

Matthew H. Adler (MA-4720)
Jeffrey A. Carr (JC-1103)
Pepper Hamilton LLP
300 Alexander Park
CN 5276
Princeton, NJ 08543-5276
Tel: (609) 452-0808

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

**COMMODITY FUTURES TRADING)
COMMISSION,)**

Plaintiff,)

vs.)

Civil Action No.: 04CV 1512

**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)**

Honorable Robert B. Kugler

Defendants.)

**REPLY TO INVESTORS' RESPONSES TO EQUITY RECEIVER'S
OBJECTIONS TO CERTAIN INVESTOR CLAIMS**

Stephen T. Bobo, Equity Receiver ("the Receiver") of Defendants Equity Financial Group, LLC, Tech Traders, Inc., Tech Traders, Ltd., Magnum Investments, Ltd., Magnum Capital Investments, Ltd., Robert W. Shimer, and Vincent J. Firth, files this reply to various investors' responses to the Equity Receiver's Objections to Certain Investor Claims. The Receiver addresses each investor's response in turn.

1. Robert Scott Batchelar

As a threshold matter, Robert Scott Batchelar's objection to the Receiver's method of pro rata distribution should not be considered because it comes several months after the Court's February 11, 2005 deadline for such objections. On January 14, 2005, the Receiver served a Notice of Hearing on all claimants, including Batchelar, informing them of the Court's February 11, 2005 deadline. Batchelar's objection also fails on the merits because, as discussed at length in the Receiver's Motion, the Defendants' conduct in this case falls well within the definition of a Ponzi scheme¹, and, therefore, pro rata distribution to the investors victimized by the scheme is the most equitable method of distribution. (*See* Mem. in Supp. of Mot. of the Equity Receiver for Authority to Make An Interim Distribution on Account of Investor Claims (the "Motion") at pp. 10-12.)

2. Edward Evors of Bally Lines, Ltd.

Edward Evors' response to the Receiver's objection is apparently limited to a request for the Receiver's accounting, which the Receiver is willing to share if Evors makes a request for specific documentation and assuming he seeks information beyond the financial summary provided in the Motion.

Evors also provides the Court with a copy of a rather puzzling letter addressed to the Receiver's counsel.² As the Receiver indicated in his objection, Bally Lines has failed to provide

¹ A Ponzi scheme is a "fraudulent investment scheme in which money contributed by later investors generates artificially high dividends for the original investors, whose example attracts even larger investments." BLACK'S LAW DICTIONARY 1198 (8th ed. 2005). *See also Official Comm. of Unsecured Creditors v. R.F. Lafferty & Co.*, 267 F.3d 340, 344 (3d Cir. 2001). Thus, a Ponzi scheme turns on Defendants' misrepresentations of fictitious profits to lure unsuspecting investors. Simply because some legitimate trading activity may have occurred in case, as Batchelar contends, does not give this Ponzi scheme any degree of legitimacy.

² In this May 10, 2005 letter, Evors apparently attempts to respond to the Receiver's repeated requests for additional information from Bally Lines. Most recently, the Receiver requested from Bally Lines supporting documentation for an alleged \$50,000 transfer to Tech Traders and an amended claim form identifying all individuals with a beneficial interest in Bally Lines' investment with Tech Traders. Unfortunately, this letter raises far more questions

information required by this Court. Because Evors' letter does not provide the required information, the Receiver stands by his objection to Bally Lines' claim for the reasons detailed on page 2 of the Equity Receiver's Objections to Certain Investor Claims (the "Objections").

3. Marsha Green and Thomas List

Because the legal and factual responses filed by Dr. Marsha Green and Thomas List are virtually identical, the Receiver replies to their joint arguments. Green and List contend that the Kaivalya – Magnum relationship and the Shasta – Tech Traders relationship share "extreme similarities" in an attempt to convince the Court to treat Kaivalya investors as additional victims of the Defendants' Ponzi scheme. Kaivalya investors, however, are fundamentally different than Shasta investors and cannot be treated the same. First, as Green and List admit, there is no indication that the Kaivalya funds ever reached Magnum.³ (*See* Green's Resp. to Legal Issues at ¶ 17; List's Resp. to Legal Issues at ¶ 15.) The funds invested by Shasta investors, on the other hand, did reach Tech Traders. In fact, Shasta invested over \$14 million with Tech Traders through April 1, 2004. (*See* Motion at pg. 5.) Second, despite their suggestion to the contrary, the Receiver does not now propose that Magnum be consolidated with Tech Traders for purposes of distribution. (*See* Motion at pg. 8.) Rather, the Receiver has made clear that this is an issue that the Court may need to resolve at some later date. (*See id.* at pg. 9.) Thus, at this time, Magnum and Tech Traders remain two separate and distinct entities for purposes of the Receiver's proposed distribution.

than it answers. The letter identifies another investor and other investment operations of Bally Lines, but it does not respond to the Receiver's information requests.

³ Green and List erroneously claim that the Receiver's "investigation indicates that the funds invested in Kaivalya never made it into Magnum as promised because they were utilized to pay funds owed to Magnum's investors." (*See* Green's Resp. to Legal Issues at ¶ 23; List's Resp. to Legal Issues at ¶ 21.) Nowhere does the Receiver make any such conclusion. To the contrary, the Receiver is advised that third parties misappropriated the Kaivalya funds for their own purposes.

Green and List, moreover, contend that the Receiver's proposed treatment of their Kaivalya repayments as prior withdrawals is inequitable. Instead, they propose that they receive a 38 percent interim distribution based solely on their total investments with Shasta at the time of the freeze order. But this proposal would afford them a windfall at the expense of other investors because most of the funds repaid to Kaivalya investors came from the money that other people had invested with Tech Traders. (*See* Motion at pp. 22-23.) Regardless of how these funds are characterized – “return of Kaivalya principal” or “previous withdrawals from the Defendants” – the fact remains that Green and List received \$120,000 and \$47,5000, respectively, of *other people's money*. Thus, equity requires that these funds be deducted from the respective pro rata shares available to Green and List under the Receiver's proposed plan of distribution.⁴

4. Jeffrey and Barbara Marrongelle

The Marrongelles tacitly assume the consolidation of Magnum and Tech Traders in their response. They propose that their \$60,000 investment with Edgar Holding Group, Inc., another Shimer-controlled investment opportunity, and their \$100,000 investment with Tech Traders through Shasta be combined as “funds invested” for purposes of determining their pro rata share. Their proposal, however, assumes that the funds invested actually reached the bank accounts of Magnum and Tech Traders. But this is mistaken because the Marrongelles' investment with Edgar *never* reached Magnum or Tech Traders. Even if the Court ultimately were to decide to

⁴ The Receiver recognizes that the Court will likely need to conduct an evidentiary hearing on the issue of whether repayments received by Kaivalya investors should be treated as withdrawals in light of the fact that these repayments came from Tech Traders' funds. That being said, several misstatements of “fact” in the responses filed by Green and List require correction in order to properly frame the issues for the hearing. To start, the Receiver has neither stated that “Kaivalya and Shasta are entities controlled by Defendants, Robert W. Shimer and Coyt E. Murray” nor believes that to be true. To the Receiver's knowledge, Robert Shimer controlled Kaivalya but Coyt E. Murray was not directly associated with it. Likewise, the Receiver has neither “admitted that Kaivalya investors invested in Magnum for commodity trading just as Shasta investors invested in Tech Traders for commodity trading” nor has information supporting this. As discussed above, the funds invested with Kaivalya were apparently misappropriated and there is no evidence available that they were transferred to Magnum. Finally, contrary to what Green and List contend, the Receiver has provided evidence that the funds sent to Kaivalya investors came from Tech Traders and is prepared to introduce the source documents into evidence at the hearing. (*See* Aff. of Stephen T. Bobo in Supp. of Mot. for Authority to Make Interim Distribution at ¶¶ 26-28.)

consolidate Tech Traders and Magnum, the funds the Marrongelles invested with Edgar should not be eligible for distribution. Instead, the funds they received back from Edgar should be offset against the distribution they would otherwise be entitled to receive on their Shasta claim. Those Edgar repayments came primarily from Tech Traders' funds, similar to the Kaivalya issue discussed above. Any other result would be unfair to the investors whose funds did go into Tech Traders.

5. Nancy Omaha Boy

Despite her suggestion to the contrary, the "actual chronology of events" has no bearing on the proposed treatment of Nancy Omaha Boy's claim. (*See Omaha Boy's Resp. to Legal Issues* at pg. 3.) Whether Omaha Boy later invested with Shasta the same funds that Kaivalya had already paid to her is irrelevant. Rather, the Receiver's proposed treatment of Omaha Boy's claim focuses solely on the need to recover the value of Tech Traders' funds paid to her through Kaivalya. As the Receiver's Objections make clear, in return for her Kaivalya investment Omaha Boy received \$180,000 of Tech Traders' funds – all of which is *other people's money*.⁵ An equitable distribution requires that these prior repayments be taken into account.

6. Alison Shimer

Despite the array of irrelevant issues Alison Shimer raises in her response, the Receiver objects to Shimer's claim for two simple reasons. First, the \$150,000 Mrs. Shimer invested with Shasta came from a joint checking account at Patriot Bank she shared with her husband, Defendant Robert Shimer. The significance of the joint checking account as the source of the funds invested cannot be determined until the Court determines the degree of Defendant Robert

⁵ Although Omaha Boy claims that she received \$175,000 – not \$180,000 – of Tech Traders' funds for her Kaivalya investment, records for the Kaivalya account at Patriot Bank show that Omaha Boy did in fact receive \$180,000 of Tech Traders' funds directly from this account.

Shimer's culpability in this Ponzi scheme.⁶ Second, before Mrs. Shimer made the investment, over \$150,000 had been transferred to that joint account from bank accounts at Patriot Bank in the names of Edgar and Kaivalya which, in turn, had received significant funds from Tech Traders. Notwithstanding Mrs. Shimer's argument that some or all of these payments should be treated as "attorneys' fees," the Receiver believes that the Shimers' receipt of these significant amounts from Kaivalya and Edgar should be treated as previous withdrawals.

One final note: the Receiver is not limited by the CFTC's action against Defendant Robert Shimer. To the extent the Receiver determines that Robert Shimer engaged in wrongful conduct in this case, the Receiver has the authority take appropriate action against Shimer to protect the interests of all other investors. (*See* 4/1/04 Ct. Order at III.D, F.)

7. Sterling Entities

The Receiver has discussed the proposed treatment of the Sterling entities' claims at length in other briefs. Specifically, the Receiver has addressed the many reasons for aggregating the seven claims filed by the Sterling entities. (*See* Reply of Stephen T. Bobo, Equity Receiver, to Objections to Mot. for Authority to Make Interim Distribution at pp. 18-21.) For example, the Sterling entities – which are under the common control of a small group of people – treated their seven accounts with Tech Traders as part of a unified group of accounts, and therefore, their claims should be aggregated. Further, the Receiver has explained multiple times why the Sterling entities must disclose the ultimate beneficial owners of the Sterling entities' investment with Tech Traders if they want their claims to be allowed. (*See* Tr. of Hr'g on 5/13/05; Reply of Stephen T. Bobo, Equity Receiver, to Objections to Mot. for Authority to Make Interim Distribution at pp. 18-21; Equity Receiver's Reply to the Sterling Entities' Resp. to Objections at

⁶ Although Alison Shimer states in her claim form that the "Source of Funds Used to Invest" came from the "Financing of property," bank records recently obtained from Patriot Bank show Robert Shimer – not Alison Shimer – as the beneficiary of a wire transfer of "closing proceeds" to the Shimers' joint account.

pp. 1-2.) Quite simply, without disclosure of this information, the Receiver cannot ensure and recommend a fair and equitable distribution of the limited receivership funds. Finally, the Receiver has also presented his reasons for opposing the release of funds held in Account #37923 in the name of Sterling Trust (Anguilla) Ltd. at Man Financial. (See Reply of Stephen T. Bobo, Equity Receiver, to Objections to Mot. for Authority to Make Interim Distribution at pp 21-22.) To date, the CFTC's discovery requests to the Sterling entities relating to Sterling Trust (Anguilla) Ltd. remain unsatisfied. Therefore, until all material facts are known and the Court can make a fully informed determination regarding the funds in this account, the Receiver believes the status quo with respect to this account should be preserved.

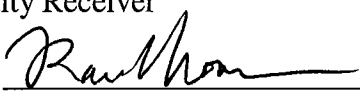
The Receiver's proposed treatment of the Sterling entities may require adjustments. In particular, if the Court were to decide not to aggregate the Sterling entities' claims, the Receiver would likely require the Sterling entities to provide additional information explaining and supporting numerous inter-entity transfers if these transfers are to be given full force and effect in determining the respective claim amounts.

Dated: May 20, 2005

Stephen T. Bobo
Bina Sanghavi
Raven Moore
Sachnoff & Weaver, Ltd.
10 South Wacker Drive, Suite 4000
Chicago, IL 60606
(312) 207-1000

Matthew H. Adler
Jeffrey A. Carr
Pepper Hamilton LLP
300 Alexander Park, CN 5276
Princeton, NJ 08543-5276
(609) 452-0808

Respectfully submitted,
STEPHEN T. BOBO
Equity Receiver

By: 
One of his attorneys