 229 F. Supp. 2d 799, 802 (N.D. Ohio 2002) *aff'd*, 2004 U.S. App.  
21 LEXIS 10107 (6<sup>th</sup> Cir. May 19, 2004); See also, McFarland v. Winnebago South, Inc., 863 F.  
22 Supp. 1025, 1034 (W.D. Mo. 1994) ("A federal district court presiding over an equity  
23 receivership has extremely broad power to supervise the receivership and protect receivership  
24 assets.").

25 With respect to a plan to distribute receivership assets, reasonably expeditious and  
26 efficient procedures will generally be upheld so long as they are also fair and equitable. (See,  
27 Liberte Capital Group v. Capwill, 229 F. Supp. 2d at 804 ("As a court sitting in equity, this  
28 Court is governed by a fundamental principle that the method of distribution should be



1 equitable and fair.”); See also, S.E.C. v. Hardy, 803 F.2d at 1038-39 (“the rights of creditors of  
2 a receivership must be balanced against the need for expeditious administration of the  
3 receivership; a district court in overseeing a receivership must ‘make rules which are  
4 practicable as well as equitable’ (*quoting First Empire Bank-New York v. FDIC*, 572 F.2d  
5 1361, 1368 (9<sup>th</sup> Cir.), *cert. denied*, 439 U.S. 919, 58 L. Ed. 2d 265, 99 S. Ct. 293 (1978)).

6  
7 b. The Court May Summarily Determine the Allowance or Disallowance of  
8 Disputed Claims

9 The equity powers of the District Court to issue orders pertaining to the administration  
10 of a receivership estate were discussed at length by the Ninth Circuit in S.E.C. v. Hardy, 803  
11 F. 2d 1034 (9th Cir. 1986). In its decision, the Court articulated two overriding principals of  
12 law:

13 First, a district court’s power to supervise an equity receivership  
14 and to determine the appropriate action to be taken in the  
15 administration of the receivership is extremely broad. . . . The  
16 basis for broad deference to the district court’s supervisory role in  
17 equity receiverships arises out of the fact that most receiverships  
18 involve multiple parties and complex transactions.

19 . . .

20 Secondly, we have acknowledged that a primary purpose of  
21 equity receiverships is to promote orderly and efficient  
22 administration of the estate by the district court for the benefit of  
23 creditors. [Citations omitted.] Accordingly, we generally uphold  
24 reasonable procedures instituted by the district court that serve  
25 this purpose. [Citations omitted.]

26 S.E.C. v. Hardy, 803 F. 2d at 1037-1038.

27  
28 The Ninth Circuit has noted these policies support its upholding the use of summary

1 proceedings in the receivership court to resolve claims:

2 The use of such proceedings enables a receiver to consolidate all  
3 litigation concerning his receivership in a single district court and  
4 before a single district judge, and to avoid formalities that would  
5 slow down the resolution of disputes. This promotes judicial  
6 efficiency and reduces litigation costs to the receivership.

7 [Citations omitted.] The primary purpose of allowing courts to  
8 establish receiverships in securities fraud actions is to prevent  
9 further dissipation of assets of the defrauded investors; the use of  
10 summary post-judgment proceedings helps to effectuate this.

11 S.E.C. v. Wencke, 783 F. 2d 829, 837 n. 9 (9th Cir. 1986), cited  
12 with approval in S.E.C. v. Hardy, 803 F. 2d 1034.

13  
14 Under the foregoing authorities, the Court may summarily determine the allowed amount of  
15 any disputed or unresolved claim. If there are any disputed or unresolved claims, these will  
16 be submitted to the Court for determination.

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18 Dated this 12th day of November, 2008

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20 Linda J. Candler  
21 Attorney for Receiver Robb  
22 Evans and Associates LLC  
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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

COMMODITY FUTURES TRADING  
COMMISSION,

Plaintiff,

v.

ROBERT JOSEPH BEASLEY AND  
LONGBOAT GLOBAL FUNDS  
MANAGEMENT, LLC,

Defendants.

CASE NO. 05-CV-2142-PJH

[Proposed] ORDER APPROVING  
PROPOSED DISTRIBUTION AND  
PAYMENT OF CLAIMS

Date: December 17, 2008  
Time: 9:00 a.m.  
Place: Courtroom 3, 17<sup>th</sup> Floor  
450 Golden Gate Ave.  
San Francisco, CA 94102  
(Hon. Phyllis J. Hamilton)

The Motion of Robb Evans & Associates LLC, Permanent Receiver in the above-captioned case, for an Order approving an initial and final claim distribution to investors of Piranha Capital, L.P. and Piranha Capital Investment (Bahamas) came on regularly for hearing on December 17, 2008 in Courtroom 3 of the above-referenced Court, the Honorable Phyllis J. Hamilton, United States District Judge, presiding. Parties appeared as reflected in the Court's record.

The Court, having reviewed the Motion and all papers filed in support thereof, and good cause being shown therefore, rules as follows:

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IT IS HEREBY ORDERED:

1. The Receiver's Motion for approval of a claim distribution to investors of Piranha Capital, L.P. on a pro rata basis, in the amount of \$477,436.33, which represents a pro rata distribution to each investor of 2.22% is hereby approved.

2. The Receiver's Motion for approval of a claim distribution to investors of Piranha Capital Investment (Bahamas) on a pro rata basis, in the amount of \$447,563.67, which represents a pro rata distribution to each investor of 12.56% is hereby approved.

3. The Receiver's Motion for approval of a claims identification and verification procedure, as identified in the Motion and more fully described therein is approved.

Dated: \_\_\_\_\_

\_\_\_\_\_  
PHYLLIS J. HAMILTON.  
United States District Judge