

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

6 EDWARD G. FATES (BAR NO. 227809)
7 501 West Broadway, 15th Floor
San Diego, California 92101-3541
8 Phone: (619) 233-1155
Fax: (619) 233-1158
9 E-Mail: tfates@allenmatkins.com

10 Attorneys for Receiver
KRISTA L. FREITAG

11
12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**
14 **WESTERN DIVISION**

15 SECURITIES AND EXCHANGE
COMMISSION,

16 Plaintiff,

17 v.

18 WORLD CAPITAL MARKET INC.;
WCM777 INC.; WCM777 LTD. d/b/a
19 WCM777 ENTERPRISES, INC.; and
20 MING XU a/k/a PHIL MING XU,

21 Defendants,

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

27 Relief Defendants.
28

Case No. CV-14-2334-JFW-MRW

***EX PARTE APPLICATION TO
EXTEND DEADLINE TO FILE
MOTION TO ALLOW AND
DISALLOW CLAIMS***

Ctrm: 16-Spring St. Floor
Judge: Hon. John F. Walter

1 Krista L. Freitag ("Receiver"), the Court-appointed receiver for Defendants
2 World Capital Market Inc. ("WCM"), WCM777 Inc. ("WCM777"), and
3 WCM777 Ltd. d/b/a WCM777 Enterprises, Inc. ("WCM777 Enterprises"), and
4 Relief Defendants Kingdom Capital Market, LLC ("KCM"), Manna Holding
5 Group, LLC ("MHG"), Manna Source International, Inc. ("MSI"), WCM
6 Resources, Inc. ("WCM Resources"), To Pacific, Inc., ToPacific, and their
7 subsidiaries and affiliates (collectively, "Receivership Entities"), hereby applies
8 *ex parte* for an extension of the deadline to file her motion to allow and disallow
9 claims.

10 **I. INTRODUCTION**

11 This receivership arises from an action brought by the Securities and
12 Exchange Commission to halt a large Ponzi scheme that was operated under the
13 name WCM777 and other names. To date, the Receiver's accounting reflects that
14 defendants raised approximately \$90.8 million from investors and distributed
15 approximately \$18.6 million to investors, leaving investors with a collective net loss
16 of approximately \$72.2 million. The Receiver is currently holding approximately
17 \$26.2 million in cash in receivership accounts and anticipates collecting another
18 \$1.5 million or more.

19 In March 2016, the Court approved the Receiver's recommendation regarding
20 Phase II of the investor claims process, which focused on the review of the
21 approximately 72,000 claimed investments contained in investor claims. The
22 Receiver has now completed the vast majority of the authorized claims review work.
23 Due to several factors discussed below, to date the Receiver has not been able to
24 confirm a large number of claims that she believes may be valid. After analysis of
25 the claims data, the Receiver believes that certain supplemental testing work is
26 warranted to identify additional valid claims which will allow as many legitimate
27 investor victims as possible to participate in the distribution of receivership assets.
28 Accordingly, the Receiver requests a 75-day extension of the July 31, 2016 deadline

1 to file her motion to allow and disallow claims such that the supplemental testing
2 work can be performed.

3 II. BACKGROUND FACTS

4 On June 3, 2015, the Receiver filed her Motion for Order: (1) Setting Claims
5 Bar Date; (2) Approving Claim Forms; and (3) Approving Engagement of Third
6 Party Claims Administrator ("Motion"). Dkt. No. 341. In the Motion, due to the
7 large number of investors and challenges in analyzing their claims, the Receiver
8 proposed a three-phase claims process using a third party claims administrator
9 capable of automating the intake and review of claims and ultimately assisting in
10 any distribution. Additionally, the Receiver stated she would report to the Court at
11 the end of Phase I (claims submission) and provide her recommendations regarding
12 proceeding with Phase II (claims testing). The Court granted the Motion on July 13,
13 2015, and set November 9, 2015, as the deadline to submit claims ("Claims Bar
14 Date"). Dkt. No. 354.

15 On October 23, 2015, due to the low initial response rate from investors, the
16 Receiver filed an *Ex Parte* Application to Extend the Claims Bar Date to
17 December 24, 2015 ("*Ex Parte* Application"). Dkt. No. 396. On December 24,
18 2015, at 11:59 p.m., the Court-approved extended time period for investors to
19 submit claims officially ended. At the end of Phase I, a total of 35,545 claims,
20 representing 72,253 separate investments totaling more than \$386 million, had been
21 submitted. The total dollar amount of claims submitted (approximately
22 \$386 million) exceeds what the Receivership Entities' banking records reflect as the
23 net amounts invested/net loss by more than \$300 million.

24 On March 11, 2016, the Receiver filed her report regarding Phase I of the
25 claims process and *ex parte* application for approval of recommendation for Phase II
26 ("Phase II Recommendation"). Dkt. No. 427. In the Phase II Recommendation, the
27 Receiver laid out the proposed process whereby the majority of the 72,253 claimed
28 investments (*i.e.*, claimed investments that did not match information in available

1 databases based on initial tests performed by claims administrator Epiq) would be
2 manually reviewed by the Receiver's staff, with support from Epiq. The Phase II
3 Recommendation included a combined estimated budget for the Receiver and Epiq
4 for the claims review process of \$374,866 and a timeline for completing the review
5 of claims, including a July 31, 2016 deadline for filing a motion to allow and
6 disallow claims. The Court approved the Phase II Recommendation on March 11,
7 2016. Dkt. No. 430.

8 III. CLAIMS REVIEW WORK PERFORMED TO DATE

9 Since then, the Receiver has implemented the Phase II review procedures laid
10 out in the Phase II Recommendation, including performing the manual review of the
11 vast majority claims, with support from Epiq. Investors who provided no support
12 for their claimed investments or whose support is insufficient to trace to actual
13 investor deposits reflected in the defendant entity bank records have been or are
14 being issued a notice of the deficiency with their claims and given 20 days to
15 respond with additional documentation supporting their claims.

16 At this point, the review work contemplated in the Phase II Recommendation
17 is 95% completed. However, the number of claimed investments that have been
18 matched to deposits into Receivership Entity accounts is very small - only 2,785 or
19 approximately 4% of claimed investments. The total amount of these claimed
20 investments is \$22.7 million. As noted above, the Receiver's forensic accounting
21 shows that investor net losses were approximately \$72.2 million, leaving
22 approximately \$49.5 million in net losses which have not been matched to any
23 claims.

24 There are several reasons for the low amount of allowed claimed investments
25 in relation to the total known net loss: (1) many investors have not substantiated
26 their claims with *any* documentation; (2) many investors (in fact, the vast majority
27 of claimants) gave cash to a leader or other intermediary, so their funds (a) may not
28 have reached the Receivership Entities, (b) came into the Receivership Entities

1 under a different name thus requiring more reverse testing, or (c) simply cannot be
2 traced;¹ (3) many investors submitted claims for "points" they were issued by
3 WCM777 (or they purchased from other investors) which do not correlate to an
4 actual dollar investment; (4) the scheme generally targeted unsophisticated
5 individuals and as a result, numerous claims were incorrectly completed; and
6 (5) many claims are simply bogus and were submitted by people hoping to receive a
7 distribution even though they did not have an actual loss from the WCM777 scheme
8 (*e.g.*, approximately 27,000 claims were submitted from China in the last 10 days
9 the claims process was open).

10 Because of the large number of claims for points and bogus (primarily cash)
11 claims, in order to identify true investors with actual net losses and maintain the
12 integrity of the claims process, it is necessary to verify claimed investments by
13 tracing them to deposits made into Receivership Entity accounts. Accordingly, in
14 her motion for allowance and disallowance of claims, the Receiver will recommend
15 that only claims where the funds have been verified against actual net loss banking
16 data be allowed. While this approach necessarily maintains the integrity of the
17 claims process, it is a challenging review process due to the fact that more often than
18 not, investors did not provide supporting documentation for their claims (*e.g.*, check
19 copy, wire, deposit slip, etc.) Thus, the Receiver believes tracing the investments
20 backwards from Receivership Entity net loss data to the claims data, even with the
21 absence of supporting documentation, will produce more allowed claims and will
22 ensure underlying investors are approved for distribution (rather than leaders, who
23 may have submitted claims for other investors' funds).

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¹ Because bogus claimants can say they paid cash, those who filed cash claims without supporting documentation (proof of payment to a leader which can be traced or a deposit slip reflecting a deposit into a Receivership Entity bank account), may necessarily be denied.

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IV. RELIEF REQUESTED

The Receiver requests that the July 31, 2016 deadline to file her motion to allow and disallow claims be extended by 75 days to October 14, 2016. The additional time will be used to run supplemental checks designed to identify more investors with net losses and allow their claims. Instead of starting from investor claims and trying to match claimed investments' support to deposits into Receivership Entity accounts, these supplemental or "reverse" checks will start from unmatched deposits into Receivership Entity accounts and attempt to match them to deficient claims based on the source of funds (investor or leader), date, and amount. The Receiver believes this supplemental testing work will materially increase the number of allowed claims and therefore the number of investors eligible to receive a distribution from the receivership estate. The Receiver believes the additional work will not increase her portion of the approved Phase II budget and, having consulted with Epiq, estimates that it will increase the Epiq portion of the budget by approximately \$20,000 (less than a 10% variance from the estimated budget of \$374,866).

The Receiver discussed the need for an extension and the estimated increase to the Phase II budget with counsel for the Securities and Exchange Commission ("Commission") prior to filing this application. Counsel for the Commission advised that the Commission has no opposition.

V. ARGUMENT

"The power of a district court to impose a receivership or grant other forms of ancillary relief does not in the first instance depend on a statutory grant of power from the securities laws. Rather, the authority derives from the inherent power of a court of equity to fashion effective relief." *SEC v. Wencke*, 622 F.2d 1363, 1369 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly and efficient administration of the estate by the district court for the benefit of creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir 1986). As the appointment

1 of a receiver is authorized by the broad equitable powers of the court, any
2 distribution of assets must also be done equitably and fairly. See *SEC v. Elliot*,
3 953 F.2d 1560, 1569 (11th Cir. 1992).

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

8 A district court's power to supervise an equity receivership
9 and to determine the appropriate action to be taken in the
10 administration of the receivership is extremely broad. The
11 district court has broad powers and wide discretion to
12 determine the appropriate relief in an equity receivership.
13 The basis for this broad deference to the district court's
14 supervisory role in equity receiverships arises out of the
15 fact that most receiverships involve multiple parties and
16 complex transactions. A district court's decision
17 concerning the supervision of an equitable receivership is
18 reviewed for abuse of discretion.

14 *Id.* (citations omitted); see also *CFTC v. Topworth Int'l, Ltd.*, 205 F.3d 1107, 1115
15 (9th Cir. 1999) ("This court affords 'broad deference' to the court's supervisory role,
16 and 'we generally uphold reasonable procedures instituted by the district court that
17 serve th[e] purpose' of orderly and efficient administration of the receivership for
18 the benefit of creditors."). Accordingly, the Court has broad discretion in approving
19 procedures for the administration of claims.

20 Here, there is good cause to grant a 75-day extension such that the remaining
21 claims checks and additional "reverse" testing work can be completed, additional
22 investor claims can be verified and allowed, the Receiver's motion to allow and
23 disallow claims can be prepared, and as many investors as possible are able to
24 participate in the distribution of receivership assets.

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VI. CONCLUSION

Based on the foregoing, the Receiver requests that the deadline to file her motion to allow and disallow claims be extended from July 31, 2016 to October 14, 2016.

Dated: July 22, 2016

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

By: /s/ Edward Fates
EDWARD G. FATES
Attorneys for Receiver
KRISTA L. FREITAG