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

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Commodity Futures Trading Commission,

Plaintiff,

v.

**Civil Action No. 04 CV 1512**

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

Honorable Robert B. Kugler

Defendants.  
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**OPPOSITION OF DEFENDANT TECH TRADERS, INC.  
TO THE MOTION OF TEMPORARY EQUITY RECEIVER  
TO APPROVE INVESTOR CLAIM PROCESS**

Defendant Tech Traders, Inc. (“TTI”), by and through its attorneys, Gusrae Kaplan & Bruno, PLLC, in Opposition (the “Opposition”) to the Motion of the Temporary Equity Receiver (the “Receiver”) to Approve Investor Claim Process (the “Motion”), states the following:

1. The Receiver, by his Motion, seeks leave of this Court to distribute to “investors” who may have invested funds with TTI (i) proposed claim forms (the “Claim Forms”) (Exhibit “A” to the Motion); and (ii) a letter addressed to the “investor” (the “Investor Letter”) (Exhibit “B” to the Motion) to purportedly enable the Receiver to propose a plan of distribution of TTI’s and other Defendants’ funds that were frozen (the “Frozen Funds”) pursuant to the Ex Parte

Temporary Restraining Order issued by this Court on April 1, 2004 (the “Temporary Restraining Order”).

2. No hearing has been held nor any determination made by this Court as to any of the substantive allegations made against TTI in the Complaint filed on April 1, 2004 (the “Complaint”). The only allegation contained in the Complaint against TTI is a violation of Commission Regulation 4.30, 17 C.F.R. § 4.30, for allegedly holding and trading pooled investor funds in TTI’s name.<sup>1</sup> No hearing has been held nor any determination made as the substantive allegations relating to TTI in Plaintiff’s motion for a preliminary injunction. Accordingly, only unproven assertions exist at present, mandating, it is respectfully submitted, that no action be taken by the Receiver at this time. To do otherwise would result in harm to TTI and its principals that may never be rectified.

3. The Receiver was appointed in order to maintain the status quo. The Receiver’s Motion is contrary to this function. The Receiver seeks to submit the Claim Forms and Investor Letter in order to enable the Receiver to propose a plan of distribution of the Frozen Funds. Any reference to a present distribution of the Frozen Funds is inappropriate and premature at present where, as stated heretofore, there has not been any finding of any wrongdoing by TTI. TTI will be prejudiced by any distribution of the Frozen Funds should there be a determination by this Court that the Plaintiff has not proven the allegations of the Complaint.

4. TTI will be negatively impacted by the Receiver’s submission of the Investor Letter and Claim Forms to all TTI “investors.” Any submission of these documents creates an overall inference that TTI has in fact violated the law. Should TTI ultimately prevail at the

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<sup>1</sup> While Plaintiff’s motion for leave to file a First Amended Complaint which would include additional charges against TTI is currently pending, such leave has not been granted by this Court, and therefore, such proposed additional charges against TTI are not addressed herein. Notwithstanding, should the Court permit the Plaintiff to file its First Amended Complaint, the substantive arguments contained herein shall remain the same.

hearing on this matter, TTI's relationship(s) with its "investors" shall have been irreparably and unfairly damaged by the negative inference created by the Investor Letter and Claim Forms.

5. A simple reading of the Investor Letter would lead an "investor" to believe that the allegations contained in the Complaint are true. It would be easy for the recipient of the Investor Letter to conclude that the Court has made a determination that TTI has violated the law. The Investor Letter states:

Based on the evidence available, the court froze the activities and funds of the Defendants.

(Exhibit "B" to the Motion, page one, paragraph two). We submit that allegations do not equal evidence and, accordingly, the use of such terminology by the Receiver is inappropriate, especially where the Investor Letter does not even suggest, much less state, that the documents submitted to the Court were submitted *ex parte*, that there was no hearing in which TTI participated, and that no determination was made by the Court as to the allegations against TTI.

6. The Investor Letter further suggests that distribution of the Frozen Funds by the Receiver is a *fait accompli*. The Investor Letter explicitly states:

Once the information requested on the claim forms has been received and reviewed, I will be formulating a proposal for distributing funds back to the investors.

. . . .

Should you fail to return the complete form in a timely fashion, *you may be barred from participating in the distribution of the funds that are frozen.*

(Exhibit "B" to the Motion, page one, paragraphs four and three; emphasis added). Any "investor" would reasonably conclude from a reading of the Investor Letter that, there will be a distribution and that the matter is concluded. Such is not the case!

7. In addition to the foregoing, even assuming *arguendo* that the Court, after a hearing on the substantive allegations against TTI, directs the Receiver to submit requests for information to TTI investors, the proposed Claim Form itself is subject to objection. The Claim Form contains requests for information that have no bearing on the purported purpose of the Claim Form – to enable the Receiver to propose a plan of distribution of the Frozen Funds – and as such, the Receiver should not be authorized to submit the Claim Form in its present state.

8. The Claim Form in its entirety refers to investments made with Tech Traders, Ltd. (Exhibit “A,” paragraph no. 1), an entity that is not subject to the Court’s Temporary Restraining Order, and therefore, an entity over which the Receiver does not have authority or jurisdiction. For this reason alone, the entire use of the Claim Form should not be permitted.

9. Furthermore, specific paragraphs of the Claim Form are improper and should not be permitted. Paragraph nos. 3 and 5 of the Claim Form state:

3. I originally learned about Tech Traders from \_\_\_\_\_ and was solicited to invest in Tech Traders by \_\_\_\_\_;
5. I received information regarding the amount of my equity with Tech Traders from: \_\_\_\_\_.

The foregoing requests are clearly improper requests for discovery that have no relevance to the purported purpose of the Claim Form or are in any way germane to the distribution of the Frozen Funds. Such inquiry creates an inordinate burden of disclosure which can also infringe upon relationships with TTI.

***[Remainder of page intentionally left blank]***

**WHEREFORE**, Defendant TTI respectfully requests the Motion be denied in its entirety, or in the alternative, should the Court grant the Receiver's Motion after a substantive hearing on the merits, the Investor Letter and Claim Form be amended to exclude the impermissible terminology as specified herein, and for such other and further relief the Court deems just and proper.

Dated: New York, New York  
July 6, 2004

Respectfully submitted,



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Cirino M. Bruno

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**CERTIFICATE OF SERVICE**

I, Justin H. Cohen, Esq. hereby certify that on July 6, 2004, I caused copies of the foregoing **Opposition of Defendant Tech Traders, Inc. to the Motion of Temporary Equity Receiver's to Approve the Investor Claim Process** to be served upon the following addressees by fax as indicated below:

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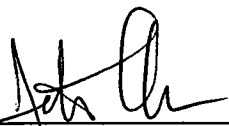
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