

Court No. S086670  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF

TRUSTEE ACT R.S.B.C.1996, C. 464, AS AMENDED

AND

LAW AND EQUITY ACT  
R.S.B.C. 1996, CHAPTER 253, AS AMENDED

AND

ELITE FX LIMITED PARTNERSHIP  
ELITE FX MANAGEMENT INC.  
ELITE FX INVESTMENTS INC.  
ELITE FX TRADING INC.

INITIAL REPORT TO THE COURT  
OF BOALE WOOD & COMPANY LTD.  
JUDICIAL TRUSTEE AND RECEIVER

November 20, 2008

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## **APPOINTMENT**

In September 2008, the Management of Elite FX Group of Companies made an application to the Supreme Court of British Columbia to have a Judicial Trustee appointed. In an Affidavit sworn in support of the application, James Roland deposed that it was his view that the appointment of a Judicial Trustee was in the best interest of the investors.

On October 9, 2008, the Supreme Court of British Columbia appointed Boale, Wood & Company Ltd. as Judicial Trustee and Receiver (the “Judicial Trustee”) of the following entities:

- Elite FX Limited Partnership ( the “Partnership”)
- Elite FX Management Inc. (“Management”)
- Elite FX Investments Inc. (“Investments”)
- Elite FX Trading Inc. (“Trading”)

Collectively the above noted entities will be referred to in this report as Elite FX.

A copy of the Judicial Trustee Court Order can be found on our website at <http://www.boalewood.ca/images/assets/elitefxorder.pdf>

We have been appointed as a result of a failed investment plan that is described in more detail later in this report. Our mandate, as Judicial Trustee, is to take possession and control of the property of Elite FX, including the recovery of monies owed to Elite FX, and to distribute the same on a fair and equitable basis to the stakeholders in Elite FX.

In preparing this report we have relied on the corporate and investment records of Elite FX as well as discussions with management. We have not audited, reviewed or otherwise verified this information.

## **BACKGROUND**

As set out in the Offering Memorandum, the Partnership was initially formed by Elite FX Management Inc., the General Partner, on January 18, 2006 and became a Limited Partnership under the laws of British Columbia on January 20, 2006. The purpose of the Partnership was to provide a structure to allow the Limited Partners to invest in foreign exchange contracts. James Roland was the sole Officer and Director of the General Partner. He was responsible for the administration of the Partnership and the trading in foreign exchange contracts which was conducted initially by Elite FX Investments Inc., and later by Elite FX Trading Inc. David Roland was an advisor in the formation of the Partnership.

The records of Elite FX indicate that between January 2006 and September 2006, the Partnership raised approximately \$7,300,000 from the Limited Partners pursuant to the Offering Memorandum. We are advised by James Roland, that all of the funds raised (after deducting commissions, expenses and management fees) were invested with Razor FX, a New York company that purported to be experts in trading foreign exchange contacts and provided literature that indicated their clients were yielding returns as high as 60% annually.

According to James Roland, in September 2006 approximately 65% of the Limited Partners cashed out their investment in the Partnership and invested their funds with a new Limited Partnership named Horizon FX that was formed by Gem Ali, a former Director of the Partnership. It was at this time that the Elite FX Limited Partnership Offering Memorandum was amended and Elite FX Trading Inc. took over the management of the partnership and trading in foreign exchange contracts. Of the remaining 35% of Limited Partners (the “Elite Investors”) in the Partnership, some have redeemed all or part of their investment, while others have not redeemed any portion.

On January 16, 2008 James Roland became aware that Razor FX was basically a ponzi scheme whereby the new capital invested by parties was used to payback profits or

redemptions to existing investors, thus creating the illusion of a successful and profitable investment.

We understand that the principals of Razor FX, MacCaul and Eisner, have both pleaded guilty to conspiracy to commit mail and wire fraud. As part of their plea agreements, they have consented to forfeit to the regulatory authorities in the United States of America, all of the property that was derived from their conduct. According to the U.S. Court documents this property that could be worth as much as US\$28,000,000.

Counsel for Elite FX has recently filed a claim with the U.S. Postal Inspector, Vincent Minecci, who was appointed by the District Court of New York. We have written to Mr. Minecci advising him of our appointment and requesting that all future communications be sent to us.

We are unable to confirm that proceeds from this forfeited property will be made available to the investors in Razor FX, including the Elite Investors. We will provide you with more details as information becomes available.

## ELITE INVESTORS SUMMARY

Based on the records of Elite FX we can summarize of the Elite Investors as follows:

	<b>Number</b>	<b>Amount Invested</b>	<b>Amount Repaid</b>	<b>Net Investment</b>
Total Elite Investors	238	\$ 7,311,053	\$ 2,511,918	\$4,799,135
Investors paid back 100% of initial investment & profits	<u>65</u>	<u>1,395,463</u>	<u>1,976,763</u>	<u>(581,300)</u>
<b>Remaining Elite Investors</b>	<b><u>173</u></b>	<b><u>\$ 5,915,590</u></b>	<b><u>\$ 535,155</u></b>	<b><u>\$5,380,435</u></b>

Based on the financial records of Elite FX, there are currently 173 Elite Investors who have invested a total of \$5,915,589, have received \$535,154 back and are currently owed \$5,380,435 of their original investment. The above summary does not include any of the profits that may have been previously reported to the Elite Investors.

We further understand the Remaining Elite Investors include sales agents that chose to invest their commissions and related parties.

## **ASSETS AVAILABLE TO REPAY THE ELITE INVESTORS**

The primary assets available to repay the Elite Investors are the funds held by the Judicial Trustee, Boale, Wood & Company Ltd., in the amount \$1,189,852 plus any recovery from the U.S. proceedings against Razor FX which cannot be quantified at this time.

According to James Roland the only physical asset that Elite FX owns is a computer that was purchased in 2006 for approximately \$2,000. This computer is no longer working and is not considered to have any realizable value. Mr. Roland further advises that there are few small outstanding liabilities totaling less than \$2,000. Given its minimal value, the Judicial Trustee does not intend to take possession of this asset.

## **OUTSTANDING LITIGATION**

Two of the Elite Investors had commenced a legal action against the Partnership to recover a total investment of \$100,000 paid to the Partnership in October and November 2007. As a result of our appointment these proceedings have been stayed.

In their Statement of Claim, the investors are claiming that their investment occurred after a Cease Trade Order was issued by Securities Commission and, therefore, was invalid by reason of illegality. They also claim that the funds paid to the Partnership are held in trust and should be returned. The Partnership has filed a Defence, inter alia, denying liability. We intend to seek legal advice on the validity of the position of the Plaintiff and respond to their claim accordingly. Should the Plaintiff's be successful, the \$100,000 invested will have to be returned, plus any costs that they may recover, thus reducing the funds available for the Elite Investors.



## **ALLOCATION OF PROCEEDS AMONGST ELITE INVESTORS**

To date we have recovered funds of approximately \$1,189,000 that will be available for distribution to the Elite Investors net of a reserve for the outstanding litigation and professional fees and disbursements to complete the administration of this matter. As well a claim has been made in the United States proceedings by Elite FX for return of the funds invested in Razor F/X. The timing and amount of any recovery are uncertain at this time.

We have considered the alternative methods to allocate the funds amongst the Elite Investors and have concluded that the fairest and most equitable way to distribute the funds is to do a pro-rata distribution based on the cash invested or sales commissions reinvested less the funds returned. We also have considered whether or not to include the sales agents and related parties in the pro-rata distribution. Our preliminary view is that these investors should be treated the same as the other investors assuming that they have invested cash or commissions earned. Should we determine otherwise, the effected investors will be advised accordingly.

Any purported profits on the investment of each Elite Investor will be ignored as we now know these profits were fictitious. Accordingly, any cash returned to the Elite Investors is considered to be a return on their investment as opposed to a distribution of profit.

This proposed allocation is consistent with the methodology used in preparing the 2007 T5013 investment statements that were sent out to the Elite Investors earlier this year. These statements were prepared by Elite FX based on legal advice received from the law firm of Thorsteinssons.

It should be noted that the proposed method of allocation does not include the Elite Investors that have received repayment of their initial investment (by way of profits or redemption). These Elite Investors will not share in any distribution that we make to the Elite Investors.

## **PROPOSED COURSE OF ACTION OF JUDICIAL TRUSTEE/RECEIVER**

In order to proceed with a distribution to the Elite Investors we will require a Court Order approving a claims filing/approval process and the methodology of distribution as previously described in this report. We are currently considering the alternatives which would be best suited for the Elite Investors to file and have their claims approved. Barring unforeseen circumstances, it is our intention to apply to Court for an Order in the near future to authorize the Judicial Trustee to proceed with this process and thereafter make a distribution on the method approved by the Court.

Finally, we will be reviewing the records of Elite FX and will provide you with a more complete report on the financial transactions of Elite FX including the actual amounts invested in and returned by Razor FX as well as the fees, expenses, commissions and other disbursements.

Dated at Vancouver, British Columbia, this 20<sup>th</sup> day of November, 2008.

### **Boale Wood & Company Ltd.**

In its Capacity as Judicial Trustee and Receiver of  
Elite FX Limited Partnership et al

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Per: John McEown, CA•CIRP