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

**COMMODITY FUTURES TRADING )  
COMMISSION, )**

**Plaintiff, )**

**vs. )**

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

**Defendants. )**

**Civil Action No.: 04CV 1512**

**Honorable Robert B. Kugler**

**THIRD APPLICATION OF EQUITY RECEIVER  
AND SACHNOFF & WEAVER, LTD. FOR INTERIM  
COMPENSATION AND EXPENSE REIMBURSEMENT**

Stephen T. Bobo, as Equity Receiver (the "Receiver") for Equity Financial Group, LLC, Tech Traders, Inc., Tech Traders, Ltd., Magnum Investments, Ltd., Magnum Capital Investments, Ltd., Vincent J. Firth, and Robert W. Shimer (the "Receivership Defendants"), and his principal counsel, Sachnoff & Weaver, Ltd. ("Sachnoff & Weaver"), file this application with the Court requesting an award of interim compensation and expense reimbursement for services rendered from October 1, 2004 through December 31, 2004. The Receiver and Sachnoff &

Weaver (collectively the “Applicants”) seek interim compensation in the amount of \$203,689.50 and reimbursement of expenses in the amount of \$10,243.94.

### **BACKGROUND AND STATUS OF THE CASE**

1. On April 1, 2004, the Commodity Futures Trading Commission (the “Commission”) filed its Complaint and Motion for *Ex Parte* Statutory Restraining Order with the Court, seeking injunctive relief and civil monetary penalties against Defendants Equity Financial Group, LLC, Tech Traders, Inc., Vincent J. Firth, and Robert W. Shimer. In an order entered on that same day, the Court granted the Commission’s motion for the restraining order and appointed Stephen T. Bobo as Temporary Equity Receiver for these Defendants and their assets.

2. On April 29, 2004, with the Court’s approval, the Receiver employed attorneys from the law firm of Pepper Hamilton LLP as local counsel and Sachnoff & Weaver as principal counsel. The Receiver also employed accountants with the firm of FGМК, LLC (“FGМК”) in Bannockburn, Illinois. In an effort to ensure that costs remain reasonable and appropriate, the Receiver’s local counsel and his accountants continue to discount their services by 5 percent. Further, in light of the scale of services provided during this period, Sachnoff & Weaver has discounted the billing rates of attorneys and paralegals between 5 and 9 percent.

3. In light of additional facts that emerged from the Commission’s ongoing investigation, on June 25, 2004, the Commission filed a motion for leave to amend its complaint to name additional defendants. On August 10, 2004, the Court granted the Commission’s motion. Two days later, on August 12, 2004, the Commission filed its Amended Complaint, naming five additional Defendants, including Coyt E. Murray, J. Vernon Abernethy, Tech Traders, Ltd., Magnum Investments, Ltd., and Magnum Capital Investments, Ltd. As of August 24, 2004, all named Defendants consented to the Court’s entry of a preliminary injunction.

4. Pursuant to Court order, Mr. Bobo serves as the Receiver for Tech Traders, Inc., Tech Traders, Ltd., Magnum Investments, Ltd., Magnum Capital Investments, Ltd., Equity Financial Group, LLC, Vincent Firth, and Robert Shimer.

5. On June 18, 2004, the Receiver filed a motion to approve the investor claim process. The Court approved the investor claim process proposed by the Receiver on August 23, 2004. As part of this process, the Receiver distributed claim forms on August 27, 2004 to all persons identified as possibly having invested funds with the Receivership Defendants through Shasta Capital Associates, LLC (“Shasta”), through New Century Trading, LLC (another Shimer-organized entity that placed its investors’ funds with Tech Traders), and directly with Tech Traders. The Receiver distributed approximately 170 claim forms requesting responses by September 26, 2004. In total, the Receiver received 104 proofs of claim.

6. Throughout November and December of 2004, the Receiver and his counsel reviewed and analyzed the 104 proofs of claim and supporting documentation submitted by investors. In instances where investors failed to provide complete proofs of claim or adequate documentation supporting all transfers to and withdrawals from the Receivership Defendants, a Sachnoff & Weaver paralegal contacted investors regarding the deficiencies. Although most investors have complied with the Receiver’s request for additional information, a smaller number of investors have yet to provide all of the necessary information. Therefore, a Sachnoff & Weaver paralegal continues to follow up with these investors.

7. The Receiver and his counsel also communicate with investors on a regular basis in an attempt to address their many questions and concerns about the receivership estate. The investors generally look to the Receiver for information regarding the Receivership Defendants’

investment activities, as well as for answers related to the investor claim process and the Receiver's proposed plan of distribution.

8. Based on his review and analysis of the investor proofs of claim, the Receiver developed a proposed plan for distributing the receivership funds. On January 7, 2005, the Receiver filed this proposed plan with the Court in the form of a motion for authority to make an interim distribution on account of investor claims. In this motion, the Receiver proposed distributing approximately \$10.4 million in receivership funds on a pro rata basis, with payments to be made to those investors whose claims have been agreed to by the Receiver, and reserving the equivalent distribution amounts for investors whose claims are not yet fully documented or are disputed by the Receiver.

9. Thereafter, the Receiver mailed a Notice of Hearing on the Receiver's motion for authority to make an interim distribution on account of investor claims to all investors who submitted proofs of claim. The Notice of Hearing provided investors with information about the Receiver's motion, including the method proposed for determining each investor's distribution amount. In response, 15 investors filed objections to the Receiver's motion. In addition, the Commission and Defendant Equity Financial Group filed limited objections.

10. On February 25, 2005, the Receiver filed a reply to the investors' objections, as well as to the limited objections filed by the Commission and Equity Financial Group. In his reply, the Receiver focused primarily on those objections where investors disputed the proposed method for determining individual distributions.

11. To date, the Receiver maintains exclusive control of receivership assets totaling approximately \$19.5 million previously held by brokerage firms Forex Capital Markets, Global Forex Trading, Man Financial, and Rosenthal Collins Group and banking institutions Bank of

America and Citicorp. The Receiver has secured these assets primarily in an escrow account at LaSalle Bank, N.A. in Chicago, Illinois.<sup>1</sup> This account serves as the designated depository for funds of the Receivership Defendants. Within this account, subaccount number 8601310983 holds the frozen assets of Shasta and subaccount number 8601311106 holds the frozen assets of Tech Traders. All of these funds remain in interest-bearing accounts.

12. The Receiver and his attorneys continue to investigate the Receivership Defendants' business affairs and, specifically, Defendants' handling of investor funds, informally and through the discovery process. In early December of 2004, the Receiver's counsel participated in the deposition of third-party Howell Woltz. Further, the Receiver's counsel prepared for the depositions of Defendant Robert Shimer, Tech Traders Magnum and third-parties Coyt A. Murray and Elaine Teague of Puttman & Teague, Shasta's accountant; however, these depositions were postponed for various reasons.

13. During this period, the Receiver has worked with FGMK to finalize the financial analysis of the Receivership Defendants' bank and trading accounts, including analysis of the loss or misappropriation of investor funds. This process has been complicated by the lack of complete records kept by the Defendants, the number of bank and trading accounts involved (almost fifty), the difficulty in obtaining complete transaction records from the Defendants' financial institutions, and the numerous transfers between related entities. Despite these complications, the accountants have been able to provide the Receiver with a comprehensive

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<sup>1</sup> To date, the Receiver is holding approximately \$19.5 million in frozen assets, of which \$17,794,342.43 is held in the LaSalle Bank escrow account. The remaining frozen assets continue to be held in Man Financial account number 37923. A February 2005 account statement from Man Financial reflects that these assets, which are held in 10-year U.S. Treasury Notes, have an "account value at market" of \$1,731,913.00, although the Receiver understands that the actual value of the Treasury Notes is somewhat greater.

analysis of the amounts of funds taken in by Tech Traders and Shasta and how they were used. While an overall view of the Magnum entities has been pieced together, some of the details are still unclear.

14. In addition, the Receiver continues to work with his accountants on tax-related issues involving Shasta, the pool managed by Defendant Equity Financial Group, and Defendant Tech Traders. Specifically, the Receiver has determined the necessary steps for filing tax returns on behalf of receivership entities and Shasta and distributing W-2 forms for wages paid to Tech Traders' employees in 2004.

15. In January of 2005, the Receiver's motion for authority to sell the assets of Tech Traders was granted. These assets include the relatively large computer network and other equipment located at its Gastonia, North Carolina offices. Shortly thereafter, the Receiver removed the rest of the business records from the premises.

16. The Receiver has dealt with several other issues during the period of this application, including preparing an affidavit in response to Sterling Trust (Anguilla), Ltd.'s renewed motion to intervene, and preparing and filing a second interim report of his activities and a response to Gusrae, Kaplan & Bruno, PLLC's motion to withdraw as counsel for the Tech Traders' entities.

#### **NATURE OF THE SERVICES RENDERED AND EXPENSES INCURRED**

17. From October 1, 2004 through December 31, 2004, the Applicants have provided over 871 hours of services as Receiver and as principal counsel for the Receiver. The major reason for the higher level of activity by the Applicants during this period is the large amount of work in connection with reviewing claims and preparing the distribution plan. For the Court's benefit in reviewing this application, the Applicants' services are divided into six (6) categories:

- A. General estate administration;
- B. Accounting for Receivership Defendants' transactions;
- C. Contacts with investors;
- D. Claims and distribution motion;
- E. Pleadings and court hearings; and
- F. Discovery.

A copy of Sachnoff & Weaver's statement of services by category is attached as Exhibit C to the Declaration of Stephen T. Bobo as Equity Receiver in Support of the Third Applications for Interim Compensation and Expense Reimbursement of Sachnoff & Weaver, Ltd., Pepper Hamilton LLP, and FGMK, LLC.

18. In its April 1, 2004 Order, the Court directed the Receiver and his counsel to file fee applications on a quarterly basis. On November 12, 2004, the Applicants filed their second quarterly fee application with the Court, wherein they requested fees in the amount of \$106,520.00 and expenses in the amount of \$4,578.42. The Court approved the Applicants' fee application on December 21, 2004.

19. Pursuant to the Court's directive, the Applicants file this third fee application covering the fourth quarter of 2004.

**A. General Estate Administration**

20. The Applicants seek compensation for 91.90 hours of professional services related to the administration of the receivership estate from October 1, 2004 through December 31, 2004. Among the many services that the Receiver and his counsel performed in administering the estate are: handling tax-related issues for Tech Traders and Shasta, with the assistance of the Receiver's accountants; researching potential causes of action available against

third parties to the litigation; preparing and filing a second interim report of the Receiver; preparing and filing a second fee application on behalf of the Receiver's counsel, accountants, and computer consultants; communicating on a regular basis with attorneys for the Commission and the Receivership Defendants; communicating with the Receiver's accountants at FGMK; communicating with Receivership Defendants' creditors regarding outstanding balances owed by Defendants; supervising Sachnoff & Weaver's Accounting Department and LaSalle Bank to ensure proper maintenance of the interest-bearing escrow account that serves as the depository for Receivership Defendants' and seeking authority to liquidate Tech Traders' assets, specifically, its large computer network and other equipment.

**B. Accounting for Receivership Defendants' Transactions**

21. The Applicants seek compensation for 133.70 hours of services related to accounting for the Receivership Defendants' transactions, including their handling of investor funds. The Receiver and his counsel performed these services from October 1, 2004 through December 31, 2004. The Receiver and his counsel continue to work with the accountants at FGMK, LLC to finalize the financial analysis of approximately 50 bank and trading accounts maintained by the Receivership Defendants and related entities. In particular, the Receiver directed the accountants to trace the sources and uses of funds through the bank accounts of Tech Traders, its predecessors Magnum Investments, Ltd. and Magnum Capital Investments, Ltd., Shasta, Vincent Firth, and Robert Shimer, as well as other entities under the control or direction of Robert Shimer, including Kaivalya Holding Group, Inc. and Edgar Holding Group, Inc. The Receiver and his counsel have assisted the accountants by working with investigators at the Commission and directly with the banks and brokerage firms in order to obtain and review all necessary financial records. The accountants expect to be able to finalize their financial analysis



for the Receiver and his counsel shortly after receiving the few remaining document requests from the financial institutions.

**C. Contacts with Investors**

22. The Receiver and his counsel continue to address the questions raised by various investors who were victimized by Receivership Defendants' Ponzi scheme. In particular, the investor claim process has raised numerous questions and concerns for investors placed over approximately \$43 million with the Defendants. As a result, the Receiver and his counsel continue to address the questions and concerns of various investors almost daily. In addition, the Receiver continues to communicate with investors by way of the Shasta website located at [www.shastacapitalassociates.com](http://www.shastacapitalassociates.com), providing updates to visitors on a monthly basis. The Applicants provided 56.4 hours of services in this category during the fourth quarter of 2004.

**D. Claims and Distribution Motion**

23. By far the largest component of the Applicants services during the fourth quarter of 2004 was the 380.15 hours of professional services required to manage the investor claim process and propose an interim distribution plan to the Court for its approval. On August 27, 2004, the Receiver sent approximately 170 investor claim forms to all persons believed to have invested with Tech Traders, Shasta, and New Century, the other Shimer-organized entity that invested with Tech Traders. Pursuant to the Court's order approving the investor claim process, the Receiver requested responses from investors within 30 days. As of September 26, 2004, the Receiver received 76 proofs of claim. Thereafter, the Receiver received an additional 28 proofs of claim.

24. During the months of November and December of 2004, the Receiver and his counsel conducted a comprehensive review of the 104 proofs of claim and supporting

documentation submitted by investors, as well as follow up communications with many of them. This effort required significant time and resources to ensure the accuracy and completeness of the proofs of claim. For example, the Receiver and his counsel worked with the accountants of FGМК to ensure that the proofs of claim submitted by investors were consistent with the accountants' analysis of the flows of funds into and out of the Receivership Defendants. The Receiver and his counsel researched applicable precedent and considered the various issues relating to the most equitable way to make a distribution in these circumstances.

25. After careful review of and analysis of the relevant issues, these proofs of claim on January 7, 2005, the Receiver filed a motion for authority to make an interim distribution of receivership estate funds on account of investor claims. In support of his motion, the Receiver also filed a lengthy memorandum, affidavit, and distribution schedules for agreed and disputed claims. The memorandum explains the numerous issues to be considered in determining an appropriate distribution and the reasons for the Receiver's recommendations. The Receiver proposed a pro rata distribution which would return as much as \$10.4 million to investors.

#### **E. Pleadings and Court Hearings**

26. The Applicants seek compensation for 30.10 hours of services related to the drafting of motions and reports and participating in court hearings from October 1, 2004 through December 31, 2004. The Receiver and his counsel continue to participate in scheduled court hearings primarily by telephone to minimize costs to the receivership estate. In addition, a junior-level associate continues to prepare most of the pleadings in this matter, with partners providing oversight and review.

27. During this period, the Receiver filed several pleadings to keep the Court abreast of his efforts on behalf of the receivership estate. In particular, the Receiver filed an affidavit in

response to Sterling Trust (Anguilla), Ltd.'s renewed motion to intervene, an objection to the motion of Gusrae, Kaplan & Bruno, PLLC to withdraw as counsel for the Tech Traders' entities, and the Second Interim Report of Equity Receiver.

**F. Discovery**

28. The Applicants seek compensation for 178.8 hours of services related to their participation in discovery from October 1, 2004 through December 31, 2004. These efforts to engage in the discovery process include:

A. Responding to discovery requests served on the Receiver by Receivership Defendants;

B. Reviewed documents produced by Receivership Defendants in response to discovery requests;

C. Preparing for and taking the 30(b)(6) depositions of Tech Traders and Magnum and third-party Howell Woltz in Gastonia, North Carolina; and

D. Preparing for the depositions of Defendant Robert W. Shimer and third-party Elaine Teague of Puttman & Teague (both depositions were postponed).

**G. Reimbursement of Expenses**

29. The Applicants seek reimbursement for a total of \$10,243.94 in expenses incurred from October 1, 2004 through December 31, 2004. Since the inception of this case, the Applicants have consciously attempted to minimize their expenses. During this period, the Receiver's counsel was required to travel out of state only once. In December of 2004, the Receiver's counsel traveled to Charlotte, North Carolina for the deposition of third-party Howell Woltz. Other expenses necessary to perform the Receiver's obligations include substantial photocopying and Bates-numbering of the Receivership Defendants' and third-party documents

by outside contractors, internal photocopying expenses at Sachnoff & Weaver's regular rate of \$.20 per page, postage expenses, long-distance telephone charges, overnight delivery and messenger charges, and computer research fees. A summary of these expenses is included in Exhibit C to the Declaration of Stephen T. Bobo. A detailed breakdown of these expenses is also available should the Court or any party wish to review this information.

**REASONABLENESS OF THE COMPENSATION REQUESTED**

30. The Receiver understands that the compensation and expenses sought by this application are considerable; however, he has consciously attempted to keep them at a reasonable level through the efficient administration of the Receivership Defendants' estate. The Receiver continues to rely on a small group of attorneys and staff primarily consisting of one partner, one junior-level associate, and one paralegal from Sachnoff & Weaver's litigation group to assist him in carrying out the Court's orders. Other attorneys at Sachnoff & Weaver with expertise in taxation and bankruptcy have provided limited services on behalf of the Receiver as well. Finally, the Receiver has sought the services of several document clerks to help organize and manage the voluminous and ongoing production of documents turned over by the Receivership Defendants and relevant third parties, including investors, brokerage firms, and banking institutions.

31. In routine matters, such as reviewing documents and drafting motions and reports to the Court, the Receiver has primarily relied upon junior-level associates and paralegals. Of the total of 871.05 hours for which compensation is sought in this application, only 326.50 hours, or less than 38% of the total, were provided by the Receiver and other members of the firm. An associate provided 266.30 hours, or approximately 30% of the total. Paralegals provided 198.65 hours, or approximately 22% of the total. Litigation Document Clerks performed the remaining

79.60 hours at the significantly reduced rate of \$70 per hour. In addition, the Receiver continues to seek the assistance of the Commission when appropriate. Specifically, the Receiver has looked to the Commission for assistance in serving subpoenas for necessary bank and trading records, uncovering the assets in the possession of, or under the control of, the Receivership Defendants, and investigating the trading losses of the Defendants. The Receiver's reliance on the Commission for various tasks has assisted to control the costs of this engagement.

32. The Receiver requests payment for his services at the discounted rate of \$350 per hour, which the Receiver believes to be justified in light of his experience in these types of matters.

33. In light of the quantity of services performed during this stage of the case, particularly relating to the investor claim process, and in recognition that the cost will likely be borne by the investors, Sachnoff & Weaver seeks compensation for its attorneys and paralegals at a discount ranging from 5 to 9 percent of their customary hourly rates instead of the straight 5 percent discount promised in the motion to employ Sachnoff & Weaver. These discounted rates range from \$165.00 to \$315.00. Total time and fees sought for each attorney and paralegal are summarized in the following table:

| <u>Timekeeper</u>    | <u>Practice Group</u> | <u>Total Hours</u> | <u>Hourly Rate</u> | <u>Compensation Requested</u> |
|----------------------|-----------------------|--------------------|--------------------|-------------------------------|
| Stephen T. Bobo      | Financial Services    | 231.80             | \$350.00           | \$81,130.00                   |
| Bina Sanghavi        | Litigation            | 94.00              | \$315.00           | \$29,610.00                   |
| John W. Moynihan     | Litigation            | 0.50               | \$315.00           | \$157.50                      |
| Mary Lou Zwick       | Employee Benefits     | 0.20               | \$310.00           | \$62.00                       |
| Kenneth G. Kubes     | Financial Services    | 21.10              | \$205.00           | \$4,325.50                    |
| Raven Moore          | Litigation            | 245.20             | \$195.00           | \$47,814.00                   |
| Judith M. Livingston | Litigation Paralegal  | 89.65              | \$190.00           | \$17,033.50                   |
| Cheryl L. Baran      | Litigation Paralegal  | 109.00             | \$165.00           | \$17,985.00                   |
| Document Clerks      | Litigation            | 79.60              | \$70.00            | <u>\$5,572.00</u>             |
|                      |                       |                    | <b>FEE TOTALS</b>  | <b>\$203,689.50</b>           |

34. The Applicants have kept their time in tenths of an hour, or six-minute increments. Consistent with the previous periods, the Receiver exercised his billing judgment where appropriate to reduce the services for which compensation is sought, as well as the resulting amount of compensation requested. The amount of such reductions totals over 100 hours of services, equal to an additional discount of nearly \$15,000.00. In an effort to avoid charging for services that could be deemed excessive, duplicative or unnecessary, the Applicants do not seek compensation for strictly administrative or ministerial tasks.

35. Finally, the Applicants agreed to take on this matter with no assurance that funds would exist in the Receivership Defendants' estate to compensate for professional services. Neither the Receiver nor Sachnoff & Weaver holds a retainer for the services that they continue to provide to the Receivership Defendants. The Applicants have acted expeditiously in administering the estate and investigating the affairs of the Receivership Defendants. For these reasons, the Applicants are deserving of the full amount of the compensation requested.

#### **RELIEF REQUESTED**

Based upon the amount of services provided, the skill required, and the results achieved to date, the Applicants submit that the compensation requested is justified and payment is appropriate.

WHEREFORE, the Applicants respectfully request that this Court enter an order:

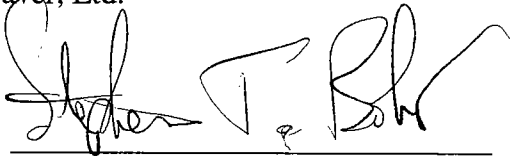
1. Allowing interim compensation in the amount of \$203,689.50 to the Receiver and Sachnoff & Weaver for services provided and in the amount of \$10,243.94 for expenses incurred and advanced from October 1, 2004 through December 31, 2004;

2. Authorizing the Receiver to pay Sachnoff & Weaver the amount of \$203,689.50 in fees and \$10,243.94 in expenses from the funds of the receivership estate for the period of October 1, 2004 through December 31, 2004; and

3. Providing the Receiver and Sachnoff & Weaver further relief as may be appropriate in these circumstances.

Respectfully submitted,

STEPHEN T. BOBO,  
Equity Receiver and on behalf of Sachnoff &  
Weaver, Ltd.

By: 

One of his attorneys

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