

BROWN & CONNERY, LLP
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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
WARREN W. FAULK, ESQ.**

I, Warren W. Faulk, Esq., hereby depose and say as follows:

1. I am an attorney admitted to practice before this Court and a partner of Brown & Connery, LLP, attorneys for proposed Intervenor Sterling (Anguilla) Trust, Ltd. (“Trust”). I submit this declaration in support of Trust’s motion to intervene for the limited purpose of moving 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.
2. The complaint in this action was filed on April 1, 2004. The CFTC alleged that the Defendants Equity Financial Group, LLC (“Equity”), Tech Traders, Inc. (“Tech

Traders”), Vincent J. Firth and Robert W. Shimer engaged in a fraudulent multimillion dollar solicitation scheme which received \$5.7 million from accredited investors. The complaint did not name Trust as a defendant and did not allege that it engaged in any culpable conduct.

3. After months of discovery, the CFTC amended its complaint to include additional parties and conduct. Trust is not named as a defendant or wrongdoer. (Amended Complaint).
4. Simultaneously with the filing of the original complaint, the CFTC filed a motion for an *ex parte* statutory restraining order and preliminary injunction. In support of that motion, the CFTC submitted a memorandum of fact and law as well as exhibits which contained affidavits and other documents. Nothing in the CFTC’s submissions makes reference to culpable conduct by Trust. Based upon the CFTC’s papers, this Court entered an order dated April 1, 2004 which, among other things, appointed a receiver, restrained the Defendants from transferring assets and gave the receiver the power to take control of funds and property traceable to customers as well as under the control of the Defendants (the “Receivership Order”).
5. The Receiver then contacted financial institutions and, pursuant to the Receivership Order, accounts in the name of Tech Traders were either seized or frozen. One of the accounts frozen by the Receiver was a \$1.925 million account held in Trust’s name at Man Financial. The CFTC and Receiver justify this freeze based upon the theory that Tech Traders “controlled” the account because at one time it had a limited power of attorney to trade the account.

6. On August 24, 2004, the Court signed the Order which granted the CFTC's motion for a preliminary injunction and, *inter alia*, permits the Receiver to hold the "assets" of the named defendants. Trust's \$1.925 million account improperly was included in these assets. Trust denies that the funds belong to or were under the control of Tech Traders and can prove that the funds used to purchase the treasury bills in the account belong exclusively to Trust. Because it is not a defendant, Trust was not afforded an opportunity to oppose the preliminary injunction which affects its funds. It now moves to intervene and seeks *due process* from this Court.
7. In this case it is clear that intervention as of right is appropriate. There can be no dispute that this motion is timely. It is made after learning that the Court decided the preliminary injunction motion on consent and that no attempt was made to have the Court consider Trust's interests. Indeed, since the motion was granted by consent order, the Court never had any opportunity to consider the issues or "evidence" relating to Trust's account at Man Financial.
8. There also can be no dispute that Trust has a sufficient interest in the litigation and that its interest may be impaired by the disposition of the motion. Not only does the failure to release the funds continue to harm Trust's clients by tying up their funds indefinitely, but a significant portion of the \$1.925 million of Trust's funds could be distributed to other Tech Traders investors, paid to the Receiver as fees or taken as disgorgement or fines assessed against Tech Traders by the CFTC.
9. Finally, the CFTC's and the Receiver's interests on the preliminary injunction motion clearly were adverse to Trust's interest. The CFTC was the movant and sought the preliminary injunction. The Receiver wished to maximize the amount of assets he has to

administer and was aligned with the CFTC. Without a preliminary injunction, the Receiver would have no receivership assets. Indeed, it was the Receiver who caused Trust's account at Man Financial to be frozen in the first instance. Thus, there can be no credible assertion that either the CFTC or the Receiver took any action to advocate Trust's interest on the preliminary injunction motion. There can be no clearer disparity of interest than was presented on the motion -- the CFTC and the Receiver wished to hold the money which Trust wants returned.

10. Trust does not submit a draft complaint with this motion (as might otherwise be required by FRCP 24) because it seeks only to intervene for the limited purpose of moving for partial relief from the Order to obtain the release of its frozen assets now located at Man Financial.
11. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

/s Warren W. Faulk
Warren W. Faulk, Esquire

Dated: September 22, 2004