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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

**Commodity Futures Trading  
Commission**

**Plaintiff,**

**vs.**

**Equity Financial Group LLC,  
Tech Traders, Inc.,  
Vincent J. Firth, and  
Robert W. Shimer,**

**Defendants.**

**CIVIL ACTION NO. 04-cv-1512 (RBK-AMD)**

**DECLARATION OF  
MARTIN P. RUSSO, ESQ.**

I, Martin P. Russo, hereby depose and say as follows:

1. I am an attorney admitted to practice in the state of New York and have been admitted pro hac vice before this Court for the purposes of this action. I am a member of Kurzman, Eisenberg, Corbin, Lever & Goodman LLP, co-counsel to proposed Intervenor Sterling (Anguilla) Trust, Ltd. ("Trust").
2. I submit this declaration in further support of Trust's motion to intervene for the limited purpose of moving pursuant to Federal Rule of Civil Procedure ("FRCP") 60 for partial relief from this Court's order dated August 24, 2004 (the "Order") granting

the CFTC's preliminary injunction motion on consent. Except as alleged upon information and belief, I have personal knowledge of the facts and circumstances set forth herein and am competent to testify to them.

**No Preparation to Flee**

3. I have reviewed the CFTC's brief and am familiar with the unsupported accusation that Vernice and Howell Woltz are "preparing to flee the country." Ms. Streit's ("Streit") alleged basis for this statement is an e-mail from Howell Woltz to friends and family (annexed to her declaration at attachment 13). Notably, the e-mail explains that the Woltz family has been contemplating a move to The Bahamas for years because both Vernice and Howell Woltz work there on a regular basis. I am informed and believe that as early as the year 2000 the Woltz family purchased a home in Nassau and their children (who later balked at the idea) were accepted at the local St. Andrew's School.
4. As employees and/or owners of active Bahamian, Anguillan and St. Lucian entities, both Vernice and Howell Woltz travel to these countries several times a month and stay for extended periods of time to work. I personally have traveled to the Bahamas to meet them in the Sterling offices located in Nassau. In addition, during my representation of Sterling, I often have communicated with Venice and/or Howell Woltz by telephoning them in the Bahamas. My experience has been that it is not out of the ordinary for either Vernice or Howell Woltz to be out of the country for weeks at a time.

5. As counsel to the Woltz family, I am unaware of any criminal investigation/action or civil suit from which they could be fleeing. Moreover, as the Court is aware, Vernice and Howell Woltz are not defendants in this action and the Sterling Group of companies are victims of the fraud that the CFTC is purporting to investigate.
6. In addition, it appears that neither Ms. Streit nor Joy McCormack ("McCormack") have a good faith belief that Vernice and Howell Woltz are "fleeing" the country because they did not make this allegation "upon information and belief" in their declarations.

**No Attempts to Avoid Jurisdiction**

7. The Streit declaration is very carefully drafted to present a false impression of Vernice and Howell Woltz' level of cooperation with the CFTC and the Receiver without acknowledging the CFTC's refusal to extend the same level of cooperation
8. As an initial matter, the Court should be clear that Ms. Streit has never properly completed service of a subpoena on Vernice Woltz, Howell Woltz or any Sterling entity. Ms. Streit appears to have been under the impression that delivering a subpoena by FedEx carrier amounts to proper service under FRCP 45. She also seemingly believed that sending a copy of a subpoena that has not been served to the attorney of the intended recipient is good service. As the Court is aware, FRCP 45 requires personal service.

9. Despite never properly having been served with a subpoena, my clients have gone to great lengths to assist the CFTC and have repeatedly offered to consent to service under certain conditions.

**Howell Woltz**

10. In or about May of 2004, Ms. Streit forwarded a subpoena for testimony to my office by facsimile and U.S. Mail. Although Mr. Woltz was not served properly, we agreed to produce him for deposition. We requested that the place of the deposition be moved to a location closer to the Woltz family home, but Ms. Streit refused for her own convenience. Nonetheless, we agreed to produce Mr. Woltz. On May 27, 2004, Ms. Streit telephoned me at my offices and cancelled the Woltz deposition stating that the Receiver was unavailable on the agreed upon June date.
11. At or about that time, I had a telephone call with Ms. Streit during which I asked her when she needed Mr. Woltz to testify. She responded in words or substance as follows: "maybe July, perhaps never." In the months that followed, I had another telephone conversation with Ms. Streit during which I asked her when she would take Mr. Woltz' deposition. She responded in words or substance as follows: "probably towards the end of the year, maybe October." I was clear that we would produce him at her request.
12. To date, the CFTC has not asked me to reschedule the deposition of Mr. Woltz.

**Vernice Woltz**

13. In or about late August 2004, Ms. McCormack sent a subpoena to Vernice Woltz by FedEx delivery and U.S. Mail. The subpoena never was personally served, called for

the production of documents and things hundreds of miles away from the district in which it was issued, was unusually burdensome inasmuch as it required the physical delivery of computers and other electronic equipment and sought information which Ms. Woltz could not legally (under the laws of the Bahamas and Anguilla) provide.

14. On or about August 31, 2004, Ms. Woltz timely objected to the subpoena on the above stated grounds. However, in the interest of cooperation, Ms. Woltz offered to consent to service of a subpoena of reasonable scope which did not compromise her professional obligations (i.e., her obligations under the laws of foreign jurisdictions to keep certain information confidential). See Attachment 3 to the Streit declaration. Ms. Streit thereafter continued to correspond as if an objection to her subpoena had not been lodged.
15. In or about the second week of September 2004, I spoke with Ms. Streit and, on one occasion, her CFTC colleague (by telephone) regarding the information she was seeking. I explained that certain information could not be provided without violating Bahamian and Anguillan privacy and confidentiality laws. My best recollection is that at that time I offered several compromises (e.g., a process by which an independent auditor certifies that the defendants are not the beneficial owners of Sterling funds while maintaining strict confidentiality) which were rejected. Ms. Streit's colleague informed me that they would attempt proper service on Ms. Woltz and were not willing to compromise.
16. At or about that time, I was sent a copy of a new subpoena dated September 9, 2004 which the CFTC claimed it was serving on Ms. Woltz. The new subpoena sought even more information which I previously had informed Ms. Streit could not be

provided under the laws of the Bahamas and Anguilla. Put simply, Ms. Streit escalated the situation by seeking information which she knew exposed Ms. Woltz to criminal penalties if she complied.

17. On or about September 15, 2004, I was informed by Ms. Streit that the CFTC was unable to serve Ms. Woltz because she was working abroad at the time of the attempted service. Ms. Streit then reversed the CFTC's position and requested that Ms. Woltz accept service. Ms. Streit did not, however, offer to negotiate the scope of the subpoena to make compliance consistent with the laws of foreign jurisdictions. As a consequence, Ms. Woltz did not consent. As of October 26, 2004, the subpoena has not been served on Ms. Woltz.
18. Notably, however, the Sterling Group continued to produce documents to the CFTC notwithstanding the absence of any subpoena. On September 29, 2004, Sterling produced 463 pages of documents which were copies of Vernon Abernathy's work papers and had been provided to a representative of the Sterling Group during its investigation of this matter after the CFTC filed its lawsuit. Sterling also identified more than a dozen potential relief defendants. Finally, Sterling requested more information regarding a "back-up" tape which the CFTC was seeking and specifically informed Ms. Streit that "[i]f the tape is identified and it contains matters relating to Tech Traders, it voluntarily will be produced." See Attachment 10 to the Streit declaration.
19. Ms. Woltz' cooperation and reasons for not consenting to the CFTC's subpoena at this time are best set forth in my letter dated October 11, 2004, which is annexed hereto at Exhibit "A". In that letter, I again informed Ms. Streit that if she agrees "to limit the

subpoena to areas that properly are the subject of the above-referenced action, and which would not expose my clients to prosecution by foreign governments, they will consider consenting to service.” To date, Ms. Streit has not contacted me to attempt to work out a compromise.

**Claim Information Provided to the Receiver**

20. In or about the first week of September 2004, the Sterling Group received an undated letter from the Receiver which included a model claim form and required that information be provided within 30 days of the date of the letter. To avoid any confusion, I contacted an attorney representing the Receiver and was informed that he had made a mistake in not dating the letter. It was unclear if the mistake had been made with respect to others or only as to the Sterling Group of companies. In any event, the Receiver’s attorney informed me that the 30 day period would run on September 26, 2004 (a Sunday). As a consequence, the Sterling Group caused a separate claim form with respect to each entity to be delivered to the Receiver by Friday, September 24, 2004.
21. A true copy of the form filed by Trust is annexed hereto as Exhibit “B”. In that document, Sterling Trust reserves its rights with respect to the Man Financial account and particularly carves out those funds from others that were invested with Tech Traders. It also indicates that Trust is incorporating by reference the documents previously produced to the Receiver in April 2004 and will provide additional copies if necessary.

22. I have reviewed the Receiver's declaration and am surprised by his assertion that the "claim of Sterling Trust (Anguilla), Ltd. appears to be deficient ...." I have received no notification from the Receiver or his lawyers which indicates any problems or omissions in the documents and affidavits which were provided. Moreover, I am informed and believe that no Sterling entity has received a letter or any other notification of any deficiency in the information submitted to the Receiver. The absence of any notice is at odds with the Receiver's claim that he "notified [claimants] of the deficiencies and asked [them] to remedy them." If the Receiver is being truthful, the Court should question why Sterling Trust was not afforded the same notice as others allegedly received and given an opportunity to remedy any issue.

**McCormack Declaration Contains Misinformation**

23. The McCormack declaration is demonstrative of the CFTC's bias against Trust. In an attempt to argue the merits of the preliminary injunction motion on this motion to intervene, McCormack asserts as a fact in her affidavit that \$2,650,580 has been traced to a source which is not a Sterling entity. She then attempts to support this allegation by reference to the "summary chart" annexed to her declaration as attachment 3. A cursory review of the chart is proof positive that a hearing must be held to protect Trust's rights. I am informed and believe that McCormack has mischaracterized deposits coming from other institutions, or from accounts in Sterling's name at other trading firms, as not belonging to Trust.

24. McCormack's conclusions directly are contradicted by the sworn affidavit of Ms. Dematee Mohan which was submitted to the Receiver. In her affidavit Ms. Mohan affirms that the funds transferred belonged to Sterling Trust. See Exhibit B. It also is clear that McCormack intentionally is being disingenuous and misleading the Court. For example, McCormack characterizes \$1,500,000 of deposits to the Man Financial account as originating from "Mr. James & Mr. Chinn" and concludes that these funds did not belong to Sterling Trust. I am informed and believe that the funds in question were held at Le Masurier, James & Chinn Ltd., a well respected and established British brokerage house now owned by the Bank of Bermuda and based in the British Isles. Surely the CFTC is aware of the brokerage firm and that the funds deposited with the firm do not belong to the named (and now deceased) partners. McCormack's assertion that Mr. James & Mr. Chinn were the source of the funds is like saying Mr. Morgan and Mr. Stanley own the assets managed by Morgan Stanley Dean Witter et al.
25. This Court should not allow the CFTC to do an end run around due process by relying on the deceptive McCormack declaration.
26. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.



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Martin P. Russo, Esq.

Dated: White Plains, New York  
October 27, 2004