

1 DAVID R. ZARO (BAR NO. 124334)
 2 TED FATES (BAR NO. 227809)
 3 TIM C. HSU (BAR NO. 279208)
 ALLEN MATKINS LECK GAMBLE
 MALLORY & NATSIS LLP
 515 South Figueroa Street, Ninth Floor
 Los Angeles, California 90071-3309
 Phone: (213) 622-5555
 Fax: (213) 620-8816
 E-Mail: dzaro@allenmatkins.com
 tfates@allenmatkins.com
 thsu@allenmatkins.com

7 Attorneys for Court-appointed Receiver
 8 KRISTA L. FREITAG

9 **UNITED STATES DISTRICT COURT**
 10 **CENTRAL DISTRICT OF CALIFORNIA**
 11 **WESTERN DIVISION**

12 SECURITIES AND EXCHANGE
 13 COMMISSION,

14 Plaintiff,

15 v.

16 WORLD CAPITAL MARKET INC.;
 WCM777 INC.; WCM777 LTD. d/b/a
 WCM777 ENTERPRISES, INC.; and
 17 MING XU a/k/a PHIL MING XU,

18 Defendants,

19 KINGDOM CAPITAL MARKET, LLC;
 MANNA HOLDING GROUP, LLC;
 20 MANNA SOURCE INTERNATIONAL,
 INC.; WCM RESOURCES, INC.;
 21 AEON OPERATING, INC.; PMX
 JEWELS, LTD.; TOPACIFIC INC.;
 22 TO PACIFIC INC.; VINCENT J.
 MESSINA; and INTERNATIONAL
 23 MARKET VENTURES,

24 Relief Defendants.
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Case No. CV-14-2334-JFW-MRW

**NOTICE OF MOTION AND
 MOTION FOR APPROVAL OF
 NOTE AMENDMENT AGREEMENT
 WITH MYCOTECHNOLOGY, INC.**

Date: June 15, 2015
 Time: 1:30 p.m.
 Ctrm: 16
 Judge: Hon. John F. Walter

1 **TO ALL INTERESTED PARTIES:**

2 **PLEASE TAKE NOTICE** that on June 15, 2015, at 1:30 p.m. in
3 Courtroom 16 of the above-entitled Court, located at 312 North Spring Street, Los
4 Angeles, California 90012, Krista L. Freitag (the "Receiver"), the Court-appointed
5 permanent receiver for Defendants World Capital Market Inc.; WCM777 Inc.;
6 WCM777 Ltd. d/b/a WCM777 Enterprises, Inc.; and Relief Defendants Kingdom
7 Capital Market, LLC; Manna Holding Group, LLC; Manna Source
8 International, Inc.; WCM Resources, Inc.; ToPacific Inc.; To Pacific Inc.; and their
9 subsidiaries and affiliates (collectively, "Receivership Entities"), will and hereby
10 does move the Court for approval of a Note Amendment Agreement amending
11 certain promissory notes issued by MycoTechoonology, Inc. ("Motion").

12 The Motion is based on this Notice of Motion and Motion, the attached
13 Memorandum of Points and Authorities, the Declaration of Krista L. Freitag, the
14 documents and pleadings already on file in this action, and upon such further oral
15 and documentary evidence as may be presented at the time of the hearing.

16 **Procedural Requirements:** If you oppose this Motion, you are required to
17 file your written opposition with the Office of the Clerk, United States District
18 Court, 312 North Spring Street, Los Angeles, California 90012 and serve the same
19 on the undersigned not later than twenty-one (21) calendar days prior to the hearing.

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1 IF YOU FAIL TO FILE AND SERVE A WRITTEN OPPOSITION by the
2 above date, the Court may grant the requested relief without further notice. This
3 Motion is made following the conference of counsel pursuant to L.R. 7-3.

4
5 Dated: May 15, 2015

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
DAVID R. ZARO
TED FATES
TIM C. HSU

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8 By: /s/ Tim C. Hsu

9 TIM C. HSU
10 Attorneys for Court-appointed
11 Receiver
12 KRISTA L. FREITAG
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 In February 2014, Receivership Entity Kingdom Capital Market, LLC
4 ("KCM") purchased three convertible promissory notes from MycoTechnology, Inc.
5 ("Myco") pursuant to a Note Purchase Agreement whereby KCM paid \$1,050,000
6 in exchange for the issuance of three convertible promissory notes with face values
7 of \$750,000, \$250,000 and \$50,000 ("Notes"). The Notes may be converted to
8 common stock of Myco at the option of KCM.

9 Myco is a small, start-up, food technology company, which, although it is
10 generating revenues, has never generated a profit. Its primary source of funding
11 thus far has been the \$1,050,000 from KCM.

12 Myco is in dire need of additional capital to support its operations and will
13 run out of cash shortly if such capital is not obtained. Myco intends to and is
14 working to address its need for capital by securing financing from other sources. In
15 order to do so successfully, however, it needs to modify its debt to KCM.
16 Accordingly, Myco approached the Receiver with a proposal to pay off the Notes at
17 a discount concurrent with prospective capital raises. The Receiver and Myco
18 negotiated terms over several months and, subject to Court approval, agreed to terms
19 of the Note Amendment Agreement and Amended and Restated Promissory Note
20 ("Agreement") attached as Exhibit A to the Declaration of Krista L. Freitag filed
21 herewith ("Freitag Decl.").

22 Under the Agreement, the Notes will be cancelled and replaced with an
23 Amended and Restated Promissory Note ("Amended Note") and the outstanding
24 balance discounted to a total amount of \$750,000 to be repaid in tranches based on
25 the amount of capital Myco is able to raise. The Receiver believes that cancelling
26 the Notes in exchange for the Amended Note will give Myco the best opportunity to
27 secure additional financing necessary to support its continued operations and will
28 maximize and accelerate the potential recovery from the investment for the

1 receivership estate. Thus, the Receiver respectfully requests the Court approve the
2 Agreement.

3 **II. RELEVANT FACTS**

4 On or about February 11, 2014, KCM purchased the Notes from Myco with
5 face values of \$750,000, \$250,000 and \$50,000 (or \$1,050,000 combined). Freitag
6 Decl., ¶ 3. On March 3, 2014, another Receivership Entity, Manna Source
7 International, Inc., pre-paid Myco via wire transfer \$107,250 for "myceliated"
8 coffee beans, which Myco continues to hold in storage. *Id.* Myco is a food
9 technology company that uses myceliation, a patent-pending mushroom
10 fermentation process to improve taste, value and health, in various agricultural
11 products – from chocolate and tea to stevia and grains – and includes a patented
12 process for the myceliation of coffee. *Id.* at ¶ 4.

13 As holder of the Notes, KCM is entitled to a seat on Myco's board of
14 directors. *Id.* at ¶ 5. The Receiver assumed that seat after her appointment. *Id.* The
15 Receiver has attended a board meeting, had discussions with key company
16 personnel, and has reviewed weekly status updates and the company's financial
17 records. *Id.*

18 Based on this review, the Receiver learned that Myco does not have the
19 ability to pay off the Notes and needs additional capital soon to maintain a going
20 concern operation. *Id.* In particular, Myco has never generated any significant
21 revenues and has very limited cash remaining. *Id.* If Myco is unable to raise cash
22 promptly, it will run out of cash and be forced to cease operations. *Id.*
23 Consequently, the value of the receivership estate's investment would be
24 significantly impacted. *Id.*

25 In anticipation of these issues, Myco has been working to raise capital. *Id.* at
26 ¶ 6. In December 2014, Myco came to the Receiver with a proposal to pay off the
27 Notes at a discount. *Id.* Myco explained it could not obtain financing from other
28 sources without modifying the existing debt to KCM. *Id.* Myco has provided

1 numerous financial records requested by the Receiver and the parties negotiated
2 terms. *Id.* On April 20, 2015, the parties signed a non-binding letter of intent
3 ("LOI") and began preparing a definitive agreement. *Id.* On May 4, 2015, the
4 parties executed the Agreement, subject to Court Approval. *Id.*

5 **III. THE AGREEMENT**

6 The basic terms of the Agreement are as follows:¹

7 1. The outstanding Notes, with a combined face value of \$1,050,000, will
8 be surrendered to Myco in exchange for the Amended Note, which will result in the
9 forgiveness of all accrued interest and \$300,000 in outstanding principal.

10 2. The Receiver, on behalf of KCM and its affiliates, will release Myco
11 from any and all obligations relating to the Notes and with respect to the pre-paid
12 purchase order for coffee beans totaling \$107,250, but excluding any claims arising
13 from the Agreement or the Amended Note.

14 3. The Receiver will relinquish her position as a member of the board of
15 directors. However, for as long as the Amended Note is outstanding, the Receiver
16 will continue to receive all reports and written communications that members of the
17 board receive and will hold such reports and communications in confidence.

18 4. The Amended Note will evidence a reduced repayment obligation in
19 the total amount of \$750,000, due and payable to the Receiver in tranches within
20 five (5) days of Myco obtaining specified levels of debt or equity financing. The
21 payment tranches and financing levels are as follows:

<u>Financing Obtained:</u>	<u>Incremental Amount Due:</u>
\$2,000,000	\$175,000
\$3,000,000	\$75,000
\$6,000,000	\$250,000

27 _____
28 ¹ The summary of terms herein are provided for convenience only. In the event of
any conflict between the terms of the Amendment Agreement and the summary
provided herein, the Amendment Agreement governs and controls.

1 \$10,000,000 \$250,000
2 **Total:** \$750,000

3 The financing levels are cumulative and run from the date of the LOI
4 (April 20, 2015). The Amended Note is due in full in the event MycoTechnology or
5 its assets are sold, assigned, or otherwise transferred to another company. The
6 Amended Note matures on December 31, 2020.

7 The Receiver is informed that Myco has already raised \$135,000 since the
8 LOI, expects to raise another \$300,000 in May 2015, has secured a term sheet for
9 Series A Preferred Stock financing, and plans to close on another \$6,000,000 in
10 financing in June 2015.

11 See Freitag Decl., ¶ 7, Ex. A.

12 **IV. ARGUMENT**

13 "The power of a district court to impose a receivership or grant other forms of
14 ancillary relief does not in the first instance depend on a statutory grant of power
15 from the securities laws. Rather, the authority derives from the inherent power of a
16 court of equity to fashion effective relief." *SEC v. Wencke*, 622 F.2d 1363, 1369
17 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly
18 and efficient administration of the estate by the district court for the benefit of
19 creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir 1986). As the appointment
20 of a receiver is authorized by the broad equitable powers of the court, any
21 distribution of assets must also be done equitably and fairly. See *SEC v. Elliot*,
22 953 F.2d 1560, 1569 (11th Cir. 1992).

23 District courts have the broad power of a court of equity to determine the
24 appropriate action in the administration and supervision of an equity receivership.
25 See *SEC v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005). The Ninth
26 Circuit explained:

27 A district court's power to supervise an equity receivership
28 and to determine the appropriate action to be taken in the
 administration of the receivership is extremely broad. The
 district court has broad powers and wide discretion to

1 determine the appropriate relief in an equity receivership.
2 The basis for this broad deference to the district court's
3 supervisory role in equity receiverships arises out of the
4 fact that most receiverships involve multiple parties and
complex transactions. A district court's decision
concerning the supervision of an equitable receivership is
reviewed for abuse of discretion.

5 *Id* (citations omitted); see also *Commodities Futures Trading Comm'n. v. Topworth*
6 *Int'l, Ltd.*, 205 F.3d 1107, 1115 (9th Cir. 1999) ("This court affords 'broad deference'
7 to the court's supervisory role, and 'we generally uphold reasonable procedures
8 instituted by the district court that serve th[e] purpose' of orderly and efficient
9 administration of the receivership for the benefit of creditors."). Accordingly, this
10 Court has broad equitable powers and discretion in the administration of the
11 receivership estate, including in the disposition of receivership estate assets.

12 Here, the receivership estate holds the Notes, pursuant to which Myco owes a
13 total of \$1,050,000 plus interest accrued thereon to KCM and \$107,250 worth of
14 coffee beans. Freitag Decl., ¶ 3. Myco, however, does not have the cash or
15 revenues to repay the obligation and there is no ready market to sell the coffee
16 beans. *Id.* at ¶ 5. The Receiver has attended a Myco board meeting, had discussions
17 with Myco's key personnel, and has reviewed weekly updates and financial records
18 provided by Myco. *Id.*

19 Based on this review, the Receiver believes Myco needs additional capital
20 immediately to support its ongoing operations. *Id.* at ¶ 8. Myco has explained that
21 in order to raise capital from other sources, it needs to significantly reduce the debt
22 it owes to KCM. *Id.* It is understandable that investors would require the KCM
23 debt to be reduced as they want to make sure the funding they provide is used
24 primarily to support ongoing operations, rather than to pay off existing debt. *Id.*
25 Accordingly, the Receiver believes Myco will be unable to raise the amount of
26 capital needed if the amount owed to KCM is not modified. *Id.* The receivership
27 estate would likely recover nothing if Myco is unable to raise capital and is forced to
28 cease operations. *Id.*

1 Accordingly, the Receiver and Myco negotiated terms and ultimately
 2 executed the Agreement, subject to Court approval. Although it cannot be
 3 guaranteed, the Receiver believes the Agreement provides the best chance for a
 4 significant and timely recovery for the receivership estate. *Id.* at ¶ 9. The Receiver
 5 anticipates Myco should be able to raise necessary capital to fund its operations and
 6 thus the receivership estate stands to recover up to \$750,000 in specified tranches if
 7 and when the capital raising benchmarks are reached. *Id.* Furthermore, as
 8 previously mentioned, Myco has notified the Receiver it has secured a term sheet for
 9 Series A Preferred Stock financing and anticipates closing on \$6,000,000 in
 10 financing in June 2015. *Id.* Therefore, the Receiver respectfully requests the Court
 11 approve the Agreement.

12 **V. CONCLUSION**

13 For the reasons set forth herein, the Receiver respectfully requests entry of an
 14 order approving the Agreement.

15
 16 Dated: May 15, 2015

ALLEN MATKINS LECK GAMBLE
 MALLORY & NATSIS LLP
 DAVID R. ZARO
 TED FATES
 TIM C. HSU

17
 18
 19 By: _____ /s/ Tim C. Hsu
 20 TIM C. HSU
 21 Attorneys for Court-appointed
 22 Receiver
 23 KRISTA L. FREITAG
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PROOF OF SERVICE

Securities and Exchange Commission v. World Capital Market Inc.; WCM777 Inc, et al.
USDC, Central District of California – Western Division (Los Angeles) – Case No. 2:14-cv-02334-JFW-MRW

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 515 S. Figueroa Street, 9th Floor, Los Angeles, California 90071-3398.

A true and correct copy of the foregoing document(s) described as:

NOTICE OF MOTION AND MOTION FOR APPROVAL OF NOTE AMENDMENT AGREEMENT WITH MYCOTECHNOLOGY, INC. will be served in the manner indicated below:

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF")** – the above-described document will be served by the Court via NEF. On May 15, 2015, I reviewed the CM/ECF Mailing Info For A Case for this case and the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated below:

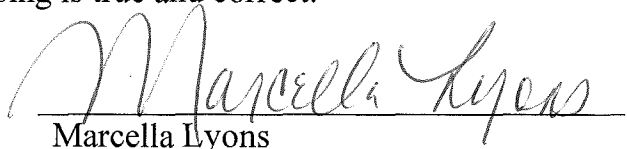
- **Robert E Barnes**
robertbarnes@barneslawllp.com,brettollefson@yahoo.com
- **John W Berry**
berryj@sec.gov,irwinma@sec.gov
- **John B Bulgozdy**
bulgozdyj@sec.gov,LAROFiling@sec.gov,berryj@sec.gov,irwinma@sec.gov
- **Peter F Del Greco**
delgreco@sec.gov,LAROFiling@sec.gov
- **Michael R Farrell**
mfarrell@allenmatkins.com
- **Edward G Fates**
tfates@allenmatkins.com,bcrfilings@allenmatkins.com,jbatiste@allenmatkins.com
- **Maranda E Fritz**
Maranda.Fritz@ThompsonHine.com,Docket@ThompsonHine.com,patricia.hart@thompsonhine.com,Dwayne.Lunde@thompsonhine.com
- **Edward Gartenberg**
egartenberg@gghslaw.com,smelara@gghslaw.com,mdolukhanyan@gghslaw.com
- **Tim C Hsu**
thsu@allenmatkins.com,mlyons@allenmatkins.com
- **International Market Ventures**
maranda.fritz@thompsonhine.com

- 1 • **Vincent J. Messina**
Maranda.fritz@ThompsonHine.com
- 2
- 3 • **Julio J Ramos**
ramosfortrustee@yahoo.com,ramoslawgroup@yahoo.com
- 4
- 5 • **Mark L Smith**
mls@clydesnow.com,jgerber@clydesnow.com
- 6 • **David J Van Havermaat**
vanhavermaatd@sec.gov,LAROFiling@sec.gov,berryj@sec.gov,irwinma@sec.gov
- 7
- 8 • **David Joseph Van Sambeek**
davidv@w-wlaw.com
- 9 • **Richard Vermazen**
rvermazen@hotmail.com
- 10
- 11 • **Amrita Bimali Walgampaya**
bwalgampaya@w-wlaw.com,cwellman@w-wlaw.com,hfrljuckic@w-wlaw.com
- 12 • **D Loren Washburn**
dlw@clydesnow.com
- 13
- 14 • **Scott W Wellman**
swellman@w-wlaw.com
- 15 • **David R Zaro**
dzaro@allenmatkins.com
- 16

17 2. **SERVED BY U.S. MAIL OR OVERNIGHT MAIL (indicate method for each**
18 **person or entity served)**: On _____, I served the following person(s) and/or
19 entity(ies) in this case by placing a true and correct copy thereof in a sealed
20 envelope U.S. Mail, first class, postage prepaid, and/or with an overnight mail
21 service addressed as follows. I am readily familiar with this firm's practice of
22 collection and processing correspondence for mailing. Under that practice it is
23 deposited with the U.S. postal service on that same day in the ordinary course of
24 business.

25 *No Manual Recipients (as of May 15, 2015)*

26 Executed on May 15, 2015. I declare under penalty of perjury under the laws of the
27 United States of America that the foregoing is true and correct.

28 
Marcella Lyons