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**In The United States District Court
For The District Of New Jersey
Camden Vicinage**

Commodity Futures Trading Commission,
Plaintiff,

vs.

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

Hon. Robert B. Kugler

Civil Action No: 04-1512 (RBK)

Motion for Leave to File a First
Amended Complaint For
Injunctive And Other Equitable
Relief And Civil Monetary
Penalties Under The Commodity
Exchange Act, 7 U.S.C. §§ 1 *et*
seq.

Pursuant to Federal Rule of Civil Procedure 15(a), the Commodity Futures Trading Commission (“Plaintiff” or “CFTC”) respectfully requests leave to file its First Amended Complaint. In support Plaintiff states as follows:

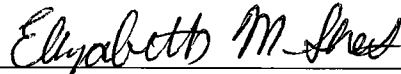
1. On April 1, 2004, upon learning that a fraud was being committed and that investor funds were in danger of being dissipated, Plaintiff filed on an emergency basis a Complaint for Injunctive and Other Equitable Relief and Civil Monetary Penalties Under the Commodity Exchange Act (“Complaint”), along with a Motion for an *Ex Parte* Statutory Restraining Order and Order Appointing A Receiver seeking to freeze assets, preserve books and records, appoint a receiver and otherwise maintain the status quo. Based on the allegations in the Complaint and supporting brief and declarations, this Court entered a Statutory Restraining Order and Order Appointing a Receiver against Defendants Equity Financial Group, LLC, Tech Traders, Inc., Vincent J. Firth and Robert W. Shimer the same day.

2. Plaintiff has now undertaken discovery in this matter and, as set out in the proposed First Amended Complaint, has learned that the fraud committed in this case was much more extensive than was originally known and that other parties besides the originally named Defendants are liable for that fraud under the Commodity Exchange Act, as amended 7 U.S.C. §§ 1 *et seq.* (2002). Justice requires that the complaint be amended to expand the charges and to name other responsible parties. Therefore, the Plaintiff seeks to amend the complaint to expand the charges against the originally named Defendants and to add as Defendants three entities – Tech Traders, Ltd., Magnum Investments, Ltd., and Magnum Capital Investments, Ltd. – and two individuals – Coyt E. Murray and J. Vernon Abernethy.

For the above reasons, Plaintiff respectfully requests leave of Court to file the attached
First Amended Complaint.

Date: June 24, 2004

Respectfully submitted,



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PROPOSED ORDER

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Magnum Investments, Ltd., Magnum
Capital Investments, Ltd., Vincent J. Firth,
Robert W. Shimer, Coyt E. Murray, and
J. Vernon Abernethy,
Defendants.

Hon. Robert B. Kugler

**Civil Action No: 04-1512
(RBK)**

**PROPOSED ORDER GRANTING LEAVE TO FILE A FIRST AMENDED
COMPLAINT**

Upon motion of the Plaintiff Commodity Futures Trading Commission, and it appearing that justice so requires,

IT IS HEREBY ORDERED THAT leave is granted Plaintiff Commodity Futures Trading Commission to file the First Amended Complaint attached to its Motion seeking leave to amend.

SO ORDERED _____, 2004

Hon. Robert B. Kugler
UNITED STATES DISTRICT JUDGE

**PROPOSED
FIRST
AMENDED
COMPLAINT**

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**Civil Action No: 04-1512
(RBK)**

First Amended Complaint For
Injunctive And Other Equitable
Relief And Civil Monetary
Penalties Under The
Commodity Exchange Act,
7 U.S.C. §§ 1 *et seq.*

I. The Parties

1. The parties to this action are as follows:

a. Plaintiff Commodity Futures Trading Commission (“Commission” or “CFTC”) is an independent federal regulatory agency that is charged with responsibility for administering and enforcing the provisions of the Commodity Exchange Act, as amended (the “Act”), 7 U.S.C. §§ 1 *et seq.* (2002), and the Regulations promulgated thereunder, 17 C.F.R. §§ 1 *et seq.* (2004). The agency’s principal office and headquarters is located at Three Layette Centre, 1155 21st Street, NW, Washington, DC 20581, although this matter is being prosecuted through its Chicago Regional Office at 525 West Monroe Street, Suite 1100, Chicago, Illinois 60661.

b. Defendant Equity Financial Group, LLC, (“Equity”) is a New Jersey limited liability company formed on September 1, 1998, with an address of 3 Aster Court, Medford, New Jersey 08055. Equity is not registered with the CFTC in any capacity. It is the commodity pool operator (“CPO”) and manager of a commodity pool organized as Shasta Capital Associates, LLC (“Shasta”), a Delaware company.

c. The Tech Traders Common Enterprise Defendants consist of at least two domestic and two foreign companies, identified below, which are controlled by the same persons, generally share ownership, offices, and employees, and commingle funds received from investors. In substance, there is no meaningful distinction among the entities, which operate as a common enterprise and are collectively referred to as “Tech Traders.”

i. Defendant Tech Traders, Inc. is a Delaware corporation located in Gastonia, North Carolina.

ii. Defendant Tech Traders, Ltd. is a foreign corporation organized under the laws of the Bahamas. It is a sister company to Tech Traders, Inc. and was party to a “Service Agreement” dated June 1, 2001, purportedly providing that Tech Traders, Ltd. would place investment funds with Tech Traders, Inc. for trading.

iii. Defendant Magnum Investments, Ltd. (“Magnum”) was incorporated as a South Carolina corporation in 1991, but is not in good standing. On information and belief, it is doing business as Magnum. Magnum was party to a “Service Agreement” dated June 1, 2001, purportedly providing that Magnum would place investment funds with Tech Traders, Inc. for trading.

iv. Defendant Magnum Capital Investments, Ltd. (“MCI”) is a foreign corporation organized under the laws of the Bahamas. It is a sister company to Magnum Investments, Ltd. and was party to a “Service Agreement” dated June 1, 1999, purportedly providing that MCI would send investment funds for placement with Magnum for trading.

d. Defendant Vincent J. Firth resides in Medford, New Jersey and is the President and sole shareholder of Equity.

e. Defendant Robert W. Shimer resides in Leesport, Pennsylvania and is legal counsel for Shasta and Equity.

f. Defendant Coyt E. Murray resides in or about Tega Cay, South Carolina and is President and Chief Executive Officer of Tech Traders, Inc., Chief Executive Officer of Tech Traders, Ltd., President of Magnum Capital Investments Ltd. and was a registered agent of Magnum Investments, Ltd.

g. Defendant J. Vernon Abernethy is a certified public accountant (“CPA”) and resides in Gastonia, North Carolina. From October 2003 until May 6, 2004, he was President of Sterling Casualty & Insurance, Ltd., an insurance company licensed under British law in the territory of Anguilla and one of a group of foreign entities that includes Sterling (Anguilla) Trust, Ltd., Sterling ACS, Ltd, Sterling Bank, Ltd. and Sterling Investment Management, Ltd. (collectively, the “Sterling Group of Companies”), some of which invested funds with Tech Traders.

II. Summary Of Action

2. The Commission seeks emergency injunctive relief to enjoin a multi-million dollar commodity futures fraud involving a so-called “super fund” or master pool of one or more commodity pools operated by Tech Traders and its president, Murray, neither of whom were registered with the Commission. Tech Traders and Murray falsely represented to investors that Tech Traders enjoyed extraordinary success trading in selected financial futures contracts using a confidential, proprietary “portfolio” trading system, and in addition engaged Abernethy as an allegedly independent CPA to provide a monthly and quarterly performance number based on “reviewed” and “verified” trading results. From at least June 2001 through April 1, 2004, when the Commission initially filed this action (the “relevant time”), Tech Traders solicited and received upwards of \$47 million from others, including Equity and its pool, Shasta. Although Tech Traders, Murray and Abernethy reported consistent, high monthly performance numbers to participants, Tech Traders actually lost, misappropriated and dissipated millions of dollars, leaving a shortfall in excess of \$20 million.

3. Abernethy prepared monthly and quarterly reports showing that Tech Traders enjoyed trading gains from at least June 2001 through February 2004, knowing that the reports

would be provided to prospective and actual participants whom Abernethy knew or should have known would rely upon not only the information included, but also the fact that it had been reviewed and verified by an independent CPA. Indeed, the performance results were featured in the solicitations by himself, Tech Traders, Murray, Equity, Firth and Shimer and used to prepare statements sent to pool participants. However, Abernethy was not independent, did not review all the trading, did not take any steps to “verify” anything, and reported materially inaccurate performance gains, despite possessing documents that disclosed huge trading losses.

4. The Shasta commodity pool was a feeder fund to the Tech Traders’ “spuer fund” master pool and one of the principal sources of funds received by Tech Traders. From June 2001 through March 2004, defendants Equity, Firth and Shimer solicited approximately \$15 million of onshore and offshore investments via several investment vehicles for trading by Tech Traders in commodity futures contracts. Equity, Firth and Shimer touted the “astonishing” performance of the Shasta commodity pool, claiming that the pool had earned trading profits of approximately 100% per annum since inception. Equity, Firth and Shimer also represented to actual and prospective participants that all the commodity futures trading underlying these results was reviewed and verified by an independent CPA, *i.e.*, Abernethy, in order to provide participants with “reasonable assurance” that the performance information reported by Shasta was accurate. Further, Equity, Firth and Shimer hired another CPA to purportedly receive the results from Abernethy, affirm the results to inquiring participants and potential participants, and vouch for the legitimacy of the investment and the persons involved. In reality, Firth and Shimer merely instructed this second CPA to parrot the information Abernethy had supplied. This CPA did not perform an independent review. Firth and Shimer knew this second CPA did not perform an independent review. Equity, Firth and Shimer had no reasonable basis upon which to believe

that the performance information supplied to actual and prospective participants had been verified.

5. The Sterling Group of Companies, initially introduced to Tech Traders by Firth and Shimer, invested at least \$13 million with Tech Traders for participation in the “super fund”. Other entities invested at least \$16 million with Tech Traders.

6. Equity, Tech Traders, Firth, Shimer, Murray, and Abernethy (collectively, the “Defendants”) have engaged, are engaging, or are about to engage in acts or practices which violate sections of the Act, 7 U.S.C. §§ 1 et seq. (2002), or Commission Regulations thereunder, 17 C.F.R. §§ 1 et seq. (2004). Specifically:

a. Tech Traders and Murray have violated Sections 4b(a)(2) and 4o(1) of the Act, 7 U.S.C. §§ 6b(a)(2) and 6o(1), by misrepresenting the performance of the “super fund” commodity pool operated by Tech Traders, and misappropriating and dissipating funds of others. Tech Traders violated Section 4m(1) of the Act, 7 U.S.C. § 6m(1), by failing to register with the Commission as a CPO or as a commodity trading advisor (“CTA”). Murray violated Section 4k(2) of the Act, 7 U.S.C. § 6k(2), by failing to register as an associated person (“AP”) of Tech Traders. Tech Traders violated several Commission Regulations, including commingling the property of the “super fund” with the funds of others, in violation of Regulation 4.20(c); failing to provide a Disclosure Document and account statements conforming to the requirements of Regulations 4.21-4.25, 17 C.F.R. §§ 4.21-25; and holding and trading pooled investor funds in Tech Trader’s name, in violation of Regulation 4.30, 17 C.F.R. § 4.30. Murray, as a controlling person of the Tech Traders Common Enterprise entities, is liable for the

violations by the common enterprise entities pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b).

b. Equity, Firth and Shimer violated Sections 4b(a)(2)(i)-(iii) and 4o(1) of the Act by misrepresenting and failing to disclose material information about their expertise and qualifications, recklessly misrepresenting the performance of the Shasta commodity pool and the role of the independent CPA, and accepting disbursements to which they were not entitled. Equity violated Section 4m(1) by failing to register with the Commission as a CPO. Firth and Shimer violated Section 4k(2) of the Act by failing to register as APs of Equity. Shimer has also violated Section 4m(1) and Regulation 4.30 by aiding and abetting Equity's failure to register and Tech Trader's holding of pool participant funds in its own name.

c. Abernethy violated Sections 4k(2) and 4o(1) of the Act. Abernethy participated in a faulty, agreed-upon procedure engagement, failed to conduct the agreed-upon procedures consistent with professional standards, and reported false performance results that Abernethy knew were: featured in the solicitations of commodity futures participants and clients and prospective participants and clients by himself, Tech Traders, Murray, Equity, Firth and Shimer; and used to prepare statements sent to pool participants.

7. Unless restrained and enjoined by this Court, Defendants are likely to continue to engage in the acts and practices alleged in this Complaint and in similar acts and practices, as more fully described below.

8. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, the Commission brings this action to enjoin such acts and practices, prevent the dissipation of assets, and compel

compliance with the provisions of the Act. In addition, the Commission seeks civil penalties, an accounting, restitution, disgorgement and such other equitable relief as the Court may deem necessary or appropriate under the circumstances.

III. Jurisdiction And Venue

9. The Act establishes a comprehensive system for regulating the purchase and sale of commodity futures contracts and options on commodity futures. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, which authorizes the Commission to seek injunctive relief against any person whenever it shall appear to the Commission that such person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation or order thereunder.

10. Venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1(e), in that the Defendants are found in, inhabit, and transact business in this District, and the acts and practices in violation of the Act have occurred, are occurring, or are about to occur within this District.

IV. Facts

A. Statutory Background

11. A “commodity pool” is defined in Commission Regulation 4.10(d)(1), 17 C.F.R. § 4.10(d)(1), as any investment trust, syndicate or similar form of enterprise engaged in the business of investing its pooled funds in trading commodity futures and/or commodity options. Participants share in profits and losses on a pro rata basis.

12. A “commodity pool operator” (“CPO”) is defined in Section 1a(5) of the Act, 7 U.S.C. § 1(a)(5), as any person engaged in a business that is of the nature of an investment

trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities or otherwise, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market.

13. A “participant” is defined in Commission Regulation 4.10(c), 17 C.F.R. § 4.10(c), as any person who has any direct financial interest in a commodity pool.

14. A “commodity trading advisor” (“CTA”) is defined in Section 1a(6) of the Act as any person who for compensation or profit, engages in the business of advising others, either directly or through publications, writings, or electronic media, as to the value of or advisability of any contract of sale of a commodity for future delivery made or to be made on or subject to the rules of a contract market or derivatives transaction execution facility.

15. A “futures commission merchant” (“FCM”) is defined in Section 1a(20) of the Act as an individual, association, partnership, corporation or trust that is engaged in soliciting or in accepting orders for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market or derivatives execution facility and in or in connection with such solicitation or acceptance of orders, accepts any money, securities, or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom.

16. An “associated person” (“AP”) is a person associated with, among others, a CPO as a partner, officer, employee, consultant or agent (or any person occupying a similar status or performing similar functions), in any capacity that involves: (i) the solicitation or acceptance of participation in a commodity pool (other than in a clerical capacity); or (ii) the supervision of any person or persons so engaged.

B. Shimer and Firth Had Suspect Business Histories Prior to Meeting Murray

17. Prior to meeting one another in 1999 or 2000, Shimer and Firth each had checkered business pasts with prominent failures. Shimer and Firth were introduced to Murray sometime in 2000 in the aftermath of a failed venture involving a Nevada company called Kaivalya Holding Group, Inc. (“Kaivalya”) in which Shimer was an officer and principal. Shimer had solicited in excess of \$1 million investment funds for Kaivalya, and entrusted those funds to two others for further investment with Murray. However, Shimer’s associates or others absconded with the Kaivalya funds, leaving Shimer in debt to the investors.

18. Meanwhile, Firth had his own prior unsatisfactory business experiences and lending disputes that cast doubt upon his integrity. These included, but were not limited to one that occurred in or about 1998 or 1999, wherein Firth had introduced several parties to an entity known as Badische Trust (“Badische”) to secure financing. Badische allegedly absconded with the parties’ commitment fees. At least two parties that Firth introduced to Badische brought legal action against Firth and secured judgments or other relief against Firth.

C. Murray and Tech Traders Represented that Tech Traders Used a Highly Successful System for Trading Commodity Futures Contracts

19. At all relevant times, Tech Traders consisted of approximately twelve employees and operated out of small offices in North Carolina. It purported to be a trading company, pooling proprietary and third party funds and using them to trade exchange-traded commodity futures contracts and foreign currency contracts in accounts it carried at FCMs in its own name. It deposited funds of participants into bank accounts carried in its own name, and paid salaries, expenses and other disbursements out of those accounts. Murray knew that the funds in these accounts were not to be used in such a manner.

20. Tech Traders' president and CEO, Murray, was the controlling person of Tech Traders. Murray was Tech Traders' primary contact person in dealing with potential and actual participants and clients. He was represented to be Tech Traders' primary trader and on information and belief was Tech Trader's primary decision-maker. Murray represented to Firth, Shimer and others that Tech Traders used a "portfolio" system for successful trading of selected exchange-traded financial futures contracts, including the NASDAQ 100 and S&P 500, and falsely claimed that the system earned high returns. Murray represented that the success of the portfolio system derived from the fact that it utilized many different, allegedly non-correlated, separate systems traded concurrently on different time frames using proprietary algorithms, which not only helped filter out market noise for the purpose of more correctly determining the real direction of market trends, but also would balance and smooth the performance of the system.

21. Tech Traders and Murray solicited and accepted more than \$47 million from Equity, Firth, Shimer, the Sterling Group of Companies and other third parties to trade commodity futures contracts. Tech Traders pooled these funds, which included more than \$15 million from Shasta, more than \$13 million from the Sterling Group of Companies and at least \$16 million from other investors. Tech Traders ultimately deposited only a portion of those funds in commodity futures trading accounts it maintained in its own name. Further, throughout the relevant time period, Tech Traders lost at least \$7 million trading commodity futures contracts and other financial instruments in the accounts that held Shasta, Sterling and other third-party funds. At all relevant times, Tech Traders and Murray knew that the commodity futures accounts traded by or on behalf of Tech Traders were losing money, but did not disclose that information to actual or potential participants.

D. Murray and Tech Traders Engaged Abernethy to Review and Verify Tech Traders' Performance and Report to Third Parties.

22. Murray and Tech Traders refused to permit any third persons to see any proprietary information about Tech Traders and the trading systems it used. Instead, they agreed to engage an allegedly independent CPA to review and verify Tech Traders' trading results, and supply a monthly trading performance rate of return figure to third parties. Equity, Shimer and Firth recklessly agreed to this highly unusual procedure, wherein the accountant was selected and engaged by Murray and Tech Traders as opposed to an independent accountant selected and engaged by Equity, Shimer and Firth on whose behalf the engagement was intended to benefit.

23. In or about the summer or fall of 2001, Murray and Tech Traders engaged Abernethy to review and verify Tech Traders' trading results and prepare reports in which Abernethy reported a monthly trading performance rate of return based upon agreed upon procedures developed by Abernethy, Murray and Shimer. In addition, for an additional fee, Abernethy periodically verified the total balance of funds held by Tech Traders. Murray, Tech Traders and Abernethy knew that these reports were provided to third parties, including actual and potential participants in Shasta and the Sterling Group of Companies. Murray, Tech Traders, and Abernethy knew or should have known that the actual and potential participants in Shasta and the Sterling Group of Companies would rely upon not only the performance information provided, but also that the performance information was explicitly represented to be the product of review and verification by an independent CPA of "all trading" by Tech Traders' system.

24. Abernethy did not have prior experience as an accountant in the futures industry, was not qualified to perform the agreed upon procedures engagement, agreed to a poorly designed set of agreed upon procedures, failed to construct the agreed upon procedure

engagement with proper specified parties, sent the reports to improper recipients and was not independent from Tech Traders. Abernethy failed to inform Equity, Firth, Shimer and others about these material deficiencies in the engagement.

25. Abernethy produced a combination of monthly and quarterly reports covering Tech Traders' trading performance from at least June 2001 through February 2004. Abernethy failed to conform to generally accepted accounting standards in conducting the agreed upon procedures in calculating and reporting a rate of return for Tech Traders. Each month, the rate of return Abernethy generated included new deposits received by Tech Traders as a gain in value. Consequently, the Tech Traders rates of return reported by Abernethy were inherently flawed. Moreover, Abernethy failed to verify that he had complete deposit information or test the reports for completeness as represented in the agreed upon procedures.

26. With few exceptions, Murray and Tech Traders supplied Abernethy with selective and materially incomplete source documents with which to support an accurate calculation of the commodity futures trading performance represented in the reports. Abernethy knew or should have known that the information he received was potentially incomplete, but did not take independent steps to verify the information, despite knowing as early as July 2001 the specific concern of Shasta that the calculation of the rate of return per month "is not skewed by additions and withdrawals of monies during the month." Moreover, in at least some months, Abernethy received and inspected source documents that, on their face, disclosed that Tech Traders had lost, rather than gained, substantial sums. In addition, in April 2003, Abernethy was notified by a principal of the Sterling entities that a commodity trading account over which Tech Traders had power of attorney, and which was included in the "super fund", had lost significant value.

Despite this knowledge, Abernethy continued to verify double-digit gains and continued to follow inadequate verification procedures.

27. The agreed upon procedures reports that Abernethy prepared showed gains for every month or quarter reported on from June 2001 through February 2004. Abernethy reported double-digit gains for at least 23 of the 33 months during this period. The worst performance reported was a purported gain of 4.11% for the month of June 2001, and the next worst performance reported was a purported gain of 9.02% for the month of January 2004.

28. In addition to preparing the agreed upon procedures reports, Abernethy directly or indirectly solicited potential participants for Tech Traders. Abernethy was indirectly compensated for these solicitations activities. Further, Abernethy solicited and referred potential participants to Firth and Shimer for participation interests in Shasta and or other investment vehicles. Abernethy also solicited investment funds from and on behalf of the Sterling Group of Companies and affiliated funds for direct or indirect investment with Tech Traders. Among other things, Abernethy solicited for a Sterling fund called the Strategic Investment Portfolio that fed into the Tech Traders' "super fund."

E. Equity, Firth and Shimer Never Registered with the Commission in Any Capacity Despite Being Required To Do So.

29. Shasta is the commodity pool operated by Equity. Shasta is a business that is of the nature of an investment trust, syndicate, or similar form of enterprise. Equity, through Firth and Shimer, solicited, accepted or received from others, funds for the purpose of trading in commodity futures contracts subject to the rules of a contract market. The solicitations included distribution of a Private Placement Memorandum ("PPM") that was drafted by Shimer and reviewed and approved by Firth. According to the PPM, Equity offered for sale to prospective pool participants 200,000 member shares in Shasta, with a minimum subscription of 1,000

member shares at \$100 per share, for a total minimum subscription of \$100,000. According to the PPM, ninety-nine percent of the proceeds from this offering were supposed to be invested by the pool operator for the benefit of Shasta. Equity, Firth, and Shimer utilized means of interstate commerce, such as the U.S. mails and interstate telephone lines, to manage the Shasta pool. Equity has never been registered with the Commission in any capacity, nor has it filed an exemption from registration.

30. Firth is a controlling person of Equity. Firth is the President and sole shareholder of Equity and entered into management service agreements on behalf of Equity. Firth is the sole signatory on Equity's bank account and made decisions on disbursements out of that account, including payment of personal expenses. Firth also acted as an associated person of Equity by directly and indirectly soliciting participation interests in Shasta from potential participants throughout the United States and Bahamas. Firth never registered with the Commission as an AP of Equity, but was registered in the securities industry as a registered representative of several broker-dealers between 1981 and 1990.

31. Shimer is a controlling person of Equity. Shimer is legal counsel for Shasta and its CPO, Equity. He is an attorney and has been a member of the Massachusetts Bar since 1973. From June to December 1986, he was registered as an AP of Churchill Commodities, a former CPO that had been registered with the Commission. From December 1988 to April 1989, he was registered as an AP of Capital Management Partners, a former introducing broker. In his capacity as legal counsel for Shasta, Shimer prepared Shasta's PPM, Shasta's Operating Agreement and all attendant subscription documents. He was also instrumental in the negotiation and drafting of Shasta's investment agreement with Tech Traders and in drafting the agreed upon procedures whereby Abernethy "verified" Tech Traders' performance. He was

responsible for all of Shasta's filings with the Securities and Exchange Commission and for all required notice filings in every state. In addition to preparing legal documents for Equity, Shimer also directly and indirectly solicited funds for Shasta, approved all subscription documents submitted to Shasta, accepted participant funds and deposited them into his attorney escrow account for further transmittal to Tech Traders and other entities, coordinated the activities of Abernethy and a second "Certified Public Accounting Firm" retained by Equity, coached the second CPA on how to handle questions posed by potential and actual participants, and was Equity's primary contact person for dealing with Murray. In short, Shimer handled all the details for the pool. Even though Shimer actively solicited participation interests in Shasta and thereby acted as an associated person of Equity, Shimer never registered with the Commission as an AP of Equity.

32. With limited exceptions, Equity, Shimer and Firth did not identify to actual or potential pool participants the identity of the trading company selected by Equity to trade Shasta funds. That company was Tech Traders.

33. Firth and Shimer controlled and used several investment vehicles for soliciting funds and accepting fees, commissions, profits and other payments in addition to or in combination with Equity and Shasta. None were registered with the Commission in any capacity. The investment vehicles included, but were not limited to:

- a. New Century Trading, LLC ("New Century"), a Nevis, West Indies limited liability company formed in April 2001 purportedly to seek investments from offshore investors;

- b. Dekko Management International, Ltd. (“Dekko”), a Bahamas company purportedly created to allow smaller onshore investors to compound their investment profits tax free in an offshore investment through New Century;
- c. DHRM Management, Ltd. (“DHRM”), a Bahamas company purportedly created as a successor to Dekko to engage in offshore private placement for investment as a member of New Century;
- d. Kaivalya Holding Group, Inc. (“Kaivalya”), a Nevada small business corporation formed in January 1999 in which Shimer is the Secretary;
- e. Edgar Holding Group, Inc. (“Edgar”), formed in December 2000 in which Firth is president and Shimer a shareholder and controlling person;
- f. Longview Financial Group, Ltd. (“Longview”), in which Firth is president and Shimer a shareholder and controlling person;
- g. Allied International Management, Ltd. (“Allied”), an international business corporation organized under the laws of the Bahamas purportedly to serve as the manager of New Century;
- h. Shadetree Investment Trust (“Shadetree”), a trust formed under the laws of Nevis, West Indies, which purportedly owned all the shares of Allied and purportedly was responsible for providing to Shasta and Equity access to various managed futures and currency trading funds pursuant to a referral agreement dated July 12, 2001, and also referring accounts via New Century; and
- i. Triad Capital Associates, LLC (“Triad”), a sole proprietorship company formed on September 1, 1998 of which Firth was President and sole employee.

F. Murray and the Tech Traders Defendants Were Never Registered with the Commission in Any Capacity Despite Being Required To Do So.

34. Tech Traders acted as both a CPO and CTA. Tech Traders, through Murray, operated a business that is of the nature of an investment trust, syndicate, or similar form of enterprise. Tech Traders, through Murray and Abernethy, solicited, accepted or received from others, funds for the purpose of trading in commodity futures contracts subject to the rules a contract market. Tech Traders, Murray and Abernethy utilized means of interstate commerce, such as the U.S. mails and interstate telephone lines, to manage the Tech Traders commodity pool. Tech Traders has never been registered with the Commission in any capacity, nor has it filed an exemption from registration. None of the Tech Traders common enterprise entities has ever been registered with the Commission in any capacity, nor filed an exemption from registration. Directly or through agents, Tech Traders acted as a CPO by soliciting, accepting and pooling funds from third parties for investment in commodity futures contracts, representing that it was operating a “super fund” commodity pool in which profits and losses would be allocated to participants on a pro rata basis. It acted as a CTA by making trading decisions for the “super fund” commodity pool and exercising power of attorney over at least one third-party commodity futures trading account. Murray acted as an associated person of Tech Traders by directly or indirectly soliciting funds for participation in the “super fund” commodity pool and by exercising power of attorney to trade commodity futures in third party trading accounts. Murray also acted as a controlling person for Tech Traders by, among other things, handling all the day-to-day decisions for the firm, holding himself out as the firm’s primary trader, handling most of the communications between Tech Traders and participants, and preparing work papers for use by Abernethy.

35. Tech Traders and Murray did not disclose to the FCMs that it was trading funds of other persons. In account opening documents Tech Traders and Murray submitted to one of these FCMs, it claimed to be a family-run company with a net worth of \$1-to-5 million and misrepresented that the funds were its own. Murray knew or should have known that that representation was false or misleading.

36. Commencing in March 2003, Tech Traders also exercised trading authority, for compensation, over at least one commodity futures trading account owned by one of the Sterling Group of Companies. Tech Traders lost money trading that account.

37. Tech Traders did not disclose to the participants that at least one of its trading accounts was traded by a third-party CTA, or that the third-party CTA lost money trading that account.

38. On information and belief, Tech Traders received management fees and distributions to which it is not entitled, in that Tech Traders was only to receive a share of trading profits remaining after payment of certain monthly preferential returns on investment to participants, and Tech Traders never obtained net trading profits.

39. Ultimately, Tech Traders lost, misappropriated and dissipated millions of dollars, leaving a shortfall in excess of \$20 million.

G. Equity, Shimer and Firth Repeatedly Touted Astonishing Performance in the Shasta Pool

40. One of the entities participating in the “super fund” operated by Tech Traders was the Shasta commodity pool operated by Equity. Between at least June 2001 and April 1, 2004, Equity, Shimer and Firth solicited and received approximately \$15 million from approximately 74 investors for participation interests in Shasta and transmitted most or all of those funds to Tech Traders. In addition, through Shadetree, Firth and Shimer solicited and introduced the

Sterling Group of Companies to Tech Traders in approximately April 2002, receiving compensation for doing so. The Sterling Group of Companies eventually invested several million dollars with Tech Traders.

41. At all relevant times, Murray, Tech Traders and Abernethy knew that the funds Tech Traders received from Shasta, the Sterling Group of Companies and others were comprised of funds invested by third-party participants.

42. Equity solicited interest in Shasta by various means, including individual solicitations by Shimer and Firth, distribution of the PPM drafted by Shimer, operation of a website, <http://www.shastacapitalassociates.com/>, and provision of information to third parties that tout hedge funds to investors on various web sites, including <http://www.hedgeco.net/>, <http://www.barclaygrp.com/> , and <http://www.hedgefundresearch.com/> .

43. According to the PPM, pool participants' funds in Shasta were placed with a trading company with access to a managed futures trading system for the trading of commodity futures contracts on selected financial markets. The memorandum stated that this "unique computerized approach called the Synergetic Portfolio Trading System" or "Synergy Trading System" resulted in "astonishing performance," delivering an average net return of over 100% in 2001 and 2002. Although undisclosed in the PPM, this trading company was Tech Traders.

44. On the <http://www.shastacapitalassociates.com/> web site, Equity claimed that Shasta earned monthly returns of as much as 30.19% and no less than 9% for every month since June 2001. The performance figures reported on Equity's web site were identical to those in the agreed upon procedures reports prepared by Abernethy. As of March 2004, the web site reported purported returns totaling over 130% for the period March 2003 to February 2004.

45. Using the mails and various means or instrumentalities of interstate commerce, Equity, Shimer and Firth falsely or recklessly touted the allegedly “astonishing” performance of the Shasta commodity pool, claiming that the pool had earned trading profits of approximately 100% per annum since inception. Equity, Shimer, and Firth knew that the performance figures reported by Abernethy for Tech Traders were not audited. They also failed to inform themselves of the precise trading documentation that Abernethy reviewed in connection with the engagement. Equity, Shimer and Firth knew that Tech Traders had commingled Shasta’s funds with the funds of others, and specifically knew that the balance of funds verified by Abernethy was meaningless in the absence of verification that Tech Traders held sufficient funds to repay all claims against the “super fund”. Equity, Firth and Shimer knew that Abernethy was not independent. Despite these circumstances, Equity, Shimer and Firth touted the purported performance returns and account balances of Tech Traders to potential and actual participants, intending that they rely upon it. In fact, Equity, Firth and Shimer either knew that the performance information was materially inaccurate or had no reasonable basis upon which to believe that it was accurate. Nevertheless, Equity, Shimer and Firth represented to potential participants and actual participants that an independent CPA had reviewed and verified the trading performance based upon information “reflect[ing] ... the actual information contained on the face of the brokerage statement(s) that reflect all trading by the System.” In addition, Equity, Shimer and Firth also represented that it had retained at Shasta’s own expense another independent CPA “for the purpose of verifying the profitability of Shasta’s investment with the trading company,” even though all this second CPA did was to receive the rate of return figures and restate them.

46. Prospective investors also learned about Shasta through Internet searches of web sites such as <http://www.hedgeco.net/>, which touted Shasta as a top performing hedge fund and featured Shasta as the hedge fund of the week during the week of March 14, 2004. According to the hedgeco.net site, Shasta was up over 8% net of all fees for January and February 2004 and had also achieved net returns of 107.54% in 2002 and 92.02% in 2003. On information and belief, Equity, Firth and Shimer supplied some or all of this performance information to Hedgeco and other third parties knowing that Hedgeco and other third parties would publish it.

47. Equity, Firth and Shimer directly or indirectly received disbursements from the pool and Tech Traders that totaled over \$2 million.

H. Firth and Shimer Misrepresented and Omitted Material Facts in the Shasta Private Placement Memorandum that a Reasonable Person Would Have Considered in Making a Decision to Invest.

48. As noted above, Shimer drafted the Shasta PPM and Firth reviewed, approved, and distributed it to potential pool participants. The Shasta PPM emphasized that a “Certified Public Accounting Firm” had and would provide “independent verification” of the accuracy of profits reported to Shasta participants. This representation is misleading, in that it conveyed the message that an independent, licensed professional had employed accepted accounting procedures to confirm and substantiate the reported results. Shimer and Firth knew that this representation was misleading because they knew that Abernethy was not independent from Tech Traders. Among other things, Firth and Shimer solicited prospective participants with Abernethy. A reasonable investor would find it important to learn that Shasta profits had not been independently verified and that Abernethy was soliciting participants for the pool.

49. The PPM misleadingly depicts that Firth, the president of Equity, is a successful businessman. It states that Firth has been in the real estate and finance business since 1981 and has 20 years experience in sales, operations, planning and competitive market development,

including successful orchestrations of several start-up sales operations and a real estate holding, consulting, and finance company. The PPM failed to disclose that Firth had no prior experience managing a commodity pool. It also failed to disclose that Firth and his wife twice have filed for bankruptcy under Chapter 13 of the Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* (2003), in October 2000 and February 2003, and also for discharge under Chapter 7 of the Code in 1992. The PPM falsely states that Firth holds an NASD Series 7 license, when in fact he is not so registered.

50. In addition, the PPM did not disclose to actual or prospective investors Firth's business failures and litigation, such as his experience with Badische, which would have been material to a reasonable investor and should have been disclosed. Firth and Shimer knew or should have known that Firth was not a successful businessman, had filed for bankruptcy twice, and had been involved in a business where customers funds had been misappropriated.

51. Firth and Shimer failed to disclose their past business failures and resulting debts to actual or prospective investors, such as Firth's and Shimer's experiences with Badische and Kaivalya, as set forth in paragraphs 18-19 above. Facts about these business dealings, which concerned the persons who controlled Equity and Shasta, would have been material to a reasonable investor and should have been disclosed.

V. Violations of the Commodity Exchange Act and Commission Regulations

Count I

Violations of Section 4b(a)(2) of the Act Fraud by Misrepresentation

52. The allegations set forth in paragraphs 1 through 51 are re-alleged and incorporated herein.

53. Section 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii), makes it unlawful for any person to cheat or defraud or attempt to cheat or defraud; or willfully make or cause to be made to other persons false reports or statements, or willfully enter or cause to be entered for other persons false records; or willfully deceive or attempt to deceive by any means whatsoever other persons in or in connection with orders to make, or the making of, contracts of sale of commodities, for future delivery, made, or to be made, for or on behalf of such other persons where such contracts for future delivery were or may have been used for (a) hedging any transaction in interstate commerce in such commodity, or the products or byproducts thereof, or (b) determining the price basis of any transaction in interstate commerce in such commodity, or (c) delivering any such commodity sold, shipped or received in interstate commerce for the fulfillment thereof.

Tech Traders and Murray

54. From at least June 2001 to the present, Tech Traders and Murray have cheated or defrauded or attempted to cheat or defraud and willfully deceived or attempted to deceive pool participants or prospective pool participants and clients and potential clients by misrepresenting the performance of the trading system used by Tech Traders and the commodity pool they operated, failing to disclose that the “super fund” consistently lost money and by making other misrepresentations and omissions of material facts, in violation of Section 4b(a)(2)(i)-(iii) of the Act.

55. The actions and omissions of Murray described in this count were done within the scope of his employment with Tech Traders. Therefore, Tech Traders is also liable for Murray’s violations of Section 4b(a)(2)(i)-(iii) of the Act, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2a(1)(B).

56. Murray, directly or indirectly, controlled Tech Traders and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting Tech Traders' violations alleged in this count. Murray is thereby liable for Tech Traders' violations of Section 4b(a)(2)(i)-(iii) of the Act, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b).

Equity, Firth and Shimer

57. From at least January 2002 to the present, Equity, Shimer and Firth have cheated or defrauded or attempted to cheat or defraud and willfully deceived or attempted to deceive pool participants or prospective pool participants by misrepresenting the performance of the commodity pool and other misrepresentations and omissions of material facts.

58. The actions and omissions of Firth and Shimer described in this count were done within the scope of their employment with Equity. Therefore, Equity is also liable for Firth's and Shimer's violations of Section 4b(a)(2)(i)-(iii) of the Act, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2a(1)(B).

59. Firth and Shimer directly or indirectly controlled Equity and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting Equity's violations alleged in this count. Firth and Shimer are thereby liable for Equity's violations of Section 4b(a)(2)(i)-(iii) of the Act, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b).

60. Each material misrepresentation or omission made during the relevant time period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4b(a)(2)(i)-(iii) of the Act.

Count II

Violations of Section 4o(1) of the Act:
Commodity Pool Fraud

61. Paragraphs 1 through 51 are re-alleged and incorporated herein.

62. Section 4o(1) of the Act, 7 U.S.C. § 6o(1), makes it unlawful for any CPO or CTA or AP of a CPO or CTA, by the use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, to employ any device, scheme, or artifice to defraud any client or participant or prospective client or participant; or to engage in any transaction, practice or a course of business which operates as a fraud or deceit upon any client or participant or prospective client or participant.

Tech Traders and Murray

63. During the relevant time period, Tech Traders acted as a CPO in that it engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise and in connection therewith, has solicited, accepted or received funds, securities or property from others for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility.

64. During the relevant time period, Tech Traders acted as a CTA in that for compensation or profit it engaged in the business of advising others, either directly or through publications, writings, or electronic media, as to the value of or advisability of trading in any contract of sale of a commodity for future delivery made or to be made on or subject to the rules of any contract market; any commodity option; or any leverage transaction; or for compensation or profit, and as a part of a regular business, issued or promulgated analysis or reports concerning any of the activities referred to above.

65. Murray acted as an AP to Tech Traders in that he accepted funds from at least one client under a power of attorney to trade on the client's behalf. Murray also directly or indirectly solicited and accepted funds from pool participants to invest in Tech Traders.

66. From at least June 2001 through the present, Tech Traders and Murray have violated Section 4o(1) of the Act, 7 U.S.C. § 6o(1), in that they directly or indirectly employed or are employing a device, scheme, or artifice to defraud commodity pool participants, or has engaged or are engaging in transactions, practices or a course of business which operated as a fraud or deceit upon commodity pool participants by means of the acts and practices described in paragraphs 1 through 51.

67. The actions and omissions of Murray described in this count were done within the scope of his employment with Tech Traders. Therefore, Tech Traders is also liable for Murray's violations of Section 4o(1) of the Act, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2a(1)(B).

68. Murray, directly or indirectly, controlled Tech Traders and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting Tech Traders' violations alleged in this count. Murray is thereby liable for Tech Traders' violations of Section 4o(1), pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b).

Abernethy

69. Abernethy acted as an AP of Tech Traders and Equity in that he directly or indirectly participated in the solicitation of commodity futures participants and clients and prospective participants and clients of Tech Traders, Shasta, New Century and the Sterling Group of Companies. In addition, he knew that he was being held out to third parties as an allegedly independent CPA to review and verify Tech Traders' trading results, and that the trading performance he reported were featured in the solicitations of potential participants and used to prepare statements sent to pool participants.

57. From at least June 2001 to the present, Abernethy played a key role in the fraudulent scheme set forth in this complaint. He knowingly entered into a materially deficient agreed upon procedure engagement and failed to disclose those deficiencies to persons and entities that he knew relied upon it. Abernethy solicited investors for Tech Traders, yet also knowingly allowed himself to be held out as an “independent” CPA whose job was to independently verify the performance results of Tech Traders. While serving in these roles that posed an inherent conflict of interest, and while soliciting investors with claims that Tech Traders was a profitable enterprise, Abernethy knew or should have known that Tech Traders consistently lost its investors’ funds. Abernethy failed to conform to applicable attestation standards in conducting the agreed upon procedures. The performance numbers Abernethy reported improperly included new deposits received by Tech Traders as gains. Abernethy failed to verify that he had complete deposit information or trading records, failed to test the reports for completeness as represented in the agreed upon procedures, and failed to include information in his possession that showed trading losses. Abernethy also knew that the reports would be provided to prospective and actual participants whom Abernethy knew or should have known would rely upon not only the information included, but also the fact that it had been “reviewed” and “verified” by an independent CPA.

71. From at least June 2001 to the present, Abernethy has violated Section 4o(1) of the Act, 7 U.S.C. § 6o(1), in that he directly or indirectly employed or is employing a device, scheme, or artifice to defraud commodity pool participants, or has engaged or is engaging in transactions, practices or a course of business which operated as a fraud or deceit upon commodity pool participants by means of the acts and practices described above.

Equity, Firth and Shimer

72. During the relevant time period, Equity acted as a CPO in that it engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise and in connection therewith, has solicited, accepted or received funds, securities or property from others for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility.

73. Firth and Shimer acted as APs to Equity in that they solicited pool participants to invest in Shasta.

74. From at least January 2002 through the present, Equity, Firth and Shimer have violated Section 4o(1) of the Act, 7 U.S.C. § 6o(1), in that they directly or indirectly employed or are employing a device, scheme, or artifice to defraud commodity pool participants, or have engaged or is engaging in transactions, practices or a course of business which operated as a fraud or deceit upon commodity pool participants by means of the acts and practices described above.

75. The actions and omissions of Firth and Shimer described in this count were done within the scope of their employment with Equity. Therefore, Equity is also liable for Firth's and Shimer's violations of Section 4o(1) of the Act, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2a(1)(B).

76. Firth and Shimer, directly or indirectly, controlled Equity and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting Equity's violations alleged in this count. Firth and Shimer are thereby liable for Equity's violations of Section 4o(1), pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b).

77. Each material misrepresentation or omission made during the relevant time period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4b(a)(2)(i)-(iii) of the Act.

Count III

Violation of Section 4m(1) of the Act: Failure to Register as a CPO or a CTA

78. Paragraphs 1 through 51 are re-alleged and incorporated herein.

Equity, Firth and Shimer

79. Equity acted as a CPO, used the mails and other means or instrumentalities of interstate commerce, directly or indirectly, to engage in business as a CPO without the benefit of registration, , in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2002).

80. Firth and Shimer, directly or indirectly, controlled Equity and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting Equity's violations alleged in this count. Firth and Shimer are thereby liable for Equity's violations of Section 4m(1), pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b).

81. Shimer accepted Shasta participants' funds in an escrow account entitled Robert W. Shimer escrow, attorney escrow account, Shasta Capital Associates, LLC, on behalf of Equity, an unregistered CPO. Consequently, Shimer committed or willfully aided, abetted, counseled, commanded, induced or procured the commission of, Equity's violation of Section 4m(1) of the Act, or acted in concert with Equity in such violation, or willfully caused an act to be done or omitted which if directly performed or omitted by him or another would be a violation of Section 4m(1) of the Act, and is liable for the violation of Section 4m(1) of the Act by Equity as a principal pursuant to Section 13(a) of the Act, 7 U.S.C. § 13c(a).

Tech Traders and Murray

82. Tech Traders acted as a CPO and as a CTA and used the mails and other means or instrumentalities of interstate commerce, directly or indirectly, to engage in business as a CPO and as a CTA without the benefit of registration, , in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2002).

83. Murray, directly or indirectly, controlled Tech Traders and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting Tech Traders' violations alleged in this count. Murray is thereby liable for Tech Traders' violations of Section 4m(1), pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b).

84. Each use of the mails or any means or instrumentality of interstate commerce in connection with Equity's and Tech Traders' respective businesses as a CPO without proper registration during the relevant time period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1).

Count IV

Violations of Section 4k(2) of the Act Failure To Register as an AP of a CPO

85. Paragraphs 1 through 51 are re-alleged and incorporated herein.

86. During the relevant time period, Firth and Shimer were each associated with Equity, a CPO, as a partner, officer, employee, consultant, or agent (or in a similar status), in a capacity that involved the solicitation of funds, securities or property for participation in Shasta, a commodity pool without the benefit of registration, in violation of Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2002).

87. The actions and omissions of Firth and Shimer described in this count were done within the scope of their respective employment with Equity. Therefore, Equity is also liable for Firth's and Shimer's violations of Section 4k(2) of the Act, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2a(1)(B).

88. During the relevant time period, Murray was associated with Tech Traders, a CPO and CTA, as a partner, officer, employee, consultant, or agent (or in a similar status), in a capacity that involved the solicitation of funds, securities or property for participation in a commodity pool without the benefit of registration, in violation of Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2002).

89. The actions and omissions of Murray described in this count were done within the scope of his employment with Tech Traders. Therefore, Tech Traders is also liable for Murray's violations of Section 4k(2) of the Act, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2a(1)(B).

90. During the relevant time period, Abernethy was associated with Tech Traders and/or Equity as a partner, officer, employee, consultant, or agent (or in a similar status), in a capacity that involved the solicitation of funds, securities or property for participation in Tech Traders and Shasta, in violation of Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2002).

Count V

Violations of CPO and CTA Regulations 17 C.F.R. §§ 4.20, 4.21, 4.22 and 4.30

91. Paragraphs 1 through 51 are re-alleged and incorporated herein.

Commingling of Pool Property

92. Pursuant to Commission Regulation 4.20(c), 17 C.F.R. § 4.20(c), no CPO may commingle the property of any pool that it operates or that it intends to operate with the property of any other person.

93. Tech Traders commingled property of the “super fund” with its own property or the property of others, in violation of Regulation 4.20(c).

94. Each act of Tech Traders that commingled property of the “super fund” with its own property or the property of others is alleged as a separate violation of Regulation 4.20(c).

Disclosure Document

95. Commission Regulation 4.21, 17 C.F.R. § 4.21, provides that, subject to certain exceptions not applicable here, each CPO registered or required to be registered under the Act must deliver or cause to be delivered to a prospective participant in a pool that it operates or intends to operate a Disclosure Document for the pool prepared in accordance with Regulations 4.24 and 4.25, 17 C.F.R. §§ 4.24 and 4.25, by no later than the time it delivers to the prospective pool participant a subscription agreement for the pool.

96. During the relevant time period, Tech Traders failed to deliver to prospective participants in a pool that it operated a Disclosure Document for the pool prepared in accordance with Commission Regulations 4.24 and 4.25. Therefore, Tech Traders violated Commission Regulation 4.21.

97. Each failure to deliver a Disclosure Document complying with the provisions of Regulations 4.21 through 4.25 is alleged as a separate violation of Commission Regulation 4.21.

Account Statements

98. Commission Regulation 4.22, 17 C.F.R. § 4.22, provides that, subject to certain exceptions not applicable here, each CPO registered or required to be registered under the Act must periodically distribute to each participant in each pool that it operates an Account Statement, which shall be presented in the form of a Statement of Income (Loss) and a Statement of Changes in Net Asset Value, for the prescribed period.

99. During the relevant time period, Tech Traders failed to distribute to participants in a pool that it operated an Account Statement for the pool prepared in accordance with Commission Regulation 4.22.

100. Each failure to provide an Account Statement complying with the provisions of Regulations 4.21 through 4.25 is alleged as a separate violation of Commission Regulation 4.22.

Holding Third Party Funds in the Name of the CTA

101. Regulation 4.30, 17 C.F.R. § 4.30, prohibits any CTA from soliciting, accepting or receiving from an existing or prospective client funds, securities or other property in the trading advisor's name to purchase, margin, guarantee or secure any commodity interest of the client.

102. Tech Traders was the CTA for Shasta and others in that, for compensation or profit, it advised the Shasta commodity pool and others as to the advisability of trading in commodity futures contracts.

103. As CTA for the Shasta pool and others, Tech Traders violated Regulation 4.30 by accepting their funds and trading them in its accounts at FCMs under its own name.

104. Shimer aided and abetted Tech Trader's violation of Regulation 4.30 pursuant to Section 13(a) of the Act, 7 U.S.C. § 13c(a), by drafting an investment agreement between Shasta

and Tech Traders that provides that pool funds will be held in the name of Tech Traders. Shimer also drafted the PPM that also sets out that funds will be held in the name of the trading company.

105. Each act of accepting funds into Tech Traders' commodity interest accounts in its own name including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Commission Regulation 4.30, 17 C.F.R. § 4.30.

106. Each failure to deliver a Disclosure Document and provide an Account Statement complying with the provisions of Regulations 4.21 through 4.25 is alleged as a separate violation of Commission Regulations 4.21 and 4.22, respectively.

Murray is Liable for Tech Traders' Violations as a Controlling Person

107. Murray, directly or indirectly, controlled Tech Traders and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting Tech Traders' violations alleged in this count. Murray is thereby liable for Tech Traders' violations of Commission Regulations 4.20(c), 4.21, 4.22 and 4.30, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b).

VI. Relief Requested

WHEREFORE, the Commission respectfully requests that this Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1, and pursuant to its own equitable powers:

A. Find Tech Traders and Murray liable for violating Sections 4b(a)(2), 4k(2), 4m(1) and 4o(1) of the Act, 7 U.S.C. §§ 6b(a)(2), 6k(2), 6m(1) and 6o(1), and Commission Regulations 4.20(c), 4.21, 4.22 and 4.30, 17 C.F.R. §§ 4.20(c), 4.21, 4.22 and 4.30; Equity and Firth liable for violating Sections 4b(a)(2), 4k(2), 4m(1) and 4o(1) of the Act, 7 U.S.C. §§ 6b(a)(2), 6k(2), 6m and 6o(1); Shimer liable for violating Sections 4b(a)(2), 4k(2), 4m(1) and 4o(1) of the Act,

7 U.S.C. §§ 6b(a)(2), 6k(2), 6m and 6o(1) and Commission Regulation 4.30, 17 C.F.R. § 4.30; and Abernethy liable for violating Sections 4o(1) and 4k(2) of the Act.

B. Enter an order of permanent injunction enjoining Defendants and all persons insofar as they are acting in the capacity of their agents, servants, employees, successors, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation with Defendants who receive actual notice of such order by personal service or otherwise, from directly or indirectly:

1. Engaging in conduct in violation of Sections 4b(a)(2), 4k, 4m(1) and 4o(1) of the Act, 7 U.S.C. §§ 6b(a)(2), 6k, 6m(1) and 6o(1), and Commission Regulations 4.20(c), 4.21, 4.22 and 4.30, 17 C.F.R. §§ 4.20(c), 4.21, 4.22 and 4.30;
2. Directly or indirectly soliciting or accepting any funds from any person in connection with the purchase or sale of any commodity futures or options contract;
3. Engaging in, controlling, or directing the trading of any commodity futures or options accounts, on their own behalf or for or on behalf of any other person or entity, whether by power of attorney or otherwise;
4. Introducing customers to any other person engaged in the business of commodity futures and options trading;
5. Issuing statements or reports to others concerning commodity futures or options trading; and
6. Otherwise engaging in any business activities related to commodity futures or options trading.

C. Enter an order pursuant to Section 6c(a) of the Act restraining Defendants and all persons insofar as they are acting in the capacity of Defendants' agents, servants, successors, employees, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation with them who receive actual notice of such order by personal service or otherwise, from directly or indirectly:

1. Destroying, mutilating, concealing, altering or disposing of any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records or other property of Defendants, or Shasta Capital Associates, LLC wherever located, including all such records concerning Defendants' and Shasta's business operations;
2. Refusing to permit authorized representatives of the Commission to inspect, when and as requested, any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records or other property of Defendants; or Shasta wherever located, including all such records concerning Defendants' business operations; and
3. Withdrawing, transferring, removing, dissipating, concealing or disposing of, in any manner, any funds, assets, or other property, wherever situated, including but not limited to, all funds, personal property, money or securities held in safes, safety deposit boxes and all funds on deposit in any financial institution, bank or savings and loan account held by, under the control, or in the name of the Defendants or Shasta Capital Associates, LLC;

D. Enter an order directing that Defendants provide the Plaintiff immediate and continuing access to their books and records and the books and records of Shasta, make an accounting to the Court of all of Defendants' assets and liabilities, together with all funds they received from and paid to pool participants and other persons in connection with commodity futures transactions or purported commodity futures transactions, including the names, addresses and telephone numbers of any such persons from whom they received such funds from June 2001 to the date of such accounting, and all disbursements for any purpose whatsoever of funds received from commodity pool participants, including salaries, commissions, fees, loans and other disbursements of money and property of any kind, from June 2001 to and including the date of such accounting;

E. Enter an order requiring Defendants to disgorge to any officer appointed or directed by the Court or directly to the pool participants all benefits received including, but not limited to, salaries, commissions, loans, fees, revenues and trading profits derived, directly or

indirectly, from acts or practices which constitute violations of the Act as described herein, including pre-judgment interest;

F. Enter an order requiring Defendants to make restitution by making whole each and every pool participant whose funds were received or utilized by them in violation of the provisions of the Act as described herein, including pre-judgment interest;

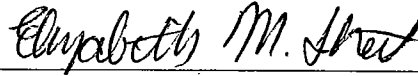
G. Enter an order requiring Defendants to pay civil penalties under the Act, to be assessed by the Court, in amounts of not more than the higher of: (1) triple the monetary gain to Defendant for each violation of the Act and Regulations, or (2) \$120,000 for each violation of the Act and Regulations;

H. Enter an order requiring Defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2) (1994); and

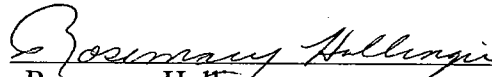
I. Enter an Order providing such other and further relief as this Court may deem necessary and appropriate under the circumstances.

Date: June 24, 2004

Respectfully submitted,



Elizabeth M. Streit
Senior Trial Attorney
A.R.D.C. No. 06188119



Rosemary Hollinger
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Commodity Futures Trading Commission
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(312) 596-0560 (Williamson)
(312) 596-0700 (office number)
(312) 596-0714 (facsimile)

CERTIFICATE OF SERVICE

The undersigned, non-attorney, does hereby certify that on June 24, 2004, she caused a true and correct copy of the foregoing **MOTION FOR LEAVE TO FILE A FIRST AMENDED COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF AND CIVIL MONETARY PENALTIES UNDER THE COMMODITY EXCHANGE ACT, 7 U.S.C. §§ 1 et seq. and [PROPOSED] ORDER GRANTING LEAVE TO FILE FIRST AMENDED COMPLAINT** to be served by Federal Express Mail and E-mail:

***On behalf of Tech Traders, Inc.
and Coyt E. Murray***

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***On behalf of Equity Financial Group,
Vincent Firth and Robert Shimer***

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On behalf of J. Vernon Abernethy

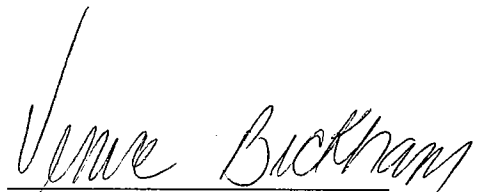
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