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

**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

Magistrate Judge Ann Marie Donio

Defendants.

**EQUITY RECEIVER’S STATEMENT OF POSITION REGARDING ACCOUNT #37923
IN THE NAME OF STERLING TRUST AT MAN FINANCIAL**

Stephen T. Bobo, as Equity Receiver (the “Receiver”) for defendants Equity Financial Group, LLC, Tech Traders, Inc., Tech Traders, Ltd., Magnum Investments, Ltd., Magnum Capital Investments, Ltd., Vincent J. Firth, and Robert W. Shimer, submits this statement of position regarding funds held in Account #37923 in the name of Sterling Trust (Anguilla) (“Sterling Trust”) at Man Financial – the principal topic on which the Court has ordered a hearing to take place on September 28 and September 29, 2005. The Receiver believes that because the facts as set forth below are not in dispute, the Court will be able to rule on how

the funds in Account #37923 should be treated as a matter of law without the necessity of an evidentiary hearing.

The Receiver does not dispute the facts as set forth in Sterling Trust's claim form, attached hereto as Ex. A, as they relate to Account #37923 – namely, the amounts of transfers to, and withdrawals from, Account #37923 and the dates of those transfers and withdrawals. Both Sterling and the Receiver agree that the transfers total \$3,000,580 and the withdrawals total \$925,000. Through document discovery and deposition testimony, the Receiver also has learned of the sources of the funds deposited into Account #37923 and believes that Sterling does not dispute the identities of those sources, as set forth below.

Against the background of these undisputed facts, along with the Court's ruling that aggregation of the Sterling claims for purposes of interim distribution is warranted (Report and Recommendation filed September 2, 2005, at 49) and the fact that the Sterling entities collectively are a Tier One investor which had clients who are Tier Two investors, the Receiver explains the bases for his proposed treatment of the funds. In short, the Receiver proposes that \$710,580 – *i.e.*, funds in Account #37923 that originated from Tech Traders and for which Tech Traders received absolutely no value in return as a matter of law – be recognized as Tech Traders' and not as Sterling's and revert back to Tech Traders' estate. The remaining funds, all of which originated from Sterling clients, should be aggregated with the funds to be distributed to the Sterling entities collectively when and if their claims are allowed, with distribution conditioned upon an approved equitable allocation among the entities and their clients. Following in chronological order are the facts underlying the specific transfers to, and withdrawals from, Account #37923, as listed on Sterling Trust's claim form, and statements of the Receiver's positions with respect to the funds involved:

I. Transfers That Total \$3,000,580

1. **1/30/03 deposit of \$240,000.** These funds did not originate from Sterling Trust but rather from Sterling ACS, and Sterling ACS acknowledges it received the funds from its clients. (V. Woltz dep. at 112, Ex. B). On January 16, 2003, Sterling ACS sent \$240,000 to Tech Traders, which it then asked Tech Traders to return – but, to Sterling Trust rather than to Sterling ACS. (V. Woltz dep. at 111, Ex. B; see also Sterling ACS claim form, attached hereto as Ex. D). Eight days after it received the \$240,000, Tech Traders wired that same amount to Sterling Trust on Friday, January 24, 2003 and, on the next Thursday, January 30, 2003, Sterling Trust transferred the funds to Account #37923. (See J. McCormack Declaration, attached hereto as Ex. D, and Att. 1 to that Declaration). Vernice Woltz has testified that “clients of Sterling Trust ... are also clients of Sterling ACS” (V. Woltz dep. at 112, Ex. B). The funds therefore should be handled consistent with this Court’s ruling, which adopts the Receiver’s proposal that investors with ownership interests in multiple accounts be consolidated for purposes of determining distribution amounts and that each investment group submit a proposed allocation of distribution funds among those with a beneficial interest in the funds. (See Report and Recommendation filed September 2, 2005, at 68, 73). In short, the funds should be aggregated with the funds to be distributed to the Sterling entities collectively when and if their claims are allowed, with distribution conditioned upon an approved equitable allocation among the entities and their clients.

2. **2/5/03 deposit of \$350,000.** Like the funds discussed in paragraph 1, these too are funds received from investors (see V. Woltz dep. at 239, Ex. B) that Sterling ACS wired to Sterling Trust on Thursday, January 30, 2003 and Sterling Trust in turn transferred to Account #37923 on the following Wednesday, February 5, 2003. (See J. McCormack

Declaration, attached hereto as Ex. D, and Att. 2 to that Declaration). As explained above in paragraph 1, the funds therefore should be aggregated with the funds to be distributed to the Sterling entities collectively when and if their claims are allowed, with distribution conditioned upon an approved equitable allocation among the entities and their clients.

3. **3/18/03 deposit of \$500,000.** These funds originated from the offshore brokerage firm of Le Masurier James and Chinn (see J. McCormack Declaration, attached hereto as Ex. D, and Att. 3 to that Declaration) and, as Vernice Woltz testified, also are funds received from clients. (V. Woltz dep. at 240-241, Ex. B). As explained above in paragraph 1, the funds therefore should be aggregated with the funds to be distributed to the Sterling entities collectively when and if their claims are allowed, with distribution conditioned upon an approved equitable allocation among the entities and their clients.

4. **4/24/03 deposit of \$1,000,000.** Like the funds discussed in paragraph 3, these funds also originated from the offshore brokerage firm of Le Masurier James and Chinn (see J. McCormack Declaration, attached hereto as Ex. D, and Att. 4 to that Declaration) and are funds received from clients. (V. Woltz dep. at 240-241, Ex. B). Like the funds discussed in paragraph 3, the funds therefore should be aggregated with the funds to be distributed to the Sterling entities collectively when and if their claims are allowed, with distribution conditioned upon an approved equitable allocation among the entities and their clients.

5. **4/24/03 deposit of \$235,580.** Tech Traders wired \$235,880 to Sterling Trust's account at Branch Banking & Trust ("BB&T") on April 23, 2003 and on April 24, 2003, Sterling Trust transferred \$235,580 to Account #37923 (See J. McCormack Declaration, attached hereto as Ex. D, and Att. 5 to that Declaration). According to Sterling, the funds should not become part of the receivership estate because they represent "the return of Sterling Trust (Anguilla)

Ltd.'s funds lost by Tech Traders.” (See letter from Sterling’s counsel dated March 21, 2005, attached hereto as Ex. E). But, Tech Traders had no legal obligation to repay Sterling for trading losses in an account that Tech Traders managed. If Sterling were permitted to retain the funds, they would be tantamount to a gift to Sterling of other investors’ funds. And, because they originated solely from other Tech Traders’ investors, these funds should revert back to Tech Traders’ estate, in order to prevent unjust enrichment. The payments also are avoidable as fraudulent conveyances for the benefit of the estate since Tech Traders received no value in return and was insolvent at all relevant times.

6. **06/03/03 – 03/31/04 – total of \$475,000 in 11 payments.** Sterling claims to have earned a total of \$475,000 in monthly “fees” from Tech Traders for maintaining Account #37923, purportedly to provide additional leverage for Tech Traders:

The money wasn't there to be used for any other reason except if Tech Traders had a margin call where they needed money immediately quickly that can be liquidated right away, and for that reason that money was there, of course, it was accruing interest, we were getting paid a fee on it.

(V. Woltz dep. at 108-109, Ex. B). Shortly after receiving each of these 11 payments, Sterling Trust transferred the funds into Account #37923, as shown on the following table:

Date Funds Received by Sterling Trust from Tech Traders	Date Funds Transferred into Account #37923	Amount of Funds Transferred into Account #37923
5/28/03	6/3/03	\$54,750
6/27/03	6/27/03	\$25,250
7/24/03	7/29/03	\$40,000
8/27/03	8/29/03	\$40,000
9/25/03	9/26/03	\$45,000
11/3/03	11/12/03	\$45,000
11/28/03	12/04/03	\$45,000
12/29/03 (\$145,000, of	1/5/04	\$45,000

<i>which \$45,000 was wired to Account #37923)</i>		
1/28/04	2/10/04	\$45,000
2/25/04	2/26/04	\$45,000
3/29/04	3/31/04	\$45,000

(See J. McCormack Declaration, attached hereto as Ex. D, and Att. 6 to that Declaration).

These funds should become part of the receivership estate because they are a series of payments received from Tech Traders for which neither Tech Traders nor its other investors received any value in return as a matter of law. Sterling's position that this \$475,000 should not become part of the receivership estate, and should be treated as fees to which only Sterling Trust is entitled, is baseless because CFTC regulations clearly prohibit a commodity brokerage firm, or futures commission merchant from using the funds in one customer's account to satisfy a margin call or trading losses of another customer. (See 17 CFR § 1.20(c) (2003), attached hereto as Ex. F ("Each futures commission merchant shall treat and deal with the customer funds of a ... customer as belonging to such ... customer. All customer funds shall be separately accounted for, and shall not be ... used to secure or extend credit, of any other person other than the one for whom the same are held.")). The funds, which originated solely from other Tech Traders' investors, therefore should revert back to Tech Traders' estate, in order to prevent unjust enrichment. Like the funds discussed in paragraph 5, the payments also are avoidable as fraudulent conveyances for the benefit of the estate since Tech Traders was insolvent at all relevant times.

7. **9/5/03 deposit of \$200,000.** Because these funds were wired to Account #37923 from Sterling Trust's account #3157 at BB&T (J. McCormack Declaration, attached hereto as Ex. D, and Att. 7 to that Declaration) and Ms. Woltz has testified that Sterling Trust's account

#3157 at BB&T held client funds (V. Woltz dep. at 241, Ex. B), these also were client funds. Like the funds discussed in paragraph 1, the funds therefore should be aggregated with the funds to be distributed to the Sterling entities collectively when and if their claims are allowed, with distribution conditioned upon an approved equitable allocation among the entities and their clients.

II. Withdrawals That Total \$925,000

8. 4/2/03 Withdrawal of \$500,000. These funds were wired from Account #37923 to a Sterling Trust investments account at Vision Select Managers Fund (a previously registered commodity pool operator in Oakbrook, Illinois.) (J. McCormack Declaration, attached hereto as Ex. D, and Att. 8 to that Declaration)

9. 2/12/04 Withdrawal of \$425,000. These funds were wired from Account #37923 to Sterling Trust's account #3157 at BB&T. (J. McCormack Declaration, attached hereto as Ex. D, and Att. 9 to that Declaration)

WHEREFORE, as set forth in detail above, the Receiver asks that the Court:

(a) rule that \$710,580 – i.e., funds in Account #37923 that originated from Tech Traders (\$235,580 plus \$475,000) and therefore from Tech Traders' other investors and for which neither Tech Traders nor its investors received any value in return as a matter of law – be recognized as Tech Traders' funds and not Sterling's and be returned to Tech Traders' estate;

(b) rule that the funds that remain in Account #37923 after the \$710,580 is returned to the receivership estate be aggregated with the funds to be distributed to the Sterling entities collectively when and if their claims are allowed, with distribution conditioned upon an approved equitable allocation among the entities and their clients;

(c) rule that Sterling Trust's two withdrawals from Account #37923 that total \$925,000 be treated as previous withdrawals and be aggregated with the amounts Tech Traders previously repaid to the Sterling entities;

(d) rule that as a Tier One investor, the Sterling entities collectively – when and if their claims are allowed and with distribution conditioned upon an approved equitable allocation among the entities and their clients – receive 38 percent of the total dollar amount they transferred to Tech Traders plus the amount identified in (b) above, less the sum of \$925,000 and all amounts Tech Traders previously repaid to the Sterling entities collectively, with distribution conditioned upon an approved equitable allocation among the entities and their clients; and

(e) grant such further relief to the Receiver as is equitable and appropriate under the circumstances.

DATED: September 15, 2005

Respectfully submitted,

STEPHEN T. BOBO
Equity Receiver

By: /s/ Jeffrey A. Carr
 One of his attorneys

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