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PB-5422

**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:

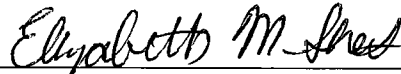
1. On April 1, 2004, upon learning that a fraud was being committed and that investor funds were in danger of being dissipated, Plaintiff filed on an emergency basis a Complaint for Injunctive and Other Equitable Relief and Civil Monetary Penalties Under the Commodity Exchange Act (“Complaint”), along 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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PB-4522

**In The United States District Court  
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Commodity Futures Trading Commission,  
Plaintiff,

vs.

Equity Financial Group LLC,  
Tech Traders, Inc., Tech Traders, Ltd.,  
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

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Hon. Robert B. Kugler  
UNITED STATES DISTRICT JUDGE

**PROPOSED  
FIRST  
AMENDED  
COMPLAINT**

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**Civil Action No: 04-1512  
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First Amended Complaint For  
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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 21<sup>st</sup> 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.

