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SOUTHERN DISTRICT OF CALIFORNIA

BY:

DEPUTY

JAMES H. HOLL, III, DC BAR NO. 453473
RACHEL ENTMAN, DC BAR NO. 483713
ERIN E. VESPE, CT BAR NO. 407295
COMMODITY FUTURES TRADING COMMISSION
1155 21st Street, NW
Washington, DC 20581
Telephone (202) 418-5000
Facsimile (202) 418-5523

Attorneys for Plaintiff
Commodity Futures Trading Commission

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

COMMODITY FUTURES TRADING)
COMMISSION,)

Case No. 04-CV-2093 J

Plaintiff,)

vs.)

FIRST AMENDED COMPLAINT FOR
INJUNCTIVE AND OTHER EQUITABLE
RELIEF AND FOR CIVIL PENALTIES
UNDER THE COMMODITY EXCHANGE
ACT, AS AMENDED, 7 U.S.C. §§ 1-et seq

WHITE PINE TRUST CORPORATION, a)
California corporation, RICHARD)
MATTHEWS, an individual, and STEPHAN)
BAERE, an individual,)

Defendants,)

LUCIA MATTHEWS, an individual,)

Relief Defendant.)

I.

SUMMARY

1. Since at least August 2000, defendants White Pine Trust Corporation (“White Pine”), Richard Matthews (“Matthews”) and Stephen Baere (“Baere”) (collectively “defendants”)

1 have been illegally operating a foreign currency trading firm out of San Diego, California.
2 Through direct solicitations and a website, defendants have solicited retail customers to trade
3 purported foreign currency contracts and foreign currency options contracts. Defendants have
4 solicited a minimum of \$650,000 in customer funds from at least three customers, and upon
5 information and belief, have solicited millions of additional dollars from hundreds of retail
6 customers for purposes of purportedly trading foreign currency and foreign currency options
7 contracts.
8

9 2. To lure customers to trade with White Pine, defendants fraudulently
10 misrepresented how customers money would be handled and protected, claiming all customer
11 money would be held in a segregated account and not in White Pine's operating accounts, when
12 in fact defendants commingled customer money with other monies in at least two corporate
13 operating accounts. Defendants falsely touted the expertise and sophistication of White Pine in
14 trading foreign currency when defendants had little or no experience trading in the foreign
15 currency markets, and blatantly posted a false winning trading record for White Pine going back
16 to 1995 even though, by defendants' own admission, White Pine was created no earlier than
17 2000.
18

19 3. Defendants' Matthews and White Pine have misappropriated customer funds.
20 Defendants deposit customer funds into White Pine operating accounts, which Matthews then
21 used for purported business expenses and for personal purposes, including paying for purchases
22 from Saks Fifth Avenue, Royal Maui Jewelers, Justflowers.com, Hooters' restaurant, and The
23 Men's Warehouse. Moreover, checks for large sums of money drawn from these same accounts
24 were made payable to Matthews personally. In one two-month period in 2004, Matthews cashed
25 checks payable to himself totaling more than \$230,000 from a single operating account. During
26 his tenure at White Pine, Baere received approximately \$400,000 in cash from one White Pine
27
28

1 account in which Matthews had deposited customer funds.

2 4. White Pine has opened and conducted business through at least six separate bank
3 accounts during its existence. Four of these bank accounts show total deposits of over \$33
4 million from 2001 through 2004.

5 5. In an attempt to hide this massive fraud and illegal operation, White Pine
6 destroyed documents responsive to a Commission subpoena and defendant Matthews lied to the
7 federal government. When questioned under oath by staff of the Division of Enforcement of the
8 plaintiff Commodity Futures Trading Commission about White Pine's activities, defendant
9 Matthews falsely testified that White Pine was not soliciting customers, had no customers and
10 held no customer funds. Defendant Matthews also claimed that White Pine's website
11 represented a business development proposal that had not been acted upon and was, in his own
12 words, "fictitious."
13

14 6. Through the conduct described above, defendant Matthews has engaged in
15 misappropriation and the fraudulent solicitation of customer funds and, consequently, violated
16 Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2002), and Commission Regulations 1.1, 32.9(a) and
17 (c), 17 C.F.R. §§ 1.1, 32.9(a) and (c) (2004).
18

19 7. Through the conduct described above, defendant Baere has engaged in the
20 fraudulent solicitation of customer funds and, consequently, violated Section 4c(b) of the Act, 7
21 U.S.C. § 6c(b) (2002), and Commission Regulations 1.1, 32.9(a) and (c), 17 C.F.R. §§ 1.1,
22 32.9(a) and (c) (2004).
23

24 8. Because defendants Baere and Matthews were acting as an officer, agent or
25 employee in engaging the engaging conduct alleged above, White Pine is vicariously liable for
26 violations of Section 4c(b) of the Act, and Commission Regulation 1.1, 32.9(a) and (c) pursuant
27 to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2002).
28

1 options on foreign currency futures contracts, and options on foreign currency, including the
2 transactions alleged in this complaint.

3 12. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C.
4 § 13a-1(e) (2002), in that defendants are found in, inhabit, or transact business in this district, and
5 the acts and practices in violation of the Act have occurred, are occurring, or are about to occur
6 within this district, among other places.
7

8 **III.**

9 **THE PARTIES**

10 **A. Plaintiff**

11 13. The Commodity Futures Trading Commission is an independent federal
12 regulatory agency that is charged with responsibility for administering and enforcing the
13 provisions of the Act, 7 U.S.C. §§ 1 et seq. (2002), and the Regulations promulgated thereunder,
14 17 C.F.R. §§ 1 et seq. (2003).
15

16 **B. Defendants**

17 14. White Pine Trust Corporation was incorporated in July 2000 in the state of
18 California. White Pine's principal place of business is 343 4th Avenue, Suite 201, San Diego,
19 California 92101. White Pine has never been registered with the Commission in any capacity.
20

21 15. Richard Matthews is self identified as the Founder and Managing Director of
22 White Pine, and is a signatory on defendant White Pine's operating accounts. Matthews
23 maintains an address in San Diego, California. From December 1994 through December 1997,
24 Matthews was registered with the Commission as an Introducing Broker of Global Trading
25 Group, a company founded by Matthews that purportedly solicited retail customers to invest in
26 futures contracts. Matthews is not registered at this time with the Commission in any capacity.
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28

1 for the overall day-to-day operation of White Pine, including handling customer requests for
2 account withdrawals.

3 22. Defendant Baere is identified variously as the Director of Business Development
4 or the Director of Client Development of White Pine. Baere solicited customers at trade shows
5 nationwide, and, in at least one investor's case, visited the private home of the investor to solicit
6 business. Baere provided customers with the solicitation materials described in paragraphs 24
7 and 26 and also communicated with customers about the status of their investments.
8

9 23. White Pine's website, at least until recently, along with other advertising and
10 solicitation materials provided to potential customers, purport to offer customers the opportunity
11 to speculate in the value of purported foreign currency and foreign currency options. Defendants
12 offer to open and manage customer foreign currency accounts, and promise customers steady
13 returns on their investments while downplaying the risk of loss.
14

15 24. Specifically, Baere and Matthews solicit potential customers to invest in White
16 Pine's Pinnacle Capital Fund, both through attending trade shows nationwide and through White
17 Pine's former website. Defendants replicated the promotional materials given to customers on
18 White Pine's website. On both the White Pine website and in other solicitation materials, for the
19 Pinnacle Capital Fund, defendants boast an eight-year cumulative performance record of 591%,
20 while simultaneously guaranteeing that 75% of its customers' investments are protected from
21 loss each month.
22

23 25. Baere and Matthews told one White Pine customer at a September 2002 trade
24 show that their fund had approximately 20-30% return on investment. Based upon profit
25 representations made by Baere and Matthews, this customer invested over \$300,000 in White
26 Pine. Baere and Matthews also directed the investor to White Pine's website so that he could
27 monitor his personal account.
28

1 26. White Pine's promotional materials also tout the defendants' expertise in
2 managing foreign currency accounts, promising that "your account manager [is] at least on the
3 same educational plateau as corporate treasures (sic) and international bankers."

4 27. However, in sworn testimony taken on January 29, 2004 before the Division of
5 Enforcement for the Commodity Futures Trading Commission, defendant Matthews
6 unequivocally admitted that White Pine's performance record was fictitious. Matthews also
7 admitted he had little expertise in trading foreign currency and explicitly denied the existence of
8 any customers. In fact, Matthews stated at least five times during this testimony that White Pine
9 was a fictitious company: "Q. So again, this is all fictitious – A. Yes. Absolutely."

10 28. In the same testimony, Matthews testified at least twice that the same performance
11 record of Pinnacle Capital Fund referenced in paragraph 19 was fictitious: "Q. These are just
12 fictitious numbers? A. Yes. The chronology and everything." White Pine's performance
13 records in its promotional material extend back to 1995, but White Pine was not incorporated or
14 otherwise doing business until at least 2000.

15 29. Matthews further testified that, contrary to defendants' highly proclaimed
16 expertise in trading foreign currency options, he knew "little about" foreign currency.

17 30. Matthews also testified that White Pine did not have, and had never had, any
18 customers. In fact, White Pine had at least three customers prior to Matthews' testimony who
19 had invested over \$650,000 with defendants, and upon and information and belief, has as many
20 as 300 customers who may have invested up to \$33 million with White Pine.

21 31. In soliciting these customers purportedly to trade foreign currency and foreign
22 currency options on their behalf, first through direct solicitation materials and subsequently by
23 referring the customers to its website, White Pine made the following misrepresentations of
24 material facts:
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- 1 a. All funds are separated and maintained in a "client funds account" and are
2 not commingled with White Pine's operating accounts;
- 3 b. All customer accounts are held outside White Pine at regulated broker
4 dealers;
- 5 c. White Pine has been in the business for eight years with a cumulative
6 performance record of 591%, covering the time period of 1995 to 2004;
7 and
- 8 d. White Pine account managers have specialized expertise in trading foreign
9 currency options.

10 32. These representations create the impression that White Pine is a legitimate firm.

11 However, these statements are false, in that:

- 12 a. Customer funds are neither separated nor maintained in the clients' name;
13 rather, funds are deposited into operating accounts in White Pine's name
14 or otherwise commingled with other funds, where some funds are
15 misappropriated and used for business and personal expenses;
- 16 b. White Pine was not in existence in 1995-1999, since it was incorporated in
17 July 2000; and
- 18 c. Matthews has little knowledge of trading foreign currency options.

19 33. In a two-month period in 2004, from the same account in which Matthews
20 deposited customer funds, Matthews wrote personal checks to himself totaling over \$230,000. In
21 another two-month period in 2003, Matthews wrote personal checks to himself totaling over
22 \$150,000 from a different operating account. In this same time period and from this same
23 account Matthews wrote other checks for personal expenditures, including a check to Royal Maui
24 Jewelers for \$26,883.63 and a check to Neiman Marcus totaling \$3,568.72. Matthews also wrote
25 two checks totaling more than \$23,000 allegedly to pay for two business trips to Las Vegas,
26 Nevada, and New Orleans, Louisiana. Baere also received approximately \$400,000 in cash
27 during his tenure from the same accounts in which Matthews had deposited investor money.
28

1 34. White Pine customers sent money directly to White Pine. Customers either wired
2 money directly into White Pine's operating accounts, or wrote personal checks made out to
3 White Pine Trust Corporation, which Matthews then deposited into White Pine's operating
4 accounts. Baere and Matthews gave customers promotional materials that referred them to
5 White Pine's website so customers could track their account. Customers also received monthly
6 account statements on White Pine's Pinnacle Capital Fund letterhead. The customer account
7 statements did not indicate the specific trading executed, where the purported trading occurred,
8 or where the customer funds were deposited.
9

10 **B. Some Of The Purported Foreign Currency Transactions Defendants**
11 **Offer Are Illegal Off-Exchange Foreign Currency Options**

12 35. Since at least February 2003, White Pine has engaged in an elaborate scheme to
13 defraud retail customers. White Pine's promotional materials and account opening documents
14 describe an investment opportunity to profit based upon the fluctuations in the relative values of
15 foreign currencies. During the relevant period, through written materials provided to customers
16 and prospective customers, White Pine stated that "We also trade in FX options." The same
17 promotional materials expand upon this statement and explain how White Pine uses options as a
18 hedging strategy purportedly to minimize the investment risk faced by prospective investors.
19

20 36. The foreign currency options contracts offered by White Pine have not been
21 conducted or executed on or subject to the rules of a contract market, or a foreign board of trade.
22 White Pine is not an appropriate counterparty under the Act for the alleged transactions herein,
23 and certain customers solicited by White Pine were not eligible contract participants.
24

25 **C. The Relief Defendant Has Received Customer Funds To Which She Is Not Entitled**

26 37. Relief defendant Lucia Matthews is Matthews' wife. Upon information and
27 belief, at no time did Ms. Matthews provide any services to White Pine; however, bank records
28

1 show that Ms. Matthews received money from a White Pine operating account. Ms. Matthews,
2 therefore, has no legitimate entitlement to or interest in these funds.

3
4 VI.

5 **VIOLATIONS OF THE COMMODITY EXCHANGE ACT**
6 **AND COMMISSION REGULATIONS**

7 **COUNT I**

8 **VIOLATIONS OF SECTION 4c(b) OF THE ACT**
9 **AND SECTIONS 1.1 AND 32.9(a) AND (c) OF THE REGULATIONS:**
10 **FRAUD BY MISAPPROPRIATION AND SOLICITATION**

11 38. Plaintiff re-alleges paragraphs 1 through 37 above and incorporates these
12 allegations herein by reference.

13 39. In or in connection with an offer to enter into, the entry into, the confirmation of,
14 the execution of, or the maintenance of commodity options transactions, the defendants have
15 cheated, defrauded, or deceived or attempted to cheat, defraud, or deceive, other persons, by
16 misappropriating customer funds, and by making false, deceptive, or misleading representations
17 of material facts and by failing to disclose material facts necessary to make other facts they
18 disclosed not misleading, including but not limited to those statements and omissions identified
19 in paragraphs 21 through 36 above, all in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b),
20 and Regulations 1.1, 32.9(a) and (c), 17 C.F.R. §§ 1.1, 32.9(a) and (c).

21 40. In the course of their solicitation of investors, the defendants have knowingly
22 made material misrepresentations and omitted material facts necessary to make other
23 representations not misleading, including, but not limited to the misrepresentations and
24 omissions set forth at paragraphs 21 through 36 above, in violation of Section 4c(b) of the Act, 7
25 U.S.C. § 6c(b), and Regulations 1.1, 32.9(a) and (c), 17 C.F.R. §§ 1.1, 32.9(a) and (c).
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1 41. Matthews, directly or indirectly, controlled White Pine and did not act in good
2 faith, or knowingly induced, directly or indirectly, the acts constituting White Pine's violations of
3 Section 4c(b) of the Act and Regulations 1.1, 32.9(a) and (c), 17 C.F.R. §§ 1.1, 32.9(a) and (c).
4 Matthews is therefore liable for these violations pursuant to Section 13(b) of the Act, 17 U.S.C.
5 § 13c(b).
6

7 42. The foregoing acts, misappropriation of customer funds, misrepresentations,
8 omissions and failures of Matthews and Baere occurred within the scope of Matthews' and
9 Baere's employment or office with White Pine. White Pine is therefore liable for these acts
10 pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B).
11

12 43. Each act of misappropriation and fraudulent misrepresentation and omission,
13 including but not limited to those specifically alleged herein at paragraphs 21 through 35 above,
14 is alleged as a separate and distinct violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and
15 Regulations 1.1, 32.9(a) and (c), 17 C.F.R. §§ 1.1, 32.9(a) and (c).
16

COUNT II

VIOLATIONS OF SECTION 4c(b) OF THE ACT, 7 U.S.C. § 6c(b) AND REGULATION 32.11(a), 17 C.F.R. §32.11(a): OFFER AND SALE OF ILLEGAL OFF-EXCHANGE OPTIONS CONTRACTS

17 44. Paragraphs 1 through 43 are re-alleged and incorporated herein.
18

19 45. During the relevant time period, defendants have solicited and/or accepted orders
20 for, and/or accepted money, securities or property in connection with, the purchase and sale of
21 commodity options when: (i) such transactions have not been conducted or executed on or
22 subject to the rules of a contract market, or a foreign board of trade in violation of Section 4c(b)
23 of the Act, 7 U.S.C. § 6c(b), and Regulation 32.11(a), 17 C.F.R. § 32.11(a), and (ii) defendants
24 were not appropriate counterparties in transactions with customers who are not eligible contract
25 participants pursuant to Section 2(c)(2)(B)(ii) of the Act, 7 U.S.C. § 2(c)(2)(B)(ii).
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- 1 B. Enter orders of permanent injunction prohibiting the defendants and any other
2 person or entity associated with them, including any successor thereof, from:
3
4 1. engaging in conduct, in violation of Section 4c(b) of the Act, 7 U.S.C.
5 § 6c(b)(2002), and Regulations 1.1, 32.9 and 32.11, 17 C.F.R. §§ 1.1, 32.9
6 and 32.11 (2004);
7
8 2. soliciting funds for, engaging in, controlling, or directing the trading of
9 any commodity futures or options accounts for or on behalf of any other
10 person or entity, whether by power of attorney or otherwise;
- 11 C. Enter orders of permanent injunction restraining and enjoining defendants and
12 relief defendant and all persons insofar as they are acting in the capacity of their
13 agents, servants, successors, assigns, and attorneys, and all persons insofar as they
14 are acting in active concert or participation with them who receive actual notice of
15 such order by personal service or otherwise, from directly or indirectly:
16
17 1. Destroying, mutilating, concealing, altering or disposing of any books and
18 records, documents, correspondence, brochures, manuals, electronically
19 stored data, tape records or other property of defendants, wherever located,
20 including all such records concerning defendants' business operations;
21
22 2. Refusing to permit authorized representatives of the Commission to
23 inspect, when and as requested, any books and records, documents,
24 correspondence, brochures, manuals, electronically stored data, tape
25 records or other property of defendants, wherever located, including all
26 such records concerning defendants' business operations; and
27
28 3. Withdrawing, transferring, removing, dissipating, concealing or disposing
of, in any manner, any funds, assets, or other property, wherever situated,

1 including but not limited to, all funds, personal property, money or
2 securities held in safes, safety deposit boxes and all funds on deposit in
3 any financial institution, bank or savings and loan account held by, under
4 the control, or in the name of defendants.

5
6 D. Enter an order directing defendants and relief defendant and any successors
7 thereof, to disgorge, pursuant to such procedure as the Court may order, all
8 benefits received including, but not limited to, salaries, commissions, loans, fees,
9 revenues and trading profits derived, directly or indirectly, from acts or practices
10 which constitute violations of the Act as described herein, including pre-judgment
11 interest thereon from the date of such violations;

12
13 E. Enter an order directing defendants to make full restitution to every customer
14 whose funds were received by him as a result of acts and practices which
15 constituted violations of the Act and Regulations, as described herein, and interest
16 thereon from the date of such violations;

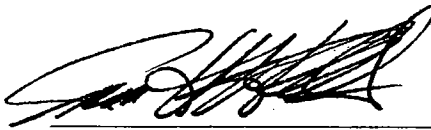
17
18 F. Enter an order assessing a civil monetary penalty against each defendant in the
19 amount of not more than the higher of \$120,000 or triple the monetary gain to the
20 defendant for each violation by defendant of the Act or Regulations;

21
22 G. Enter an order directing that defendants and relief defendant make an accounting
23 to the court of all their assets and liabilities, together with all funds they received
24 from and paid to clients and other persons in connection with commodity futures
25 transactions or purported commodity futures transactions, and all disbursements
26 for any purpose whatsoever of funds received from commodity transactions,
27 including salaries, commissions, interest, fees, loans and other disbursements of
28 money and property of any kind;

1 H. Enter an order requiring defendants to pay costs and fees as permitted by
2 28 U.S.C. §§ 1920 and 2412(a)(2); and

3 I. Order such other and further remedial ancillary relief as the Court may deem
4 appropriate.
5

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7 Dated: November 18, 2004

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10 James H. Holl, III
11 Erin E. Vespe
12 Attorneys for Plaintiff
13 Commodity Futures Trading Commission
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CERTIFICATE OF SERVICE

I certify that on this 8th day of November, 2004, I caused to be served one copy of the attached document, via U.S. First Class mail, postage prepaid, to the following:

Kent Wilson
711 8th Ave, 2d floor
San Diego, CA 92101
Agent for Service of Process for White Pine Trust Co.

Dirk Metzger
Suite 700
550 West C St.
San Diego, CA 92101
Attorney for Stephan Baere

