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

**Commodity Futures Trading
Commission**

Plaintiff,

vs.

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

Defendants.

Document Electronically Filed

CIVIL ACTION NO. 04-cv-1512 (RBK-AMD)

**MEMORANDUM OF FACT IN RESPONSE TO
THE OBJECTION FILED BY THE RECEIVER**

Sterling ACS Ltd., Sterling Alliance Ltd., Sterling Casualty & Insurance Ltd., Sterling Bank Limited, Sterling (Anguilla) Trust Ltd., Sterling Investment Management Ltd and Strategic Investment Portfolio LLC (collectively, the “Sterling Entities”), through their undersigned counsel, submit this memorandum of fact in response to the objection filed by the Receiver.

I. THE STERLING ENTITIES HAVE SUBMITTED ADEQUATE DOCUMENTATION

The Sterling Entities have produced relevant documents and information on a voluntary basis since they first learned of this action in April 2004. Within days of meeting the Receiver at the offices of Tech Traders, Inc., the Sterling Entities forwarded to him a

binder of documents relating to the monies invested. See Exhibit A to Declaration of Martin P. Russo, Esq., dated May 13, 2005 (“Russo Decl.”). In September 2004, the Sterling Entities each filed sworn proofs of claims which provided the information required by the Receiver as well as back-up documentation. See Exhibits B and C to Russo Decl.

In December 2004, the Sterling Entities responded to issues raised by the Receiver and provided additional information. See Exhibits D and E to Russo Decl.

In March 2005, this Court ordered the Receiver to send a letter requesting all the information they would need to address the Sterling Entities’ Objection to the Motion for An Interim Distribution. On March 14, 2004, the Receiver complied. See Exhibits F and G to Russo Decl. The Sterling Entities responded on March 21, 2005 and, after additional correspondence from the Receiver, provided additional information on April 5, 2005. See Exhibits H, I and J to Russo Decl.

During a telephone “meet and confer” conference with the Receiver and his counsel on April 8, 2005, the Receiver informed counsel to the Sterling Entities that only the following two issues remained: (1) he would like account statements from the closed Sterling accounts formerly at Alliance Capital Management and – more significantly – (2) he needed information regarding the natural persons who had a beneficial interest in the accounts at Tech Traders. (Russo Decl., ¶ 17.) During that telephone conversation and a follow-up call on May 6, 2005, counsel and the Receiver discussed a proposed methodology for granting the Receiver confidential access to the information without violating the laws of The Bahamas or Anguilla. In the interim, the Sterling Entities had contacted their clients and obtained consent for a confidential review of the documents by the Receiver. The Sterling Entities confirmed

the terms pursuant to which such a review could take place by letter to the Receiver on May 9, 2005. See Exhibit K to Russo Decl. They also informed the Receiver that Alliance Investment Management had refused to produce account statements for the closed Sterling accounts. (Id.) By letter dated May 11, 2005, the Receiver refused the opportunity offered by the Sterling Entities. See Exhibit L Russo Decl.

As is demonstrated by Exhibits A through L to the Russo Decl., and the admission of the Receiver, the Sterling Entities have produced adequate documentary proof to demonstrate their claims and the fact that the deposits claimed were transferred from their respective accounts to those of Tech Traders. These documents are consistent with and confirmed by both the Tech Traders “statements” and the Tech Traders bank account statements which exclusively are in the hands of the Receiver. They also disclose the beneficial owners of the funds in the Tech Traders accounts (Exhibits B and C, ¶ 8 of each claim form; Exhibits I and J, ¶¶ 10a-26a) and certify that none of the defendants own the funds invested with Tech Traders (Exhibits B and C, ¶ 9 of each claim form). Consequently, additional documentation might only be necessary if the Court rules – which it should not – that the August 2004 order requires the disclosure of “natural persons” rather than simply persons with a beneficial interest. Otherwise, the Sterling Entities’ claims have been perfected and are supported with more than adequate information.

II. THE STERLING TRUST (ANGUILLA) ACCOUNT MUST BE RELEASED

This Court was correct when it ruled that “the money in [the Man Financial] account or the large portion of the money in that account . . . apparently did not go through the Tech Traders bank account.” (May 14, 2004 Order denying Motion to Intervene). It is undisputed

that the Man Financial account was never in the name of Tech Traders. It appears that even the Receiver agrees because he has not treated it as part of the Tech Traders' receivership. Indeed, the Receiver acknowledges that the nearly \$2 million in the frozen account number 37923 at Man Financial in the name of Sterling Trust (Anguilla) is distinct from the approximate \$17,750,000 he is holding in accounts transferred from Tech Traders and the Shimmer escrow account (Receiver's Motion For Permission to Make Interim Distribution, pp. 8 and 19).

Moreover, the documentation submitted by Sterling Trust (Anguilla) clearly demonstrates that all deposits to the Man Financial account came from a Sterling Trust (Anguilla) account for the benefit of that entity. (Exhibit B). The Receiver offers no proof to the contrary and his argument that the funds can be traced through to other entities is specious. Money is fungible and, with the exception of the Federal Reserve bank (which creates the money), it always can be traced through to another source. The important point here is that the deposits were made by Sterling Trust and the account should be treated no differently than any other claimant's private account.

The Receiver's argument that some of the funds in the Man Financial account originated at Tech Traders is both factually incorrect and irrelevant.¹ None of the "transfers" from Tech Traders were to the Man Financial account. (The Receiver tries to trace funds

¹The Receiver's argument that the account was controlled by Tech Traders is similarly disingenuous. The record is clear that the trading discretion was revoked by Sterling Trust in favor of an agreement to keep the funds available for loan in the event of a margin call. A fee of \$45,000 each month was charged for this service. See Exhibit M at pp. 13-14; 83-84; 105-06; and IS-1. No trading of commodities occurred after the authorization was revoked, and more than \$1.5 million in additional funds were added to the account with instructions to place them in T-Bills. (Exhibit N). Those instructions were issued directly from Sterling Trust to Man Financial. (Exhibit O).

“through” Sterling Trust’s bank account). Nevertheless, if Sterling Trust unjustifiably received proceeds of the Tech Traders’ fraud, then it should be named as a relief defendant. The Receiver and the CFTC have now had more than one year to conduct their investigation. During this time neither has brought an action against Sterling Trust as a relief defendant. Because, the Receiver has not formally filed allegations against Sterling Trust, he has no legal authority to continue to hold the funds in the Man Financial account. Accordingly the Court must require the Receiver release the funds to Sterling Trust. See, e.g., SEC v. Black, 163 F.3d 188, 197 (3d Cir. 1998) (lifting freeze of certain investor funds because no wrong doing alleged against the investors); see also SEC v. O. Cherif, 933 F.2d 403, 413 (7th Cir. 1991) (lifting freeze of assets of non-party against whom no wrongdoing was alleged).

CONCLUSION

Based upon the foregoing, the Receiver’s factual objections should be overruled and funds should be distributed to the Sterling Entities on an individual basis.

Dated: May 13, 2005

Respectfully submitted,

/s/ Warren W. Faulk

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