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FILED
CLERK, U.S. DISTRICT COURT
MAY 17 2007
CENTRAL DISTRICT OF CALIFORNIA
BY [Signature] DEPUTY

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11 Attorneys for Plaintiff
Commodity Futures Trading Commission

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13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**

15 Commodity Futures Trading Commission)
16 Plaintiff,)
17 v.)
18 Emerald Worldwide Holdings, Inc.,)
19 et al.,)
20 Defendants.)

Case No. CV03-8339 AHM (Ex)

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CLERK, U.S. DISTRICT COURT
APR 13 2007
CENTRAL DISTRICT OF CALIFORNIA
BY [Signature]

ENTERED
CLERK, U.S. DISTRICT COURT
MAY 18 2007
CENTRAL DISTRICT OF CALIFORNIA
BY [Signature] DEPUTY

THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY FRCP, RULE 77(d).

21 [Proposed]
22 **ORDER FOR DISTRIBUTION OF RESTITUTION AND**
23 **APPOINTMENT OF FUND ADMINISTRATOR**

24 This matter came before the Court on Plaintiff Commodity Futures
25 Trading Commission's ("Commission") Motion for Order of Distribution
26 of Restitution and Appointment of Fund Administrator. The Court,

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30-11-06

1 having considered the Plaintiff's motion and its proposed distribution
2 plan, orders as follows:

3 **I. INTRODUCTION**

4 1. On November 29, 2006, the Court entered a Consent Order of
5 Disgorgement Against Relief Defendants ACE Capital Advisory Group
6 Inc., Lynnwood Jen and Esther Pranolo ("Relief Defendants Consent
7 Order"), requiring these relief defendants to disgorge \$39,194.96,
8 \$10,000 and \$55,897.79, respectively.

9 2. On November 30, 2006, the Court entered a Consent Order of
10 Permanent Injunction, Monetary Penalty and Equitable Relief Against
11 Defendants Jian Zhuang and Emerald Worldwide Holdings Inc.
12 ("Emerald/Zhuang Consent Order"), which requires Emerald and Zhuang to
13 pay restitution totaling \$3,433,722.61.

14 3. Pursuant to paragraph 31 of the Relief Defendants Consent
15 Order, and paragraph 51 of the Emerald/Zhuang Consent Order, the Court
16 Registry Investment System ("CRIS") currently holds \$1,514,859.75 in
17 proceeds attributable to the defendants' offer and sale of illegal
18 off-exchange futures contracts and misappropriation of customers'
19 investment funds, and any interest accrued thereon ("Restitution
20 Fund").

21 **II. DEFINITIONS**

22 4. As used herein, the following definitions shall apply:

23 a. "Available Distribution" shall mean the amount of
24 money in the Restitution Fund (including accumulated interest and
25 earnings thereon), less the costs of administering the fund, taxes,
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1 and the fees and expenses of the Fund Administrator, who is appointed
2 in Paragraph 5 below, for carrying out its duties as provided herein.

3 b. "Claimant" shall mean any individual and/or entity,
4 other than a defendant or relief defendant, that deposited investment
5 funds directly into a U.S. bank account of defendant Emerald Worldwide
6 Holdings Inc. ("Emerald"), relief defendant ACE Capital Advisory Group
7 Inc. ("ACE Capital") and/or relief defendant ACE Emerald W. Holding
8 Inc. ("ACE Emerald") during the period of March 2002 through April
9 2004.

10 c. "Eligible Claimant" shall mean any Claimant who
11 provided to the Fund Administrator the statement requested pursuant to
12 Paragraph 11 herein, and who the Fund Administrator has determined, by
13 an analysis of relevant financial and other records provided to it by
14 the Commission and/or the Claimant, suffered a net loss. Claimants
15 whose withdrawals were greater than their deposits are not eligible to
16 receive any distribution.

17 d. "Net Loss" shall mean the amount of restitution owed
18 by the defendants to a Claimant, which is determined by a simple
19 calculation of all deposits by the Claimant into the U.S. bank
20 accounts of Emerald, ACE Capital and/or ACE Emerald minus all
21 withdrawals or payments to the Claimant from the U.S. bank accounts of
22 Emerald, ACE Capital and/or ACE Emerald, without any adjustment for
23 purported trading results or other account activity.

24 **III. APPOINTMENT OF FUND ADMINISTRATOR**

25 5. **Robb Evans & Associates LLC, 11450 Sheldon Street, Sun**
26 **Valley, CA 91352-1121**, is hereby appointed as Fund Administrator for a

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1 period beginning with the date of entry of this Order and continuing,
2 until final distribution of the Restitution Fund. The Fund
3 Administrator is authorized to collect and distribute the Restitution
4 Fund to Eligible Claimants. The Fund Administrator shall create and
5 manage the administration of the claims procedures and distribution of
6 the Restitution Fund, in accordance with the provisions in this Order.

7 6. The Fund Administrator shall have the following rights and
8 duties:

The Fund Administrator shall use its best efforts to identify the names and information for customers entitled to restitution.

9 a. It is the Fund Administrator's responsibility, in contact
10 consultation with the Commission, to distribute funds in accordance
11 with the provisions of this Order.

12 b. The Fund Administrator, on behalf of the Restitution
13 Fund, shall take all necessary steps to enable the Restitution Fund to
14 be a "qualified settlement fund" (the "Fund") within the meaning of
15 the regulations issued under section 468B(g) of the Internal Revenue
16 Code of 1986, as amended. The Fund Administrator shall be designated
17 the administrator of the Fund, pursuant to Treas. Reg. § 1.468B-
18 2(k)(3)(i), and shall satisfy the administrative requirements imposed
19 by Treas. Reg. § 1.468B-2, including but not limited to (i) obtaining
20 a taxpayer identification number, (ii) timely filing applicable
21 federal, state, and local tax returns and paying taxes reported
22 thereon, and (iii) satisfying any information, reporting or
23 withholding requirements imposed on distributions from the Fund.

24 c. The Fund Administrator is entitled to pay from the
25 Restitution Fund all reasonable costs, fees and other expenses
26 incurred in the performance of its duties, and shall be further

1 entitled to be compensated for its services at an hourly rate ranging
2 from \$28 to \$288 per hour from the Restitution Fund as provided
3 herein; provided, however, (i) that before any amounts are paid by the
4 Fund Administrator to itself, its members or its associates, or to any
5 other person, the Commission shall be given a copy of each request by
6 the Fund Administrator to make such payment ten days before submission
7 of such request to the Court and the Commission shall be permitted to
8 submit to the Court for consideration its position as to the
9 reasonableness of the Fund Administrator's request; (ii) that all
10 requests for payment of fees or other expenses to itself, its members
11 or its associates, must be approved by the Court before payment from
12 the Restitution Fund shall be made and the Court shall review the
13 reasonableness of such fees and expenses in determining whether, in
14 its discretion, such payment will be approved; and (iii) the Fund
15 Administrator may, but is not required to, follow the procedures set
16 out in sections (i) and (ii) above, before paying from the Restitution
17 Fund all other costs, fees, and expenses (including payment of amounts
18 due to taxing authorities on behalf of the Restitution Fund).

19 d. The Fund Administrator is excused from all legal
20 requirements to post a bond or give an undertaking of any type in
21 connection with his fiduciary duties and obligations as Fund
22 Administrator under the terms of this Order.

23 e. The Fund Administrator is entitled to rely on all
24 outstanding rules of law and court orders, and shall not be liable to
25 anyone for its own good faith compliance with any order, rule, law,
26 judgment or decree. Nor shall it be liable to any person for

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1 complying with orders of this Court. In no event shall the Fund
2 Administrator be liable to any defendant in this action for its good
3 faith compliance with its duties and responsibilities under this
4 Order, nor shall it be liable to anyone for any action taken or
5 omitted by it except upon a finding by this Court that it acted or
6 failed to act as a result of misfeasance, bad faith, gross negligence,
7 or in reckless disregard of its duties.

8 f. In the event the Fund Administrator decides to resign,
9 it shall first give written notice to the parties and the Court of its
10 intention, and its resignation shall not be effective until the Court
11 has appointed a successor. The Fund Administrator shall then follow
12 such instructions as its successor or the Court gives it in turning
13 over custody and control of the Restitution Fund.

14 **IV. TRANSFER OF RESTITUTION FUND TO FUND ADMINISTRATOR**

15 7. This Order provides authority for, and the Clerk is hereby
16 ordered, upon the joint request of the Commission and the Fund
17 Administrator, to:

- 18 a. retrieve from the Restitution Fund those monies
- 19 deposited, together with interest and earnings thereon; and
- 20 b. transfer those monies to the Fund Administrator for
- 21 payment or distribution as provided in this Order.

22 8. Upon receipt of the monies from the Restitution Fund, the
23 Fund Administrator shall sign a receipt acknowledging the receipt of
24 the funds. The Fund Administrator shall then file the signed receipt
25 with the Court and serve a copy of that receipt to the Commission.

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CLAIMS

1 9. The Fund Administrator shall hold the Restitution Fund in an
2 interest-bearing account, except for funds necessary to pay expenses,
3 which funds may be held in a non-interest-bearing account.

4 **V. ADMINISTRATION OF THE CLAIMS PROCEDURE**

5 10. The Fund Administrator shall make determinations under the
6 criteria established herein as to the eligibility of Claimants to
7 recover monies and the amount of money to be distributed from the
8 Restitution Fund to each Eligible Claimant. The Fund Administrator
9 may rely upon records and calculations provided by the Commission
10 without independent verification and may complete other investigation
11 and calculations as needed.

12 11. After receipt of Restitution Fund from the Court Registry
13 Investment System, the Fund Administrator shall send a letter to each
14 known Claimant at his/her last known address.¹ The letter shall
15 identify all known deposits and withdrawals by the Claimant and the
16 Claimant's resulting Net Loss. The letter will direct the Claimant to
17 provide a statement, in a form acceptable to the Fund Administrator,
18 which confirms the deposits, withdrawals and Net Loss stated in the
19 letter.

20 12. The letter shall also state that any Claimant who disputes
21 the deposits, withdrawals and Net Loss stated in the letter must
22 submit to the Fund Administrator records substantiating any claim of
23 additional losses. The Fund Administrator will specify a deadline for
24 submission of substantiating records, if any. The deadline shall be
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26 ¹ The letter will provide identical information in English, Chinese
and Japanese.

1 no less than ninety (90) calendar days and no more than one hundred
2 twenty (120) calendar days from the date when the letter is first sent
3 by the Fund Administrator to the known Claimants.

4 13. After the deadline for submission of substantiating records
5 has passed, the Fund Administrator shall notify in writing all
6 Claimants who have submitted additional documents and whose claims for
7 additional funds have been denied by the Funds Administrator under the
8 criteria established under this Order. The Fund Administrator shall
9 advise each such Claimant of the basis for the rejection of the claim.
10 Any Claimant who objects to the Funds Administrator's determination of
11 eligibility or wishes it to reconsider its denial of the claims, must
12 so advise the Fund Administrator in writing within twenty-one (21)
13 calendar days after the date of the Fund Administrator's initial
14 denial of the claim. The Fund Administrator shall promptly consider
15 any such objection or request for reconsideration and shall notify the
16 Claimant in writing of its decision.

17 14. To carry out the purposes of this Order, the Fund
18 Administrator is authorized to make such adjustments consistent with
19 the purposes of this Order as may be agreed upon between the Fund
20 Administrator and the Commission.

21 15. All determinations of the Fund Administrator that are made
22 in accordance with the provisions of this Order shall be final.

23 **V. PAYMENT OF RESTITUTION TO ELIGIBLE CLAIMANTS**

24 16. After the notification to Claimants of denied claims, as
25 provided in Paragraph 13 above, the Fund Administrator shall apply to
26 the Court for an order approving the payment to it of all reasonable

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1 fees and expenses incurred by it in the performance of its duties
2 under this Order. Upon approval by the Court, such payment shall be
3 made to the Fund Administrator from the Restitution Fund.

4 17. Upon the approval by the Court of the payment to the Fund
5 Administrator of its fees and other expenses, as provided in Paragraph
6 16, above, the Fund Administrator shall disburse the Available
7 Distribution among the Eligible Claimants in proportion to each such
8 Eligible Claimant's share of the total losses of all Eligible
9 Claimants (*i.e. pro rata*).

10 18. No individual claim in an amount determined to result in a
11 distribution of less than \$75.00 shall be paid.

12 19. Contemporaneously with each distribution of funds, the Fund
13 Administrator shall notify the Commission of the names of the Eligible
14 Claimants to whom funds were distributed and the amount distributed to
15 each.

16 20. To the extent there remain funds in the Available
17 Distribution that are not utilized for the payment of the Fund
18 Administrator's fees and expenses, the payment of taxes, or the
19 distribution to Eligible Claimants, the unused balance shall be paid
20 to the United States Treasury as soon as practicable after the final
21 tax return for the Restitution Fund has been filed. Any such unused
22 funds shall not be credited to the defendants' obligations to pay civil
23 monetary penalties.

24 21. As soon as practicable after the final tax return for the
25 Restitution Fund has been filed, the Fund Administrator shall

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1 additionally file with the Court, and serve a copy to the Commission,
2 an accounting of all expenses paid by it from the Restitution Fund.

3 22. Upon any subsequent payment of funds to the CRIS by any
4 defendant or relief defendant, the Commission shall apply to the Court
5 for further distributions.

6 **VI. PLAN COMMENT PERIOD**

7 23. Any person wishing to comment on or object to the plan set
8 forth in this Order must do so in writing by filing their comments
9 with the Court within thirty (30) calendar days from the date this
10 Order is issued, with a copy of their comments to be served, by first-
11 class mail, upon the Fund Administrator and the Commission.

12 24. Any comments so filed shall be available for inspection
13 upon reasonable notice by any interested person during normal business
14 hours at the offices of the Fund Administrator.

15 25. The Commission may respond to any comments or objections so
16 filed within thirty (30) calendar days from the last date a comment or
17 objection may be filed, with copies of any such response to be filed
18 with the Court and served by first-class mail or private carrier upon
19 counsel for the defendants, the Fund Administrator, and all persons
20 who submitted comments or objections pursuant to Paragraph 12 above.

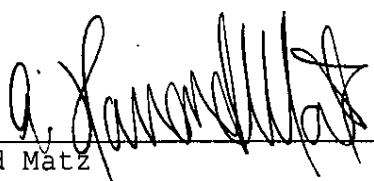
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1 26. If the Court deems it necessary or appropriate, it will
2 hold a hearing on any timely filed comment and/or objection to the
3 plan set forth in this Order.

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5 SO ORDERED, in Los Angeles, California, on this 17th day of
6 May, 2007.

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A. Howard Matz
UNITED STATES DISTRICT JUDGE

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Respectfully submitted,

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SCANNED

Attorneys for Plaintiff
COMMODITY FUTURES TRADING COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that on April 12, 2007 a true and correct copy of the **PLAINTIFF'S PROPOSED ORDER FOR DISTRIBUTION OF RESTITUTION AND APPOINTMENT OF FUND ADMINISTRATOR** was served by U.S. Mail, pre-paid, on the following persons:

Paul Cass
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Los Angeles, CA 90010
*Counsel for Defendant Thomas Hao
Jan Lu*

David Weichert
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San Clemente, CA 92672
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ACE Capital Advisory Group Inc.*

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By:

Christine M Ryall
Christine M. Ryall