

In The United States District Court  
For the District of New Jersey

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U.S. DISTRICT COURT  
2005 JUL -6 A 10:02

**COMMODITY FUTURES TRADING COMMISSION,**

**Plaintiff**

**vs.**

**EQUITY FINANCIAL GROUP, LLC, TECH TRADERS,  
INC., TECH TRADERS, LTD., MAGNUM INVEST-  
MENTS, LTD., MAGNUM CAPITAL INVESTMENTS  
LTD., VINCENT J. FIRTH, ROBERT W. SIIMER,  
COYT E. MURRAY, and J. VERNON ABERNETHY**

**Defendants**

**Civil Action No. 04CV 1512**

**Hon. Robert B. Kugler**

**Hon. Ann Marie Donio  
Magistrate**

**RESPONSE OF UNIVERSE CAPITAL APPRECIATION, LLC TO THE EQUITY  
RECEIVER'S PREVIOUS OBJECTION TO THE CLAIM OF UNIVERSE &  
RESPONSE OF UNIVERSE TO PLAINTIFF CFTC'S OBJECTION**

Universe Capital Appreciation, LLC, a Utah limited liability company (hereinafter "Universe") hereby challenges the Equity Receiver's objection to its rightful claim as an investor in Shasta Capital Associates, LLC ("Shasta") to participate in the Equity Receiver's proposed interim distribution. Universe also responds to the Plaintiff CFTC's recently filed Objection to the claim of Universe.

**The Equity Receiver's initial objection to an interim distribution to Universe based upon the Receiver's allegation contained in the Receiver's Objections to Certain Investor Claims dated March 31, 2005 has been cured.**

The Equity Receiver states on page 4 of his above cited March 31, 2005 objection with respect to the claim of Universe (claim #85) that he objects to participation by Universe in the interim distribution solely because Universe had purportedly failed "to provide the names of persons with beneficial interest in claimant". Attached hereto as Exhibit "A" is a copy of an email received by the Manager of Universe from legal counsel to the Equity Receiver Raven Moore. Also included as a part of Exhibit A is the e-mail reply of the Manager responding to Ms.

Moore's request for names of all six business entity members of Universe and their associated beneficial interest holders. By reason of the information provided in a timely manner to the Equity Receiver by claimant Universe, (as per attached Exhibit "A") the entire basis for the Equity Receiver's previous objection to including Universe in an interim distribution has been removed .

### **Response to Plaintiff CFTC's Objection to an interim distribution to Universe**

As an initial comment, any attempt by Plaintiff to suggest, as Plaintiff does in its second sentence, (see page 12 of Plaintiff's Objection) that there is any confusion or dispute as to the actual number of investor members of Universe is untrue. The Equity Receiver has been provided with a full and complete list of all members of Universe notwithstanding any suggestion to the contrary by Plaintiff in the above referenced sentence. The Equity Receiver can clearly now confirm to the Court that all members of Universe have been adequately identified to his satisfaction.

Moreover the Plaintiff's further suggestion on page 13 of its Objection that the investment activity of Universe in the entity Shasta Capital Associates, LLC ("Shasta") "may be a violation of the Commodity Exchange Act" because Universe "pooled" funds to invest in Shasta is not a viable basis for Plaintiff to argue for the exclusion of members of Universe from participation in the Equity Receiver's proposed interim distribution.

First of all, such an argument by Plaintiff is inappropriate because federal district court and appellate case law do not support any such application of the term "commodity pool" to the investment activities of Universe nor does Plaintiff's own narrow definition of the term "pool" found at 17 CFR 4.10(d)(1). (See previously filed Reply of Defendant Robert W. Shimer to Response of Plaintiff to Defendant Shimer's currently pending Motions to Dismiss under Rule 12(b)(1) and Rule 12(b)(6).

Moreover, this purported argument offered by Plaintiff as a basis to deny most Members of Universe their fair share of the interim distribution proposed by the Equity Receiver is

inappropriate because if one were to follow this purported "argument" by Plaintiff to its logical conclusion, then Plaintiff should also be objecting to *any* distribution to *any member of Shasta* since Plaintiff has also incorrectly alleged Shasta to be a "commodity pool". Since Plaintiff has not disputed most of the other claims in this case, any attempt to offer a similar "argument" as a basis to deny the legitimate claims of members of Universe should be rejected by the Court.

Plaintiff also attempts to make much of the fact that the Manager of Universe, David Perkins, "knew" Defendant Shimer. Universe would simply point out that Defendant Shimer also "knew" several of the other members of Shasta whose claims have not been disputed by the Equity Receiver. Moreover, the fact that the Manager of Universe "knew" defendant Shimer or that Shimer may have played a role in the formation of the separate corporate entity Kaivalya Holding Group, Inc ("Kaivalya") is not a basis to deny the legitimate claims of any member of Universe that had no relationship to Kaivalya.

First of all, as an attorney, it is logical and reasonable that Defendant Shimer would have assisted in the drafting of Kaivalya's Bylaws or other corporate documents that might become necessary after the company was formed. However, separate and apart from the fact that the role (if any) of Defendant Shimer in forming Kaivalya is completely irrelevant to the issue of whether or not a distribution should be made to members of Universe. Please see Exhibit "B" attached hereto.

Exhibit "B" is a true and correct copy of the Articles of Incorporation of the entity Kaivalya as originally filed and executed by its incorporator David Perkins. As can be seen from the face of Exhibit "B" Mr. Perkins was not only the incorporator but he was also the initial resident agent. Moreover, as those initially filed Articles also state the only initial Director of the Company was Perkins. Moreover the initial list of officers and Directors also filed by Mr. Perkins at the same time Kaivalya's Articles were filed lists defendant Shimer only as a Director. There is nothing "sinister" or unusual about the fact that an attorney such as Shimer should be listed as a member of the Board of Directors of a legitimately formed corporate entity.

Universe believes that, defendant Shimer's participation or non participation in the formation of the separate entity Kaivalya, has no relevance in accepting or denying the legitimate

claim to interim distribution by the Equity Receiver to the vast majority of the members of Universe.

It is true that a *very small number* of members of Universe did have a previous business relationship with Kaivalya. The list of those six particular individuals has been provided to the Equity Receiver and in the interest of keeping that list relatively confidential the list of those specific names is not attached to this Reply as an Exhibit. However, the Equity Receiver cannot deny that he has now received from Universe a list of all members of Universe who had any relationship with the entity Kaivalya.

However, the mere fact that an individual may have had a separate relationship to the entity Kaivalya is not a legitimate basis for excluding that member of Universe from the proposed interim distribution by the Equity Receiver *unless there is some reasonable basis to suspect that such a person might have received a previous distribution through Kaivalya from funds that originated from defendant Tech Traders, Inc.* (hereinafter "Tech"). Of the six individual members of Universe who had a previous relationship in any way with Kaivalya, only three received any repayment of funds from Kaivalya that originated from Defendant Tech and that information is clearly in the possession of the Equity Receiver! Plaintiff argues to exclude the approximate 40 members of Universe who legitimately and innocently invested in Shasta directly through the entity Universe even though the vast majority of those members of Universe *had absolutely no relationship at all with Kaivalya* or, in the case of three individuals who did have such a relationship, *received no funds from Kaivalya that originated from Tech or any other entity controlled by Defendant Coyt E. Murray.*

Moreover, Plaintiff is aware that all banking records of Defendant Tech are in the possession of the Equity Receiver and have been for quite some time. Plaintiff is aware that the Equity Receiver has had ample time to determine the exact amount of funds that originated from Tech that were sent, upon proper instruction, to the entity Kaivalya. Moreover, Plaintiff is also aware that all banking records of Kaivalya were willingly provided to the Equity Receiver by Kaivalya in the fall of last year. At the present time the Equity Receiver has full and complete knowledge of the total amount of funds that were received by Kaivalya from Tech and disbursed

by Kaivalya to other individuals or business entities. Moreover, the Equity Receiver is also in possession of *the name of each and every individual or business entity that ever received any disbursement from Kaivalya and the amount of any such distribution*. Nor does the Equity Receiver dispute that this is true. Universe believes the Equity Receiver has received full and complete willing cooperation from Defendant Shimer in that regard.

Any concern the Court might have about allowing the Equity Receiver to effect a distribution first back to a Universe bank account controlled by David Perkins for appropriate distribution to each member of Universe can be easily overcome by directing the Equity Receiver to make the distribution directly to each member of Universe. The Equity Receiver has the name and address of each member of Universe. The slight administrative "burden" imposed upon the Equity Receiver of issuing approximately 40 separate checks, one to each member of Universe entitled to a distribution is not a sufficient or reasonable basis to exclude the members of Universe from the proposed distribution.

The Equity Receiver has admitted in a previous telephone conversation with Defendant Shimer that it should be possible to arrive at a reasonable formula for computing the amount due to each member of Universe. For example, as Plaintiff clearly points out on page 12 of its Objection, the claim of Universe amounts to a total of \$2,647,165.00. Assuming merely for purposes of illustration that the total claim of all Shasta members is \$15,000,000.00 it would be easy to compute that Universe is entitled to receive 17.647% of that collective claim of all members of the entity Shasta.

If the amount to be distributed to Shasta's members as a part of the proposed interim distribution is determined by the Equity Receiver to be \$3,000,000.00 (again, merely for purposes of illustration) then the members of Universe should be allocated to each according to their relative ownership in Universe their proportionate share of \$529,410.00 (17.647% x \$3,000,000.00). At that point the Equity Receiver can review the amount received back by any member of Universe from either Universe itself or from Kaivalya. If any amount has been so received by any particular member of Universe, then the amount previously received by that individual can be easily subtracted from the amount otherwise due under the proposed interim distribution.

For example, if a previous amount received by any such member of Universe exceeds the amount due to that particular member under the proposed interim distribution, then no distribution need be made currently to that particular member. If the amount due under the interim distribution plan exceeds the amount previously received, then the Equity Receiver can easily subtract the amount previously received from the amount due under his interim distribution proposal and forward the difference by check to that member of Universe.

Given the amount of time the Equity Receiver has spent with respect to the more complicated legal and accounting issues surrounding the entity Sterling and all of the other assorted entities that may have made a direct investment with the entity Tech, the amount of time necessary to compute the amount properly due each member of Universe is not unreasonable nor an undue burden for the Equity Receiver to undertake. Such a computation could probably be undertaken and completed in under three hours. Moreover, such a computation requires relatively simple math skills and need not be conducted by the Equity Receiver himself but by someone who will bill the receivership estate at an hourly rate substantially less than the rate billed by the Receiver. All the Equity Receiver need do is check the math if he so requires to ensure the underlying computations are mathematically correct.

For all of the above reasons Universe respectfully requests that the Court direct the Equity Receiver to include Universe and its members in the Equity Receiver's proposed interim distribution.

Date: June 30, 2005

Respectfully submitted,

Universe Capital Appreciation, LLC

By   
David Perkins, Manager

**CERTIFICATE OF SERVICE**

I have caused to be forwarded by regular mail, a copy of Universe Capital Appreciation, LLC's Response To The CFTC's Objection to its Claim to both the Equity Receiver Stephen T. Bobo, Esq., Sachnoff & Weaver, Ltd. 10 S. Wacker Drive, Suite 4000, Chicago, Illinois 60606 and to Elizabeth Streit, Esq. Commodity Futures Trading Commission, 525 West Monroe Street, Suite 1100, Chicago, Illinois 60661 on June 30, 2005.

A handwritten signature in cursive script, appearing to read "David Perkins", is written over a horizontal line.

David Perkins, Manager  
Universe Capital Appreciation, LLC

EXHIBIT A

**Main Identity**

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**From:** "Moore, Raven" <RMOORE@sachnoff.com>  
**To:** <dperk@charter.net>  
**Sent:** 04/19/2005 4:05 PM  
**Subject:** [Norton AntiSpam] Email address

Good afternoon, Mr. Perkins--

As we discussed earlier today, please provide the names of all individuals with a beneficial interest in all entities that invested with Universe Capital. If you have any questions or concerns, please do not hesitate to contact me at [rmoores@sachnoff.com](mailto:rmoores@sachnoff.com) or 312.207.6457.

Thank you,

Raven Moore

Sachnoff & Weaver, Ltd.  
10 South Wacker Drive  
Suite 4000  
Chicago, IL 60606  
312.207.6457  
312.207.6400 (f)

**\*\*\*\*\* IMPORTANT NOTICE \*\*\*\*\***

This e-mail, and any attachments hereto, is intended only for use by the addressee(s) named herein and may contain legally privileged and/or confidential information. If you are not the intended recipient of this e-mail, you are hereby notified that any dissemination, distribution or copying of this e-mail, and any attachments hereto, is strictly prohibited. If you have received this e-mail in error, please immediately notify me at (312) 207-1000 and permanently delete the original and any copy of any e-mail and any printout thereof.

**Main Identity**

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**From:** "David Perkins" <dperk@charter.net>  
**To:** "Raven Moore" <rmoore@sachnoff.com>  
**Sent:** 04/21/2005 12:46 PM  
**Attach:** UCA To RMoore.doc  
**Subject:** Requested Info

Hello Ms. Moore - please find attached a Word doc with the information you requested. Thanks, David Perkins

21 April 2005

Good Afternoon Raven Moore,

Below please find 2 pages containing the information you requested on certain membership interests of Universe Capital held by entities other than individuals.

Can you please confirm that you received this information?

Please let me know if there is any additional information that you need and I will get it to you in an expeditious manner!

Thanks again for your work.

Sincerely,

David Perkins

**The RS Condon Family Trust (A Revocable Living Trust)**

Richard Steven Condon, Owner and Trustee

2800 Neilson Way, #512

Santa Monica, CA 90405

He is currently residing in France – his Tel numbers are:

Home: 011-33-565-119-368

Cell: 011-33-686-129-922

**Master Marketers, LLC**

David & Eleanor Stoltzfus, Sole Owners

103 Tiffany Drive

Bridgewater, VA 22812

Home: 540-828-6646

Cell: 540-607-0441

**Sherman Family Trust (A Revocable Living Trust)**

Miriam Sherman, Owner and Trustee

244 Seville K

Delray Beach, FL 33446

Tel: 561-637-9132

**Vico, Inc.**

Rick Van Houten, Owner  
6140 Foxcroft Avenue  
Las Vegas, NV 89108  
Tel: 702-656-3626  
Cell: 702-429-0520

**Yamane Family Trust (A Revocable Living Trust)**

Ian Yamane, Owner and Trustee  
2304 Silver Bluff Court  
Las Vegas, NV 89134  
Tel: 702-254-7079

**Fisher Trust**

Charles Fisher, Trustee (the same Charles Fisher who holds a membership  
interest as an individual)  
156 Waughaw Road  
Towaco, NJ 07082  
Tel: 973-316-0009

**FILED**

IN THE OFFICE OF THE  
SECRETARY OF STATE OF THE  
STATE OF NEVADA

JAN 22 1999

NO. C422-99

*Dean Heller*  
DEAN HELLER, SECRETARY OF STATE

**ARTICLES OF INCORPORATION  
OF  
KAIVALYA HOLDING GROUP, INC.**

THE UNDERSIGNED, a natural person of the age of eighteen years or more, acting as Officer of a corporation pursuant to Nevada Revised Statutes 78, adopts the following Articles of Incorporation for such corporation:

**Article I  
Purpose**

The purpose(s) of the corporation are to engage in the business of investments and to engage in any lawful act or activity for which corporations may be organized under NRS 78.

**Article II  
Name**

The name of the corporation is Kaivalya Holding Group, Inc.

**Article III  
Number of Shares**

The corporation is authorized to issue 10,000 shares, with no par value.

**Article IV  
Classes of Shares**

All shares of the corporation are of the same class, viz., common. All shares have unlimited voting rights and are entitled to receive the net assets of the corporation upon dissolution.

**Article V  
Registered Office and Resident Agent**

The street address of the corporation's initial registered office is 2211 North Rampart, Suite 145, Las Vegas, Nevada 89128. The corporation's initial resident agent is David Perkins.

Certificate of acceptance of appointment of resident agent:

I, David Perkins, accept the appointment as Resident Agent for the above named corporation.

Acceptance as Resident Agent:

*David Perkins*  
David Perkins

**Article VI  
Incorporator**

The incorporator is David Perkins, whose address is 2211 North Rampart, Suite 145, Las Vegas, NV 89128.

**Article VII  
Officers and Directors**

There shall initially be one officer, David Perkins, who shall also serve as director of the corporation. The Director's address is 2211 North Rampart, Suite 145, Las Vegas, NV 89128.

**Article VIII  
Director Liability**

To the fullest extent permitted by the Act or any other applicable law, a director of the corporation shall not be personally liable to the corporation or its shareholders for monetary damages for any action taken or any failure to take any action as a director.

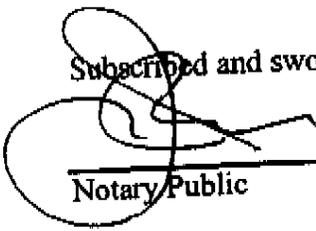
This corporation shall exist in perpetuity, unless dissolved in accordance with applicable provisions of Nevada Law.

Dated the 22nd day of January, 1999.



David Perkins  
2211 North Rampart, #145  
Las Vegas, NV 89128

Subscribed and sworn to before me this 21st day of January, 1999.



Notary Public

