

Matthew H. Adler (MA-4720)
Jeffrey A. Carr (JC-1130)
Pepper Hamilton LLP
300 Alexander Park
CN 5276
Princeton, NJ 08543-5276
Tel: (609) 452-0808

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

**COMMODITY FUTURES TRADING)
COMMISSION,)**

Plaintiff,)

vs.)

**EQUITY FINANCIAL GROUP, LLC,)
TECH TRADERS, INC., TECH)
TRADERS, LTD., MAGNUM)
CAPITAL INVESTMENTS, LTD.,)
MAGNUM INVESTMENTS, INC.,)
VINCENT J. FIRTH, ROBERT W.)
SHIMER, COYT E. MURRAY, and J.)
VERNON ABERNETHY,)**

Defendants.)

Civil Action No.: 04CV 1512

Honorable Robert B. Kugler

**SECOND APPLICATION OF EQUITY RECEIVER
AND SACHNOFF & WEAVER, LTD. FOR INTERIM
COMPENSATION AND EXPENSE REIMBURSEMENT**

Stephen T. Bobo, as Equity Receiver (the "Receiver") for the Defendants, Equity Financial Group, LLC, Tech Traders, Inc., Tech Traders, Ltd., Magnum Investments, Inc., Magnum Capital Investments, Ltd., Vincent J. Firth, and Robert W. Shimer (the "Receivership Defendants"), and his principal counsel, Sachnoff & Weaver, Ltd. ("Sachnoff & Weaver"), file this application with the Court requesting an award of interim compensation and expense reimbursement for services rendered from July 1, 2004 through September 28, 2004. The

Receiver and Sachnoff & Weaver (collectively the “Applicants”) seek interim compensation in the amount of \$106,520.00 and reimbursement of expenses in the amount of \$4,578.42.

BACKGROUND AND STATUS OF THE CASE

1. On April 1, 2004, the Commodity Futures Trading Commission (the “Commission”) filed its Complaint and Motion for *Ex Parte* Statutory Restraining Order with the United States District Court for the District of New Jersey seeking injunctive relief and civil monetary penalties against the Defendants Equity Financial Group, LLC, Tech Traders, Inc., Vincent J. Firth, and Robert W. Shimer. In an order entered on the same day, this Court granted the Commission’s motion for the restraining order and appointed Stephen T. Bobo as Temporary Equity Receiver for these Defendants and their assets (the “Order”).

2. On April 29, 2004, with the Court’s approval, the Receiver employed attorneys from the law firm of Pepper Hamilton LLP as local counsel and Sachnoff & Weaver as principal counsel. The Receiver also employed accountants with the firm of FGМК, LLC (“FGМК”) in Bannockburn, Illinois. In an attempt to keep costs both reasonable and appropriate, the Receiver’s local counsel and his accountants have agreed to discount their services by 5% for this matter. As set forth below, Sachnoff & Weaver has discounted its services by an even greater percentage in light of the magnitude of its services during the period covered by this second application.

3. On August 10, 2004, the Court granted the Commission’s motion to file an amended complaint. Two days later, on August 12, 2004, the Commission filed its Amended Complaint, naming five additional Defendants, including Coyt E. Murray, J. Vernon Abernethy, Tech Traders, Ltd., Magnum Investments, Inc., and Magnum Capital Investments, Ltd. At this point in time, all named Defendants have consented to a preliminary injunction, and Mr. Bobo serves

as the Receiver for Tech Traders, Inc., Tech Traders, Ltd., Magnum Investments, Inc., Magnum Capital Investments, Ltd., Equity Financial Group, LLC, Vincent J. Firth, and Robert W. Shimer.

4. On August 23, 2004, the Court approved the investor claim process proposed by the Receiver on June 18, 2004. As part of this process, the Receiver distributed claim forms on August 27, 2004 to all investors who may have invested funds in or with the Defendants through Shasta, through New Century Trading, LLC (another pool apparently operated by Defendants Shimer and Firth that placed its investors' funds with Tech Traders), and directly with Tech Traders. The Receiver distributed approximately 170 claim forms requesting responses within 30 days, pursuant to the Court's Order. From August 27, 2004 through September 26, 2004, the Receiver received 76 claim forms. The Receiver has received an additional 23 claim forms from September 26, 2004 through the present. A Sachnoff & Weaver paralegal continues to engage in follow up with investors regarding deficiencies in the information provided on the claim forms or in the supporting documentation. Once the Receiver has received and reviewed complete documentation from all involved investors, he will finalize his plan for distributing funds back to the investors and file a motion seeking approval of the plan.

5. To date, the Receiver maintains exclusive possession, custody, and control of receivership assets just under \$20 million previously held by brokerage firms Forex Capital Markets, Global Forex Trading, Man Financial, and Rosenthal Collins Group and banking institutions Bank of America and Citicorp. The Receiver has secured these assets primarily in an escrow account at LaSalle Bank, N.A. in Chicago, Illinois.¹ This account serves as the designated depository for funds of the Receivership Defendants. Within this account,

¹ To date, the Receiver is holding approximately \$19.7 million in frozen assets, of which \$18,005,672.97 is held in the escrow account. The remaining frozen assets continue to be held in Man Financial account number 37923. A recent Man Financial account statement reflects that these assets, which are held in 10-year U.S. Treasury Notes, have an "account value at market" of \$1,633,538.00, although the Receiver understands that the actual value of the Treasury Notes is somewhat greater.

subaccount number 8601310983 holds the frozen assets of Shasta and subaccount number 8601311106 holds the frozen assets of Tech Traders. All of these funds are in interest-bearing accounts.

6. The Receiver continues to preserve receivership assets, illustrated in part by the ongoing efforts of the Receiver, his attorneys, and his accountants in responding to the motions filed by the Sterling entities, including the renewed motion of Sterling Trust (Anguilla) Ltd. to intervene. In order to communicate his position to the Court in the most efficient and cost-effective manner, the Receiver submitted his affidavit as an exhibit to the Commission's brief in response to Sterling's renewed motion.

7. Over the course of the last several months, many investors have contacted the Receiver and his counsel with various inquiries, including specific questions pertaining to the investor claim process. In order to keep these investors abreast of the activities involving the receivership estate, the Receiver and his counsel answer telephone calls, email correspondence, and letters in an effort respond to the investors' ongoing questions and concerns.

8. The Receiver and his attorneys continue to investigate the Receivership Defendants' business affairs and, specifically, Defendants' handling of investor funds, through the discovery process. Specifically, the Receiver participated in depositions of J. Vernon Abernethy and Vincent J. Firth. Also, the Receiver and/or his counsel plan to participate in the Tech Traders and Magnum 30(b)(6) depositions, as well as the depositions of Defendant Robert W. Shimer and third-party Elaine Teague. In addition, the Receiver's ongoing investigation includes reviewing relevant computer files obtained from the Defendants' computer systems.

9. In September, the Receiver took possession of Tech Traders' offices in Gastonia, North Carolina. Currently, the Receiver is exploring ways to liquidate the relatively large

computer network and other equipment located at the offices. In the short term, retaining the equipment on the premises and paying the rent of \$1,000 per month appears to be the most efficient means of storage. In addition, the Receiver continues to work with his accountants regarding tax issues.

10. The Receiver has dealt with several other issues over the last several months, including preparing and filing the second summary of the receivership receipts and disbursements as required by Local Rule 66.1(d), preparing an interim report of his activities, and investigating tax-related issues for Tech Traders as well as for the investors of Shasta.

11. The Receiver continues to work with FGМК to finalize the financial analysis of the Defendants' bank and trading accounts, including analysis of the loss or misappropriation of investor funds. This process has been complicated by the lack of complete records kept by the Defendants, the number of bank and trading accounts involved (almost fifty), the difficulty in obtaining complete transaction records from the Receivership Defendants' financial institutions, and the numerous transfers between related entities. However, the accountants' continued efforts have provided the Receiver with a more detailed understanding of the amounts of funds taken in and how they were used.

NATURE OF THE SERVICES RENDERED AND EXPENSES INCURRED

12. From July 1, 2004 through September 28, 2004, the Applicants have provided 431.60 hours of services as Receiver and as principal counsel for the Receiver. For the Court's benefit in reviewing this application, the Applicants' services are divided into seven (7) categories:

- A. General estate administration;
- B. Investor communications;
- C. Obtaining, organizing, and reviewing documents;

- D. Working on the accounting;
- E. The investor claim process;
- F. Filing motions and attending court hearings; and
- G. Participating in discovery.

A copy of Sachnoff & Weaver's statement of services by category is attached as Exhibit C to the Declaration of Stephen T. Bobo as Equity Receiver in Support of the Second Applications for Interim Compensation and Expense Reimbursement of Sachnoff & Weaver, Ltd., Pepper Hamilton LLP, and FGMK, LLC.

13. In its April 1, 2004 Order, the Court directed the Receiver and his counsel to file fee applications on a quarterly basis. On July 15, 2004, the Applicants filed their first quarterly fee application with the Court, wherein they requested fees in the amount of \$268,767.25 and expenses in the amount of \$32,179.96. The Court approved the Applicants' fee application on August 23, 2004.

14. Pursuant to the Court's directive, the Applicants file this second fee application.

A. General Estate Administration

15. The Applicants seek compensation for 64.30 hours of professional services related to the administration of the receivership estate from July 1, 2004 through September 28, 2004. Among the variety of services that the Receiver and his counsel performed in administering the estate are: communicating on a regular basis with attorneys for the Commission and for the Receivership Defendants; requesting an additional extension to submit the 2003 tax returns for Shasta; investigating tax-related issues for Tech Traders and Shasta, as well as for the investors of Tech Traders and Shasta; filing an initial fee application on behalf of the Receiver's counsel, accountants, and computer consultants; communicating with the Receiver's accountants at

FGMK; communicating with the computer consultants at Netrix, LLC; supervising Sachnoff & Weaver's Accounting Department and LaSalle Bank to ensure proper maintenance of the interest-bearing escrow account that serves as the depository for Receivership Defendants' funds; taking possession of the Tech Traders' offices in Gastonia, North Carolina; and exploring ways to liquidate Tech Traders' assets, including its large computer network and other equipment.

B. Investor Communications

16. The Applicants seek compensation for 36.20 hours of services related to communications with investors. The Receiver and his counsel performed these services from July 1, 2004 through September 28, 2004. The Receiver continues to carry out his responsibilities under the Court's orders approving the investor claim process and granting the motions for preliminary injunctions against the Receivership Defendants. The investor claim process, albeit a critical part of the receivership process, raises countless questions and concerns for the investors. As a result, the Receiver and his counsel continue to address the questions and concerns of various investors on a regular basis. In addition, the Receiver continues to communicate with investors by way of the Shasta website located at www.shastacapitalassociates.com.

C. Obtaining, Organizing, and Reviewing Documents

17. The Applicants seek compensation for 146.75 hours of services related to examining the Receivership Defendants' handling of investor funds. The Receiver, with the assistance of his counsel and the Commission, continues to request and obtain documents from the Receivership Defendants and other relevant parties, including various investors, brokerage firms, and banking institutions. These efforts to examine the Receivership Defendants' handling of

investor funds include:

- a. Reviewing documents obtained from and/or produced by the Receivership Defendants;
- b. Reviewing records produced by various investors, including documents produced in conjunction with the investor claim process;
- c. Reviewing the bank records produced by Bank of America, Citicorp, Farmers & Mechanics Bank, Patriot Bank, Sterling Bank, Sun National Bank, Wachovia National Bank (formerly First Union National Bank), and Branch Banking & Trust;
- d. Reviewing the trading records produced by brokerage firms Rosenthal Collins Group, Man Financial, Forex Capital Markets, Global Forex Trading, and REFCO;
- e. Maintaining a document management system to ensure the Receiver has ready access to and control of all necessary documents and can provide copies to other parties upon request; and
- f. Searching the computer files copied from several of the Defendants' hard drives and reviewing relevant information from these files.

D. Working on the Accounting

18. The Applicants seek compensation for 45.60 hours of professional services related to working with and assisting the accountants at FGМК. The Receiver continues to work with that firm to trace the sources and uses of funds through the bank accounts of Tech Traders, its predecessors Magnum Investments, Inc. and Magnum Capital Investments, Ltd., Shasta, and other entities affiliated with Shasta. To date, the accountants have provided the Receiver with detailed financial analysis on all relevant bank and trading accounts. The accountants' financial analysis is not yet complete, however, in light of the significant number of bank and trading

accounts involved (upwards of fifty) and the difficulty in obtaining complete detailed transaction records from the financial institutions. As the remaining document requests come in from these financial institutions, the accountants expect to be able to finalize their financial analysis for the Receiver and his counsel.

E. The Investor Claim Process

19. The Applicants seek compensation for 53.35 hours of professional services required to initiate and manage the investor claim process. On August 27, 2004, the Receiver sent approximately 170 investor claim forms to all persons believed to have invested with Tech Traders and Shasta. Pursuant to the Court's August 23, 2004 Order, the Receiver requested responses within 30 days, by September 26, 2004. By September 26, 2004, the Receiver received 76 investor claim forms. From September 27, 2004 to the present, the Receiver has obtained an additional 23 investor claim forms.

20. Many of the investors submitting claim forms to the Receiver failed to provide complete information. Therefore, a Sachnoff & Weaver paralegal continues to send follow-up correspondence to these investors regarding deficiencies in the information provided on the claim forms or in the supporting documentation. At this point in time, the Receiver and his staff continue to receive information from investors in response to the Receiver's request for additional information.

F. Filing Motions and Attending Court Hearings

21. The Applicants seek compensation for 6.5 hours for services related to the drafting of motions and reports and attending court hearings from July 1, 2004 through September 28, 2004. During this period, the Receiver and his counsel participated in all of the scheduled court hearings by telephone to minimize costs to the receivership estate. In addition, associates

continue to prepare most of the pleadings in this matter, with partners providing review. The Receiver has filed summaries and reports to keep the Court abreast of his efforts on behalf of the receivership estate. Finally, the Receiver has provided ongoing feedback to the Commission regarding the Commission's motions for preliminary injunctions against the Receivership Defendants, as well as its efforts to respond to the Sterling Trust (Anguilla) Ltd. motion to intervene.

G. Participating in Discovery

22. The Applicants seek compensation for 78.90 hours for services related to their participation in discovery from July 1, 2004 through September 28, 2004. These efforts to fully engage in the discovery process include:

- a. Working with the parties to establish a mutually agreeable discovery schedule;
- b. Participating in the continuation of J. Vernon Abernethy's deposition in Gastonia, North Carolina and Vincent J. Firth's deposition in Philadelphia, Pennsylvania;
- c. Preparing for the upcoming depositions of Defendant Robert W. Shimer and third-party Elaine Teague of Puttman & Teague; and
- d. Planning and preparing for the 30(b)(6) depositions of Tech Traders and Magnum.

H. Reimbursement of Expenses

23. The Applicants seek reimbursement for a total of \$4,578.42 in expenses incurred from July 1, 2004 through September 28, 2004. The Applicants have consciously attempted to minimize the expenses incurred in this matter. Over the last several months, the Receiver has been required to travel out of state on only three occasions. On the first occasion, the Receiver traveled to Gastonia, North Carolina to participate in the completion of the J. Vernon Abernethy deposition. On the second occasion, the Receiver traveled to Philadelphia, Pennsylvania in late

September to participate in the second part of the Vincent J. Firth deposition. The third occasion involved travel to Gastonia, North Carolina the following week in order for the Receiver to take possession of Tech Traders' offices, obtain additional records, meet with the landlord, and plan for liquidation of the assets as ordered by the Court on August 24, 2004. The expenses sought by this fee application include only the first trip to Gastonia. The Receiver will seek expense reimbursement for the later two trips in the next quarterly fee application. Other expenses necessary to perform the Receiver's obligations include substantial photocopying and numbering of the Defendants' and third-party documents by outside contractors, internal photocopying expenses at Sachnoff & Weaver's regular rate of \$.20 per page, postage expenses, long-distance telephone charges, overnight delivery and messenger charges, and computer research fees. A summary of these expenses is included in Exhibit C to the Declaration of Stephen T. Bobo. A detailed breakdown of these expenses is also available should the Court or any party wish to review this information.

REASONABLENESS OF THE COMPENSATION REQUESTED

24. The compensation and expenses sought by this application are substantial; however, the Receiver has consciously attempted to keep them at a reasonable level through the efficient administration of the Receivership Defendants' estate. The Receiver continues to rely on a small group of attorneys and staff primarily consisting of one partner, one junior-level associate, and one paralegal from Sachnoff & Weaver's litigation group to assist him in his efforts to carry out the Court's orders. Other attorneys at Sachnoff & Weaver have provided limited amounts of services on behalf of the Receiver as well.

25. In routine matters, such as reviewing documents and drafting motions and reports to the Court, the Receiver has primarily relied upon junior-level associates and paralegals. Of the

total of 431.60 hours included in this application, only 192.80 hours, or approximately 45% of the total hours, were provided by the Receiver and other members of the firm. An associate provided 126.10 hours, or approximately 29% of the total hours. The paralegal provided 112.70 hours, or approximately 26% of the total hours. In addition, the Receiver has sought the assistance of the Commission in carrying out certain related tasks, such as serving subpoenas for necessary bank and trading records, uncovering the assets in the possession of, or under the control of, the Receivership Defendants, and investigating the trading losses of the Defendants. Through such means, the Receiver continues to control the costs of this engagement.

26. The Receiver requests payment for his services at the discounted rate of \$350 per hour, which the Receiver believes to be justified in light of his experience in these types of matters.

27. For this fee application, in light of the quantity of services performed during this stage of the case and in recognition that the cost will likely be borne by the investors, Sachnoff & Weaver seeks compensation for its attorneys and paralegals at discount ranging from 6 to 8 percent of their customary hourly rates instead of the 5 percent discount promised in the motion to employ Sachnoff & Weaver. These discounted rates range from \$185.00 to \$285.00. Total time and fees sought for each attorney and paralegal are summarized in the following table:

<u>Timekeeper</u>	<u>Practice Group</u>	<u>Total Hours</u>	<u>Hourly Rate</u>	<u>Compensation Requested</u>
Stephen T. Bobo	Financial Services	157.10	\$350.00	\$54,985.00
Bina Sanghavi	Litigation	35.20	\$285.00	\$10,032.00
Raven Moore	Litigation	126.10	\$185.00	\$23,328.50
John Moynihan	Litigation	.50	\$285.00	\$142.50
Cheryl L. Baran	Litigation Paralegal	<u>112.70</u>	\$160.00	<u>\$18,032.00</u>
		431.60		
		FEE TOTALS		\$106,520.00

28. The Applicants have generally kept their time in tenths of an hour, or six-minute

increments. The Receiver continues to exercise his billing judgment where appropriate to reduce the services for which compensation is sought, as well as the resulting amount of compensation requested. The amount of such reductions totals over seventeen hours of services. In an effort to avoid charging for services that could be deemed excessive, duplicative or unnecessary, the Applicants do not seek compensation for strictly administrative or ministerial tasks. Moreover, the Applicants have reduced the fees requested for time spent performing certain tasks where such time exceeded reasonable amounts.

29. Finally, the Applicants agreed to take on this matter with no assurance that funds would exist in the Receivership Defendants' estate to compensate for professional services. Neither the Receiver nor Sachnoff & Weaver holds a retainer for the services that they continue to provide to the Receivership Defendants. The Applicants have acted expeditiously in administering the estate and investigating the affairs of the Receivership Defendants. For these reasons, the Applicants are fully deserving of the full amount of the compensation requested.

RELIEF REQUESTED

Based upon the amount of services provided, the skill required, and the results achieved to date, the Applicants submit that the compensation requested is justified in its allowance and payment is appropriate.

WHEREFORE, the Applicants respectfully request that this Court enter an order:

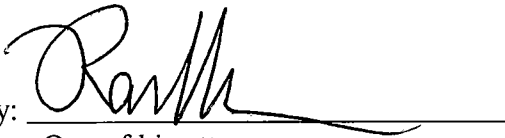
1. Allowing interim compensation in the amount of \$106,520.00 to the Receiver and Sachnoff & Weaver for services provided and in the amount of \$4,578.42 for expenses incurred and advanced from July 1, 2004 through September 28, 2004;
2. Authorizing the Receiver to pay Sachnoff & Weaver the amount of \$106,520.00 in fees and \$4,578.42 in expenses from the funds of the receivership estate for the period of July 1, 2004

through September 28, 2004; and

3. Providing the Receiver and Sachnoff & Weaver further relief as may be appropriate in these circumstances.

Respectfully submitted,

STEPHEN T. BOBO,
Equity Receiver and on behalf of Sachnoff &
Weaver, Ltd.

By: 
One of his attorneys

Stephen T. Bobo
Bina Sanghavi
Raven Moore
Sachnoff & Weaver, Ltd.
30 South Wacker Drive
Suite 2900
Chicago, IL 60606