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

**COMMODITY FUTURES TRADING :  
COMMISSION, :**

**Plaintiff, :**

**vs. :**

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

**Defendants. :**

**Civil Action No.: 04CV1512**

**Honorable Robert B. Kugler**

**CLAIMANT, MARSHA L. GREEN'S (CLAIM No. 26) RESPONSE TO  
FACTUAL ISSUES IN THE EQUITY RECEIVER'S OBJECTIONS**

Claimant, Marsha L. Green, by and through her attorneys, Norris, McLaughlin & Marcus, P.A. submits this Response to factual issues in the equity receiver's objections. In support of her response, Marsha L. Green, states as follows:

1. In 1999, Ms. Green was encouraged to invest in an entity called Kaivalya Holding Group, Inc. (hereinafter "Kaivalya") by the Defendant, Robert W. Shimer. Ms. Green invested \$134,600.00 under the terms of a Promissory Note, which provided for repayment of her principal. No interest on the principal invested in Kaivalya was ever paid to Ms. Green, however, she did eventually receive the return of her principal by checks from Kaivalya.

2. On October 31, 2003, Ms. Green began investing in Shasta Capital Associates, LLC. (hereinafter "Shasta") once again, through Defendant, Robert W. Shimer, by wiring \$50,000.00 of her retirement funds to Shasta pursuant to the Subscription Agreement October 28, 2003.

3. On February 6, 2004, Ms. Green invested an additional \$15,000.00 into Shasta via her First Union Check Number 1275.

4. Kaivalya sent Ms. Green, Patriot Bank Check Number 655, in the amount of \$40,000.00 on February 6, 2004, which represented a portion of the return of her principal investment with Kaivalya. Ms. Green reinvested these same funds back into Shasta via a wire transfer on February 12, 2004 in the amount of \$40,000.00.

5. Similarly, Ms. Green made her last investment of \$47,000.00 via wire transfer with Shasta on April 2, 2004 with the remainder of the return of her principal from Kaivalya that she received on March 18, 2004 via Patriot Bank Check Number 663 in the amount of \$47,000.00.

6. The total amount of funds Ms. Green invested with Shasta was \$152,000.00.

7. It is irrefutable that Ms. Green invested \$134,600.00 in Kaivalya and was repaid her original investment. It is also irrefutable that she invested \$152,000.00 in Shasta, resulting in a total loss of \$152,000.00 with no net recovery of any type.

8. Of the \$152,000 invested in Shasta, \$47,000.00 was invested via wire transfer on April 2, 2004, one day after this Honorable Court's Freeze Order.

9. Kaivalya and Shasta are entities controlled by Defendants, Robert W. Shimer and Coyt E. Murray, which is admitted by the Receiver in his Memorandum In Support of Motion of Equity Receiver For Authority to Make Interim Distribution On Account Of Investor Claims (hereinafter "Receiver's Memorandum"). [See p. 22 para. 48-51]

10. Despite the Receiver's admission that Defendants, Shimer and Murray were involved with Kaivalya, Magnum, Shasta and Tech Traders, and the obvious similarity of identity, he treats these entities as if they are unrelated and not part of the Ponzi scheme. Kaivalya investors invested in Magnum for commodity trading just as Shasta investors invested in Tech Traders for commodity trading. The physical location where Magnum conducted its business activities in Gastonia, North Carolina, is the same exact location that Tech Traders utilized for its business activities. Lastly, the time frame for when Magnum appears to have ended operations is the same time frame when the Receiver has begun review the records and activities of Tech Traders. [See "Receiver's Memorandum" p. 4 para. 12]

11. The Receiver has made factual assertions that the funds paid by Kaivalya Check Number 655 in the amount of \$40,000.00 on February 6, 2004, were actually from Tech Traders. To date no documentation or factual analysis has been provided or disclosed to Ms. Green to support this hypothesis.

12. The alleged factual basis in support of the Receiver's hypothesis is that since Kaivalya had no significant earnings of its own then the funds paid by Kaivalya most have come from another source. The Receiver has proposed that this other source was Tech Trader, but has yet to provide any documentation or factual basis for this conclusion to Ms. Green. The Receiver has not identified or defined his basis for alleging Kaivalya had no other significant

sources of funds between July 2002 and March 2004. [See Receiver's Memorandum p. 23 para. 49]

13. The Receiver has also assumed that neither Kaivalya nor Magnum funds were ever invested or intermingled with Tech Trader funds. It is impossible for the Receiver to reach this conclusion since he has previously acknowledged that the transactions surrounding Magnum are not yet completely understood. Based upon the lack of information and understanding regarding Magnum's activities it is impossible for the Receiver to determine the type, extent or length of involvement Magnum played in this unfortunate Ponzi scheme. [See Receiver's Memorandum p. 4 para. 11]

14. The Receiver has not established that the funds paid by Kaivalya to Ms. Green have come from any source other than Kaivalya.

15. The Receiver has also not established that Kaivalya did not invest directly into Tech Traders or indirectly through Magnum or another entity controlled by Defendants, Shimer, Firth and/or Murray.

16. The Receiver has provided no factual basis or legal principal for pursuing the principal returned to some investors but not others.

17. The only factual basis as to why the Receiver has pursued the return of Ms. Green's principal from Kaivalya is because he controls the funds presently and can exercise a set off without having to incur all of the legal cost of recapturing this property, which he acknowledged was a major reason why he was not pursuing all investors who received a return of principal. [See Receiver's Memorandum p. 14 para. 35]

18. Since all of the facts surrounding Magnum's involvement in the Ponzi scheme are admittedly unknown and the Receiver admits may need to be included in the claims process and distribution, it is premature to make any interim distribution at this stage of the investigation.

19. If any interim distribution was to be made, an escrow must be established with funds sufficient to protect the interest of all investors' disputed claims.

20. The Receiver has identified the legal bankruptcy concepts of preference and fraudulent transfer as the basis for his guidance for determining and proposing the claims process and interim distribution. Just as these legal concepts are well suited to resolving this Ponzi scheme, so to would a creditors committee comprised of investors who have the ability vote for or against a proposed plan of distribution be useful, and equitable, in determining how best to distribute the funds held. The Receiver is using investor funds for his fees and that of his counsel, while the claims of the investors are being paid by the investors in piecemeal fashion, which is simply inequitable.

21. There is no rational factual basis set forth by the Receiver or otherwise available to deny Ms. Green a full recovery of her \$47,000.00 post freeze investment.

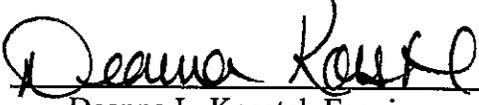
22. There is no rational factual basis set forth by the Receiver or otherwise available to deny Ms. Green a proportionate recovery of her pre-freeze Shasta investment of \$105,000.00.

23. Ms. Green will be irreparably harmed if the suggested interim distribution occurs and she is excluded. Other investors who would be repaid a 38% pro rata distribution will be unjustly enriched at Ms. Green's expense if the proposed interim distribution is made. The proposed interim distribution should include a payment in full to Ms. Green of her \$47,000.00 of

post freeze investment funds and 38% of her \$105,000.00 as her fair and equitable pro rata share of pre freeze investment funds.

Respectfully Submitted,

**Norris, McLaughlin & Marcus, P.A.**

By:   
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Date: 5/12/05

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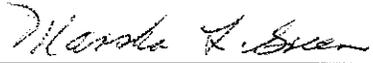
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**VERIFICATION**

I, Marsha L. Green, verify that the statements made in the Response To Legal Issues In The Equity Receiver's Objection are true and correct to the best of my knowledge, information and belief.

I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A., 4904, relating to unsworn falsification to authorities and the laws of the United States of America.

Date: 5/11/05

  
Marsha L. Green