



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.

**NOTICE OF MOTION**

TO: The Respondents

TAKE NOTICE that an application of Boale Wood & Company Ltd., in its capacity as Judicial Trustee and Receiver of Elite FX Limited Partnership et al. (the "Judicial Trustee"), will be made to the presiding Judge or Master at the courthouse at 800 Smithe Street, Vancouver, British Columbia, at a date and time to be set, for the following:

1. An Order in the form attached approving the scheme of distribution set out in the Affidavit of John McEown, sworn February 17, 2009, and directing the Judicial Trustee to make an interim distribution in accordance with that scheme of distribution


The Applicant will rely on and the inherent jurisdiction of the Court.

At the hearing of the application, the Applicant will rely on the following affidavit and other documents:

1. Affidavit of John McEown, sworn February 17, 2009.

The Applicant estimates that the application will take 15 minutes.

Dated: February 17, 2009

  
Solicitor for Boale Wood & Company Ltd., in its  
capacity as Judicial Trustee and Receiver of Elite FX  
Limited Partnership et al.  
(William L. Roberts)

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**THIS NOTICE OF MOTION** IS PREPARED AND FILED BY WILLIAM L. ROBERTS, BARRISTER AND SOLICITOR OF THE LAW FIRM OF LAWSON LUNDELL LLP, WHOSE PLACE OF BUSINESS AND ADDRESS FOR SERVICE IS: 1600 CATHEDRAL PLACE, 925 WEST GEORGIA STREET, VANCOUVER, B.C. V6C 3L2 / PHONE: (604) 685-3456 / FAX: (604) 669-1620 / FILE 23519/103273

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- (b) **“Amount Returned”** means the amount paid to each Investor by Elite FX on account of units of Elite FX Limited Partnership, without regard to whether any portion was characterized as interest, dividends, redemptions or profits;
- (c) **“Claim”** means any right or claim of any person against one or more of Elite FX in connection with any indebtedness, liability or obligation of any kind whatsoever of one or more of Elite FX that existed as at October 9, 2008;
- (d) **“Claimant”** means any person who has a Claim against any of Elite FX, and includes an Investor;
- (e) **“Claims Package”** means a document package, including:
  - (i) the Judicial Trustee’s calculation of the Claim of each Claimant;
  - (ii) a copy of this Order;
  - (iii) a Proof of Claim; and
  - (iv) such other documents determined to be necessary or desirable by the Judicial Trustee;
- (f) **“Elite FX”** means any or all of Elite FX Limited Partnership, Elite FX Management Inc., Elite FX Investments Inc., Elite FX Trading Inc.
- (g) **“Investor”** means any person who subscribed and paid for units in Elite FX Limited Partnership;
- (h) **“Proven Claim”** means a Claim that has been allowed by the Judicial Trustee or has been deemed to have been allowed by the Judicial Trustee pursuant to the terms of this Order;

### **CLAIMS PROCESS**

2. The Judicial Trustee shall determine and compile the following information in accordance with the records of Elite FX:
  - (a) a list of all known or potential Claimants;
  - (b) the amount of the Claim for each Claimant.
3. In calculating the Claim of an Investor, the Judicial Trustee shall have regard only to the Amount Advanced and the Amount Returned for each Investor, and the Claim of each Investor shall be determined by deducting the Amount Returned from the Amount Advanced, without regard to any interest, dividends, redemptions, profits or similar amounts that were or should have been paid.
4. The Judicial Trustee shall send a Claims Package to each Claimant by regular mail to the address indicated in the records of Elite FX.

5. If a Claimant disagrees with the Judicial Trustee's calculation of his/her/its Claim, as set out in the Claims Package, then that Claimant may file a Proof of Claim with the Judicial Trustee within 21 days of receipt of the Claims Package.
6. Any Claimant, regardless of whether he/she/it receives a Claims Package or is included in the records of Elite FX, may request a Claims Package from the Judicial Trustee and file a Proof of Claim.
7. If a Claimant fails or neglects to file a completed Proof of Claim with the Judicial Trustee within 21 days of receipt of the Claims Package, then that Claimant's Claim as set out in the Claims Package shall be deemed to be correct and shall be a Proven Claim.
8. Upon receipt of a completed Proof of Claim, the Judicial Trustee shall within 21 days of receipt of the completed Proof of Claim:
  - (a) allow the Proof of Claim as filed, in which case the amounts set out in that Proof of Claim shall be deemed to be the Proven Claim for that Claimant; or
  - (b) disallow the Proof of Claim as filed, in whole or in part, in which case the amount, if any, of the Claim (as allowed by the Judicial Trustee) shall be deemed to be the Proven Claim for that Claimant
9. Within 28 days of receiving a completed Proof of Claim, the Judicial Trustee shall give that Claimant written notice of the Judicial Trustee's decision to allow or disallow that Proof of Claim, as the case may be.
10. Notwithstanding paragraph 8 herein, a Claimant may appeal any disallowance of a Proof of Claim, in whole or in part, to this Honourable Court by summary application provided that the application and all supporting Affidavits are filed and delivered to the Judicial Trustee within 21 days of the Judicial Trustee having given notice of the disallowance.
11. The Judicial Trustee may apply to this Honourable Court for directions in relation to this Order as necessary or desirable.

### **DISTRIBUTION SCHEME**

12. Subject to para. 14 below, the Judicial Trustee shall distribute all property of Elite FX to Claimants on a *pro rata* basis.
13. The Judicial Trustee is authorized and directed to make such interim distributions in such amounts and at such times as the Judicial Trustee deems necessary or desirable.
14. Where the Judicial Trustee determines that the Claim of a particular Claimant is such that the Claimant should receive more than a *pro rata* payment, the Judicial Trustee is at liberty to make that determination and pay the Claim of that Claimant.
15. To receive a payment from the Judicial Trustee, a Claimant must confirm his/her/its address for delivery with the Judicial Trustee.

**NOTICE**

16. Any document or notice sent by the Judicial Trustee by regular mail shall be deemed to be received on the seventh (7<sup>th</sup>) day following the date of mailing.
17. Any Claimant who provides an email address, facsimile number or alternate address for delivery to the Judicial Trustee shall be deemed to consent to receiving materials at that email address, facsimile number or alternate address for delivery.

APPROVED AS TO FORM:

BY THE COURT

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Counsel for the Plaintiff  
(William L. Roberts)

DEPUTY DISTRICT REGISTRAR

NO. S086670  
VANCOUVER REGISTRY  
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**ORDER**

•(WLR)

**LAWSON LUNDELL LLP**

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925 West Georgia Street  
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V6C 3L2

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Attention: William L. Roberts