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8 THOMAS C. HEBRANK

9 UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA  
11 EASTERN DIVISION

12 SECURITIES AND EXCHANGE  
COMMISSION,

13 Plaintiff,

14 v.

15 CHARLES P. COPELAND,  
16 COPELAND WEALTH  
MANAGEMENT, A FINANCIAL  
17 ADVISORY CORPORATION, and  
COPELAND WEALTH  
18 MANAGEMENT, A REAL ESTATE  
CORPORATION,

19 Defendants.  
20

Case No. 11-08607-R-DTB

**RECEIVER'S EX PARTE  
APPLICATION FOR ORDER  
ALLOWING PRE-RECEIVERSHIP  
SALE OF FINANCIAL ADVISORY  
ASSETS TO ELEVAGE  
PARTNERS, LLC TO CLOSE**

Ctrm: 8  
Judge: Hon. Manuel L. Real

1 Thomas C. Hebrank ("Receiver"), the Court-appointed permanent receiver for  
2 Copeland Wealth Management, A Financial Advisory Corporation ("CWM"),  
3 Copeland Wealth Management, A Real Estate Corporation ("Copeland Realty"), and  
4 their subsidiaries and affiliates (collectively, the "Receivership Entities"), hereby  
5 applies for an order allowing a sale transaction entered into prior to the Receiver's  
6 appointment, as amended, to close. The parties to the proposed transaction are  
7 CWM, Defendant Charles P. Copeland ("Copeland"), Copeland's son C. Lawrence  
8 Copeland ("Lawrence"), the Copeland Investor Restitution Trust ("Trust"), and  
9 Elevage Partners, LLC ("Elevage"). Elevage, the proposed buyer of the assets, is  
10 prepared to close.

11 The Receiver is filing this application on an ex parte basis primarily because  
12 CWM clients are not currently receiving investment advice. Many of these clients  
13 rely exclusively on CWM for advice in managing their investments. The Receiver is  
14 not in a position to provide this advice. As soon as possible, these clients need to be  
15 moved over to Elevage, or instructed to engage a different investment adviser. Any  
16 significant delay in resolving this matter could significantly harm these clients.

## 17 I. INTRODUCTION

18 Prior to filing of the Complaint by the Securities and Exchange Commission  
19 ("Commission"), and the Court's appointment of the Receiver, CWM entered into a  
20 transaction to sell its financial advisory business to Elevage, an investment adviser  
21 registered with the State of California. The assets to be transferred to Elevage are  
22 investment management agreements ("IMAs") with clients of CWM, under which  
23 CWM manages client accounts maintained at Charles Schwab and TD Ameritrade,  
24 and receives a quarterly commission.

25 Starting in April 2009, CWM marketed its financial advisory business for sale.  
26 With the assistance of an agent, CWM contacted approximately 175 registered  
27 investment advisers about the opportunity. CWM provided approximately  
28 20 interested parties with due diligence materials, received a formal offer from

1 Elevage and three other informal offers. Declaration of Jeffrey Bottomley filed  
2 herewith, ¶ 5.

3 CWM discussed terms with Elevage and two of the other three interested  
4 parties. After considerable discussions with the other two interested parties, neither  
5 decided to pursue a transaction, leaving Elevage as the only remaining suitor. CWM  
6 negotiated terms with Elevage and, on or about September 30, 2011, CWM, Elevage,  
7 Copeland and Lawrence executed the Asset Purchase Agreement ("Agreement").  
8 Declaration of C. Lawrence Copeland filed herewith, ¶ 4. A copy of the Agreement  
9 is attached as Exhibit 1 to the Declaration of Thomas Hebrank filed herewith  
10 ("Hebrank Declaration"). CWM then met with its clients and encouraged them to  
11 consent to the transfer of their accounts to Elevage. These client meetings took place  
12 prior to the Receiver's appointment.

13 Since the Receiver's appointment, the parties to the Agreement have executed  
14 a First Amendment and Second Amendment to the Agreement (the "First  
15 Amendment" and "Second Amendment"). Copies of the First Amendment and  
16 Second Amendment are attached to the Hebrank Declaration as Exhibits 3 and 6,  
17 respectively. By this application, the Receiver requests an order allowing the sale  
18 transaction with Elevage, as amended, to close, and allowing the Receiver to assign  
19 to Elevage the IMAs for clients who have consented to the assignment. The terms of  
20 the Agreement, First Amendment and Second Amendments are discussed in detail  
21 below.

## 22 II. CAUSE FOR EX PARTE RELIEF

23 The Receiver submits that there is good cause for granting relief on an ex parte  
24 basis. As noted above, clients are not receiving investment advice. The Receiver has  
25 informed clients that he will instruct Charles Schwab and TD Ameritrade to make  
26 trades and transaction on their behalf, but he will not provide investment advice. As  
27 soon as possible, these clients should be moved over to Elevage or another registered  
28



1 Concurrently with filing it with the Court, the Receiver mailed and e-mailed  
2 the application and supporting declarations to Counsel for the Commission, to  
3 Defendant Copeland, and to counsel for Elevage. The Receiver also posted the  
4 documents on his website. All interested parties are advised that they have 24 hours  
5 from receipt of the application to file opposition.

#### 6 IV. THE RECEIVER'S ACTIVITIES TO DATE

7 Since his appointment on October 25, 2011, the Receiver has secured the  
8 offices of the Receivership Entities, met with and interviewed their employees,  
9 caused himself to be added as the sole authorized signatory for their bank and  
10 brokerage accounts, gathered and reviewed their financial statements, and caused all  
11 data on their computer servers and hard drives to be imaged and preserved. As  
12 required under 28 U.S.C. § 754, the Receiver has caused the Complaint and  
13 Judgment to be filed in the six judicial districts (not including this district) in which  
14 the Receivership Entities own property. The Receiver has also had the Receivership  
15 Entities' mail forwarded to his office.

16 The Receivership Entities shared a website with Copeland Accountancy, an  
17 entity not part of the receivership. The Receiver has instructed Copeland and  
18 Copeland Accountancy to remove all references to the Receivership Entities from the  
19 website. In addition, the Receiver established a new page on his website dedicated to  
20 this receivership: [www.ethreadvisors.com](http://www.ethreadvisors.com) (go to the tab labeled "Cases" and click  
21 on SEC v. Copeland Wealth Management). As discussed below, the Receiver has  
22 mailed a letter to all CWM clients with information about the case and directing  
23 them to his website for future updates.

24 The Receiver has also commenced work to preserve a possible sale of real  
25 property located in North Carolina, which property is the subject of a pending  
26 bankruptcy case. This is also a time sensitive matter as significant delay could cause  
27 the buyer to lose its financing commitment and walk away from the transaction. The  
28

1 Receiver anticipates filing papers seeking relief with respect to the North Carolina  
2 property within the next week.

3 In the next 10 days, the Receiver also intends to file an employment  
4 application for counsel and a Preliminary Receiver's Report. In connection with his  
5 Preliminary Receiver's Report, the Receiver will request certain relief that he  
6 believes will clarify the scope of the receivership and aid in the administration of the  
7 receivership estate.

## 8 V. PROCEDURAL BACKGROUND

9 On October 18, 2011, the Commission filed its Complaint for Violations of  
10 The Federal Securities Laws ("Complaint"), together with the Consent of Defendants  
11 Copeland, CWM and Copeland Realty ("Consent"), and the Proposed Judgment of  
12 Permanent Injunction and Other Relief as to Defendants Copeland, CWM and  
13 Copeland Realty. Docket Nos. 1 and 2. On October 25, 2011, the Court entered the  
14 Judgment of Permanent Injunction and Other Relief as to Defendants Copeland,  
15 CWM and Copeland Realty, appointing the Receiver as permanent receiver for  
16 CWM, Copeland Realty, and their subsidiaries and affiliates ("Judgment"). Docket  
17 No. 3.

18 Among other things, the Complaint alleges that Copeland, CWM and  
19 Copeland Realty committed fraud (a) in the offer and sale of limited partnership  
20 interests (investment contracts) in 23 limited partnerships managed by CWM and  
21 Copeland Realty, and (b) while acting as an investment adviser. Specifically, the  
22 Complaint alleges that, in violation of the Fixed Income Fund limited partnership  
23 agreements, more than \$18.6 million was loaned from the Fixed Income Funds to  
24 (1) Copeland Realty, (2) Real Estate Funds managed by Copeland Realty,  
25 (3) accounting clients of related non-party The Copeland Group, a Consulting and  
26 Accountancy Corporation ("Copeland Accountancy"), (4) companies in which the  
27 Private Equity Funds held interests, (5) other Fixed Income Funds, and (6) Copeland  
28 family members. Complaint, ¶¶ 17-19. The Complaint also alleges that the "loans

1 from the Fixed Income Funds to the Real Estate Funds allowed the Real Estate Funds  
2 to pay their operational expenses as well as continue their distribution payments,  
3 essentially a Ponzi-like scheme in which new investor funds were paid to existing  
4 clients." Complaint, ¶ 20.

5 The Commission further alleges that Copeland misrepresented to clients that  
6 the Fixed Income Funds were "guaranteed" and that, in violation of the Real Estate  
7 Fund limited partnership agreements, Copeland Realty (a) caused the Real Estate  
8 Funds to loan approximately \$1.8 million to other Real Estate Funds, and  
9 approximately \$500,000 to clients of Copeland Accountancy and CWM,  
10 (b) transferred approximately \$5.7 million from the Real Estate Funds to CWM,  
11 which was used to trade put options, and (c) paid itself approximately \$2.4 million in  
12 commissions and other compensation in connection with the purchase and sale of  
13 real estate. Complaint, ¶¶ 21-25.

14 The Consent of Defendants Copeland, CWM and Copeland Realty neither  
15 admits or denies the allegations in the Complaint, but consents to entry of the  
16 Judgment, leaving the issue of the amount of disgorgement and civil penalties to be  
17 determined at a later date upon motion by the Commission. The Judgment, among  
18 other things, authorizes, empowers and directs the Receiver to:

- 19 (a) "take custody, control, possession and charge... of all funds, assets" of the  
20 Receivership Entities;
- 21 (b) "to have control of, and to be add as the sole authorized signatory for, all  
22 accounts" of the Receivership Entities;
- 23 (c) "to conduct such investigation and discovery as may be necessary to  
24 locate, account for and recover all of the assets of or managed by" the  
25 Receivership Entities, "and to engage and employ attorneys, accountants and  
26 other persons to assist in such investigation and discovery";
- 27  
28

- 1 (d) "to take such action as is necessary and appropriate to preserve and...  
2 prevent the dissipation, concealment or disposition of any assets of or  
3 managed by" the Receivership Entities;
- 4 (e) "to make an accounting, as soon as practicable, to this Court and the  
5 Commission";
- 6 (f) "to make such payments and disbursements from the funds and assets... as  
7 may be necessary and advisable in discharging his or her duties as permanent  
8 receiver";
- 9 (g) "to employ attorneys, accountants and others to investigate and, where  
10 appropriate, to institute, pursue, and prosecute all claims and causes of action";
- 11 (h) "to have access to, monitor, and redirect all mail";
- 12 (i) "to operate and control the content of information posted on any Internet  
13 web site maintained" by the Receivership Entities; and
- 14 (j) "to exercise all lawful powers" of the Receivership Entities "and their  
15 officers, directors, employees".

16 Judgment, Part V.

17 The Judgment also restrains and enjoins all persons seeking relief of any kind  
18 against the Receivership Entities from (a) "commencing, prosecuting, continuing or  
19 enforcing any suit or proceeding", (b) "using self-help or executing or issuing or  
20 causing the execution or issuance of any court attachment, subpoena, replevin,  
21 execution or other process for the purpose of impounding or taking possession of or  
22 enforcing a lien upon any property or property interests" of the CWM or Copeland  
23 Realty; and (c) "doing any act or thing whatsoever to interfere with taking control,  
24 possession or management by the permanent receiver appointed hereunder of the  
25 property and assets" of CWM and Copeland Realty, "or in any way to interfere with  
26 or harass the permanent receiver or his or her attorneys, accountants, employees or  
27 agents or to interfere in any manner with the discharge of the permanent receiver's  
28 duties and responsibilities hereunder." Judgment, Part VIII.



1 deduct any amount owed to it under the indemnity provisions discussed below  
2 against any amount it owed to CWM.

3 **Minimum IMA Transfer.** The Agreement required that clients with at least  
4 \$50 million under CWM's management sign consents to transfer their IMAs to  
5 Elevage. The Receiver was informed that this condition was satisfied at  
6 approximately the same time or shortly after his appointment. This condition is not  
7 altered by the First or Second Amendments.

8 **Solicitation Agreement.** As part of the Agreement, Elevage and CWM were  
9 to sign an agreement providing that CWM would solicit existing or prospective  
10 clients to transfer or sign new IMAs with Elevage. This is reflected in Exhibit B to  
11 the Agreement ("Solicitation Agreement").

12 **Arbitration/ADR.** The Agreement contained an arbitration provision for all  
13 disputes arising out of or relating to the Agreement. The Agreement also contained a  
14 provision requiring that any disputes regarding the earnout amount be submitted to a  
15 national or regional accounting firm for binding determination.

16 **Representations.** The Agreement contained representations by CWM that,  
17 other than this case, there are no legal proceedings pending or threatened against  
18 CWM or its affiliates, and that there is no injunction or order on CWM or its assets  
19 that would restrict CWM from completing the transaction. There was no cap on the  
20 amount Elevage could recover for damages resulting from a breach of CWM's  
21 representations.

22 **Indemnity.** The Agreement contained broad indemnity provisions under  
23 which CWM indemnified Elevage for, among other things, any damages it incurs as  
24 a result of any proceedings involving CWM or its affiliates, clients, shareholders,  
25 officers or employees. There was no cap on the amount of its damages Elevage  
26 could recover under the indemnity provisions.

27 **Employment of Lawrence Copeland.** As part of the transaction, Elevage  
28 agreed to employ Lawrence under an "at will" employment agreement. This is

1 reflected in Exhibit C to the Agreement. Lawrence was the President of CWM, and  
2 its primary contact with clients.

3 **Investor Restitution Trust.** As part of the Agreement, a trust was established  
4 into which the earnout would be deposited for the benefit of certain named investor  
5 beneficiaries who have suffered losses from their investments ("Trust"). There were  
6 only 12 named beneficiaries of the Trust. The Declaration of the Copeland Investor  
7 Restitution Trust is attached to the Hebrank Declaration as Exhibit 4.

## 8 VII. THE AMENDED SALE TERMS

9 The Receiver determined that, in light of the Judgment and receivership,  
10 certain terms of the Agreement needed to be changed. As an initial matter, it was  
11 necessary to make authorization from this Court a condition to closing the  
12 transaction. Additionally, the Receiver determined that the following changes should  
13 be made:

14 **Solicitation Agreement.** This part of the Agreement was stricken. The  
15 Receiver believes that, as an officer of the Court, it is not appropriate for him to  
16 endorse Elevage or encourage clients to transfer or sign new IMAs with Elevage.

17 **Arbitration/ADR.** The Receiver believes that the alternative dispute  
18 resolution provisions in the Agreement are no longer appropriate, and that this Court,  
19 which appointed the Receiver and has jurisdiction over the receivership estate,  
20 should be the exclusive forum to resolve disputes relating to the Agreement.

21 **Setoff.** The provision allowing Elevage to offset any amount owed to it under  
22 the indemnity provisions against any amount it owed to CWM was stricken.

23 **Representations.** The representations by CWM discussed above were  
24 eliminated. The Judgment arguably makes the representation false. Moreover, the  
25 Receiver has not had sufficient time to investigate what pending or threatened legal  
26 proceedings against the Receivership Entities may exist.

27 **Indemnity.** The Receiver believes that the broad indemnity provisions in  
28 favor of Elevage are not appropriate. The Receiver's concern is that Elevage could

1 assert an indemnity claim, and that such claim might be entitled to priority in  
2 payment from the receivership estate in that it arises from a post-receivership  
3 transaction approved by the Court. In a case such as this where the assets of the  
4 receivership estate are limited, exposing the estate to an indemnity claim that could  
5 consume a large portion of the assets available for distribution is inadvisable. The  
6 Receiver, therefore, limited the scope of the indemnity, and limited the source from  
7 which Elevage could recover on an indemnity claim, or any other claim under the  
8 Agreement, to the \$100,000 Holdback.

9       **Employment of Lawrence Copeland.** The Receiver, Elevage and Lawrence  
10 agreed that although nothing prevents Elevage from employing Lawrence, the  
11 employment agreement would not be part of the Agreement.

12       **Investor Restitution Trust.** The Receiver believes that the Trust is  
13 inconsistent with the purposes of an equity receivership. One of the fundamental  
14 purposes of an equity receivership is to put the assets of the entities in receivership  
15 under the control of the Court such that the Court can determine which investors and  
16 creditors have valid claims, and further determine the most equitable manner of  
17 distributing the assets. The Trust would limit the Court's ability to serve this purpose  
18 by pre-determining that the earnout under the Agreement would go only to the 12  
19 named beneficiaries. At this early stage in the case, it is not possible to determine  
20 whether the 12 named beneficiaries are the only persons who should receive a  
21 distribution from the sale proceeds. Accordingly, the First Amendment eliminates  
22 the Trust.

23       Elevage stated that the additional delay and attorney fees it had incurred, the  
24 changed landscape due to the Commission's complaint and the Receiver's  
25 appointment, as well as the changes discussed above increase its risk under the  
26 Agreement and reduce its projected economic benefit. Accordingly, it demanded an  
27 adjustment to the purchase price. The Receiver and Elevage negotiated the purchase  
28

1 price and agreed on a flat earnout of 25% of net revenue on all accounts, including  
2 Smaller Accounts. The terms of the earnout are otherwise unchanged.

3 The inclusion of Smaller Accounts, which were excluded under the original  
4 earnout formula, substantially ameliorates the reduction in the percentage of  
5 quarterly net revenue. As of August 31, 2011, there were 179 Smaller Accounts.  
6 This is reflected on Schedule A of the Agreement. Furthermore, based on the clients  
7 who have consented to the transfer of their IMAs thus far, the Receiver believes it is  
8 unlikely that the quarterly net revenue would be sufficient to reach the 40% tier  
9 under the original earnout formula, and that for most quarters it would likely have  
10 been at the 35% or 30% tier.

11 Accordingly, the First Amendment (a) reinstates the Agreement after Elevage  
12 terminated it, (b) greatly reduces the receivership estate's exposure to claims by  
13 Elevage arising from the Agreement, (c) limits Elevage's source of recovery on any  
14 such claims to the Holdback, (d) eliminates aspects of the Agreement that are  
15 unacceptable or inadvisable in light of the receivership (the Solicitation Agreement  
16 and arbitration provisions), as well as those that run counter to the fundamental  
17 purposes of an equity receivership (the Trust), and (e) contains a modest reduction in  
18 the earnout.

19 **Second Amendment.** As discussed above, after the parties to the Agreement  
20 executed the First Amendment, and the Receiver's counsel had e-mailed the  
21 application to counsel for the Commission, and to Defendant Copeland, the  
22 Commission expressed a concern with the Agreement, as amended. Specifically, the  
23 Commission was concerned that the Agreement, as amended, did not require Elevage  
24 to register as an investment adviser in states other than California if and when CWM  
25 clients who reside in other states moved over to Elevage. The parties to the  
26 Agreement agreed that a Second Amendment was appropriate to address this  
27 concern. The Second Amendment was executed on November 7, 2011. The Second  
28 Amendment is attached as Exhibit 6 to the Hebrank Declaration.

1 **VIII. COMMUNICATIONS WITH CLIENTS**

2 On November 3, 2011, the Receiver posted on his website and mailed to all  
3 CWM clients a letter which is attached to the Hebrank Declaration as Exhibit 5. The  
4 letter advises CWM clients of the Commission's complaint, the Receiver's  
5 appointment, and the possibility that the Court will approve the proposed sale. The  
6 Receiver has not, and does not, encourage clients to, or discourage clients from,  
7 transferring their IMAs to Elevage. Although the Receiver believes that the sale  
8 makes economic sense for the receivership estate under the circumstances, and  
9 therefore seeks an order allowing the transaction to close, the Receiver takes no  
10 position regarding whether clients should or should not transfer their IMAs to  
11 Elevage. Likewise, the Receiver suggests that any order by the Court allowing the  
12 sale to close is not intended and should not be construed as an endorsement of  
13 Elevage.

14 **IX. ARGUMENT**

15 **A. The Court's Broad Equitable Powers**

16 "The power of a district court to impose a receivership or grant other forms of  
17 ancillary relief does not in the first instance depend on a statutory grant of power  
18 from the securities laws. Rather, the authority derives from the inherent power of a  
19 court of equity to fashion effective relief." *SEC v. Wencke*, 622 F.2d 1363, 1369  
20 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly  
21 and efficient administration of the estate by the district court for the benefit of  
22 creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir 1986). As the appointment  
23 of a receiver is authorized by the broad equitable powers of the court, any  
24 distribution of assets must also be done equitably and fairly. *See S.E.C. v. Elliot*,  
25 953 F.2d 1560, 1569 (11th Cir. 1992).

26 District courts have the broad power of a court of equity to determine the  
27 appropriate action in the administration and supervision of an equity receivership.  
28

1 See *SEC v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005). The Ninth  
2 Circuit explained:

3 A district court's power to supervise an equity receivership and to  
4 determine the appropriate action to be taken in the administration of the  
5 receivership is extremely broad. The district court has broad powers  
6 and wide discretion to determine the appropriate relief in an equity  
7 receivership. The basis for this broad deference to the district court's  
supervisory role in equity receiverships arises out of the fact that most  
receiverships involve multiple parties and complex transactions. A  
district court's decision concerning the supervision of an equitable  
receivership is reviewed for abuse of discretion.

8 *Id.* (citations omitted); see also *Commodities Futures Trading Comm'n. v. Topworth*  
9 *Int'l, Ltd.*, 205 F.3d 1107, 1115 (9th Cir. 1999) ("This court affords 'broad deference'  
10 to the court's supervisory role, and 'we generally uphold reasonable procedures  
11 instituted by the district court that serve th[e] purpose' of orderly and efficient  
12 administration of the receivership for the benefit of creditors.").

13 Accordingly, the Court has broad equitable powers and discretion in  
14 formulating procedures, schedules and guidelines for administration of the  
15 receivership estate and disposition of receivership assets.

16 **B. The Sale**

17 It is generally conceded that a court of equity having custody and control of  
18 property has power to order a sale of the same in its discretion. See, e.g., *S.E.C. v.*  
19 *Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992) (the District Court has broad powers  
20 and wide discretion to determine relief in an equity receivership). "The power of sale  
21 necessarily follows the power to take possession and control of and to preserve  
22 property." See also *S.E.C. v. American Capital Invest., Inc.*, 98 F.3d 1133, 1144  
23 (9th Cir. 1996), *cert. denied* 520 U.S. 1185 (decision abrogated on other grounds)  
24 (citing 2 Ralph Ewing Clark, Treatise on Law & Practice of Receivers § 482 (3d ed.  
25 1992) (citing *First Nat'l Bank v. Shedd*, 121 U.S. 74, 87 (1887))). "When a court of  
26 equity orders property in its custody to be sold, the court itself as vendor confirms  
27 the title in the purchaser." 2 Ralph Ewing Clark, Treatise on Law and Practice of  
28 Receivers § 487).

1 "A court of equity, under proper circumstances, has the power to order a  
2 receiver to sell property free and clear of all encumbrances." *Miners' Bank of*  
3 *Wilkes-Barre v. Acker*, 66 F.2d 850, 853 (2d Cir. 1933). *See also*, 2 Ralph Ewing  
4 Clark, Treatise on Law & Practice of Receivers § 500 (3rd ed. 1992). To that end, a  
5 federal court is not limited or deprived of any of its equity powers by state statute.  
6 *Beet Growers Sugar Co. v. Columbia Trust Co.*, 3 F.2d 755, 757 (9th Cir. 1925)  
7 (state statute allowing time to redeem property after a foreclosure sale not applicable  
8 in a receivership sale).

9 Generally, when a court-appointed receiver is involved, the receiver, as agent  
10 for the court, should conduct the sale of the receivership property. *Blakely Airport*  
11 *Joint Venture II v. Federal Sav. and Loan Ins. Corp.*, 678 F. Supp. 154, 156  
12 (N.D. Tex. 1988). The receiver's sale conveys "good" equitable title enforced by an  
13 injunction against the owner and against parties to the suit. *See* 2 Ralph Ewing  
14 Clark, Treatise on Law and Practice of Receivers §§ 342, 344, 482(a), 487, 489, 491  
15 (3d ed. 1992). "In authorizing the sale of property by receivers, courts of equity are  
16 vested with broad discretion as to price and terms." *Gockstetter v. Williams*, 9 F.2d  
17 354, 357 (9th Cir. 1925).

18 Here, the Receiver and the Court are faced with an asset that is rapidly  
19 diminishing in value. As noted above, the IMAs can be terminated by clients at any  
20 time. Clients with more than \$50 million under management, i.e. more than 40% of  
21 the business, have already agreed to go over to Elevage. Another approximately  
22 20% of clients have terminated their IMAs. Clients have been advised of the  
23 Complaint and Judgment, and are no longer receiving investment advice from CWM.  
24 If the sale is not approved, the Receiver will be forced to wind down the business,  
25 meaning that there will be no recovery from the business for investors and creditors  
26 of the Receivership Entities.

27 Although the Receiver has not had sufficient time to conduct an independent  
28 investigation of any relationship between the parties to the Agreement, it has been

1 represented to him by Copeland, Lawrence, and, to the best of their knowledge, Scott  
2 Bartel, former counsel for CWM, and David Mainzer, counsel for Elevage, that  
3 Elevage and its principals have no prior relationship to the Receivership Entities,  
4 Copeland or Lawrence, and that the transaction was negotiated at arm's length.  
5 Elevage is an investment adviser registered with the State of California.

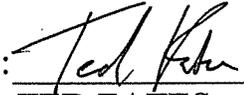
6 The exigency with regard to moving clients to Elevage or a different  
7 investment adviser of their choosing, coupled with the rapidly diminishing value of  
8 the assets, eliminates the possibility of establishing a bidding process and soliciting  
9 overbids. The Receiver has interviewed Copeland, Lawrence and Jeff Bottomley,  
10 the agent that marketed the business, and believes that the business has been  
11 adequately exposed to the market place. Even if there were time for further  
12 marketing, under the circumstances it is very unlikely that such efforts would  
13 produce a higher and better offer. The Receiver believes that approval of the  
14 Agreement, as amended by the First and Second Amendments, is in the best interest  
15 of the receivership estate.

16 **X. CONCLUSION**

17 Based on the foregoing, the Receiver requests an order approving the  
18 Agreement, as amended, and authorizing the Receiver to close the sale and assign to  
19 Elevage the IMAs of clients who sign written consents to the assignment.

20  
21 Dated: November 7, 2011

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

22  
23 By:   
24 \_\_\_\_\_  
25 TED FATES  
26 Attorneys for Receiver  
27 THOMAS C. HEBRANK  
28