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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 FGMK, LLC FOR
INTERIM COMPENSATION AND EXPENSE REIMBURSEMENT**

FGMK, LLC (“FGMK”), the accountants for 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 (collectively the “Receivership Defendants”), requests an award of interim compensation for services rendered and expense reimbursement from October 1, 2004 through December 31,

2004. FGМК seeks interim compensation in the amount of \$112,188.88 and reimbursement of expenses in the amount of \$8.24.

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 the Defendants Equity Financial Group, LLC, Tech Traders, Inc., Vincent J. Firth, and Robert W. Shimer. On the same day, the Court entered an order granting the Commission’s motion for the restraining order and appointing Stephen T. Bobo as Temporary Equity Receiver for the Defendants and their assets.

2. On April 29, 2004, with the Court’s approval, the Receiver employed the firm of FGМК, LLC (“FGМК”) in Bannockburn, Illinois as his accountants. From the inception of this engagement, FGМК has been charged with accounting for the Receivership Defendants’ receipt, use and disposition of investor funds totaling over \$43 million.

3. In light of the additional facts that emerged during the Commission’s ongoing investigation, on June 25, 2004, the Commission filed a motion for leave to amend its complaint to name additional defendants in this matter. 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. FGMK continues its comprehensive effort to finalize accounting for the Receivership Defendants' receipt, use, and disposition of investor funds. To date, FGMK has reviewed and analyzed records obtained from or produced by the Receivership Defendants, various investors, brokerage firms Forex Capital Markets, Global Forex Trading, Man Financial, Rosenthal Collins Group, and REFCO, and banking institutions Bank of America, Citicorp, Farmers & Mechanics Bank, Patriot Bank, Sterling Bank, Sun National Bank, Branch Banking & Trust, and Wachovia National Bank (formerly First Union National Bank).

5. In light of the additional Defendants named in this case as of August 12, 2004, FGMK requested additional bank and trading records to provide the Receiver with comprehensive financial analysis for all the Receivership Defendants, including the Magnum entities. FGMK awaits a handful of remaining records from select banking institutions and brokerage firms. Upon receipt of these records, FGMK expects to finalize its analysis of the Receivership Defendants' numerous accounts.

6. FGMK communicates regularly with the Receiver and his counsel to ensure that the financial summaries and detailed analysis for these accounts is organized for the benefit of and ready use by the Receiver. In response to the Receiver's request, FGMK has modified the financial summaries to recognize inter-account transfers among the Receivership Defendants' accounts.

NATURE OF THE SERVICES RENDERED AND EXPENSES INCURRED

7. From October 1, 2004 through December 31, 2004, FGMK has provided 450 hours of services as the Receiver's accountants. For the Court's benefit in reviewing this application, FGMK's services are divided into three (3) categories:

- A. Accounting of Receivership Defendants' receipt, use, and disposition of investor funds;
- B. Assisting the Receiver and his counsel with tax-related issues involving Defendants Equity Financial Group and Tech Traders; and
- C. Providing guidance to the Receiver and his counsel on professional standards for accountants.

A copy of FGМК's statement of services is attached as Exhibit A 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 FGМК, LLC.

8. In its April 1, 2004 Order, the Court directed all personnel hired by the Receiver to file fee applications on a quarterly basis. On November 12, 2004, FGМК filed its second fee application with the Court for services rendered over a four-month period. In its second fee application, FGМК requested fees in the amount of \$141,460.70 and reimbursement of expenses in the amount of \$175.00, which the Court approved on December 21, 2004.

9. Pursuant to the Court's directive, FGМК files this third fee application for the fourth quarter of 2004.

A. Accounting of Receivership Defendants' Receipt, Use, and Disposition of Investor Funds

10. FGМК seeks compensation for 444.40 hours of professional services from October 1, 2004 through December 31, 2004 related to finalizing the accounting of Receivership Defendants' receipt, use, and disposition of investor funds. The matters include:

- a. Reviewing and analyzing 21 bank accounts and 28 trading accounts;
- b. Summarizing receipts and disbursements of funds from Receivership Defendants' bank and trading accounts;
- c. Reviewing the reports prepared by accountants for the Receivership Defendants and Shasta Capital Associates, LLC;

- d. Reporting results of the firm's accounting work to the Receiver; and
- e. Modifying the presentation of the financial information and analysis for the benefit of the Receiver, the Court, the parties, and the investors.

B. Assisting the Receiver and His Counsel with Tax-Related Issues Involving Defendants Equity Financial Group and Tech Traders

11. FGMK seeks compensation for 2.10 hours of services related to taxation issues involving the Defendants Equity Financial Group and Tech Traders. Specifically, an FGMK accountant with expertise in corporate taxation issues has provided the Receiver and his counsel with necessary information for the filing of Shasta's tax return. In addition, FGMK has assisted the Receiver in preparing and filing Forms W-2 for wages paid to Tech Traders' employees in 2004.

C. Providing Guidance to the Receiver and His Counsel on Professional Standards for Accountants

12. FGMK seeks compensation for 3.50 hours of services related to instructing the Receiver and his counsel on professional standards accountants must adhere to in their practice. In particular, in preparing for the deposition of third-party Elaine Teague, the Receiver and his counsel conferred with an FGMK accountant about the "agreed upon procedures" performed by Teague, as well as Defendant J. Vernon Abernethy. The accountant also advised them on the AICPA Professional Standards and the relevance of these standards in this case.

D. Expenses For Which FGMK Seeks Reimbursement

13. FGMK seeks reimbursement for a total of \$8.24 in expenses incurred during November of 2004 for postage costs.

THE REASONABLENESS OF THE COMPENSATION REQUESTED

14. Although the professional fees and expenses sought by this application are considerable, FGMK has represented to the Receiver that they are justified by the nature and scope of the engagement and that it has consciously attempted to keep expenses at a reasonable level. At this stage in the engagement, Mark Pearson, a manager, is performing most of the accounting work. Pearson's knowledge of the overall picture of the case allows him to work at a significantly higher speed than less knowledgeable individuals. In addition, Pearson's greater knowledge of the details of the case and his forensic accounting experience has enabled him to resolve discrepancies between the various account summaries and to avoid double-counting of transactions between related accounts. With the significant size of this case and the nearly 50 different accounts involved, his familiarity with the details provides for more accurate financial analysis. In those instances where FGMK has used junior-level accountants, partners or managers have reviewed their work product on an ongoing basis. Finally, FGMK continues to confer with the Receiver and his counsel on a regular basis regarding how best to accomplish the Receiver's goals.

15. FGMK seeks compensation for its accountants at their customary hourly rates minus a 5 percent discount for this matter. These rates range from \$95.00 to \$395.00. Further, for this period, FGMK has reduced its fees by an additional \$5,762.50 due to possible duplication of efforts by its accountants. Thus, for this period, FGMK has provided the receivership estate with almost a 10% discount on its fees. The following table summarizes the total time and fees sought for each accountant:

<u>Timekeeper</u>	<u>Practice Group</u>	<u>Total Hours</u>	<u>Hourly Rate</u>	<u>Compensation Requested</u>
Mario Donato	FGMK	1.10	\$345.00	\$379.50
Michael Donato	FGMK	3.50	\$305.00	\$1,067.50
Michael Rakers	FGMK	26.10	\$275.00	\$7,177.50
Scott Shaffer	FGMK	9.00	\$395.00	\$3,555.00
Mark Pearson	FGMK	366.20	\$285.00	\$104,367.00
Jeff Parker	FGMK	2.10	\$115.00	\$241.50
Kathleen Puhl	FGMK	21.10	\$210.00	\$4,431.00
Julie Dougherty	FGMK	5.30	\$145.00	\$768.50
Emil Herrera	FGMK	14.00	\$135.00	\$1,890.00
Patricia Benaissa	FGMK	1.00	\$225.00	\$225.00
Joanne Mensik/Max King	FGMK	<u>0.60</u>	\$95.00	<u>\$57.00</u>
		450.00		\$124,159.50
			Billing adjustment due to possible duplication of efforts	\$5,762.65
			5% discount	<u>- \$6,207.98</u>
			FEE TOTALS	\$112,188.88

16. The accountants of FGMK have kept time in tenths of an hour, or six-minute increments. In an effort to avoid charging for services that could be deemed excessive, duplicative or unnecessary, FGMK does not seek compensation for administrative or ministerial tasks.


17. Finally, along with the Receiver and his counsel, FGMK agreed to take on this case with no assurance that funds would exist in the Receivership Defendants' estate to compensate FGMK for professional services. FGMK does not hold a retainer for the services that its accountants continue to provide to the Receivership Defendants. Moreover, FGMK has acted in a prompt and efficient manner in assisting the Receiver in his administration of the estate. For these reasons, FGMK appears deserving of the amount of the compensation requested.

WHEREFORE, FGМК respectfully requests that this Court enter an order:

1. Allowing interim compensation in the amount of \$112,188.88 to FGМК for services provided and in the amount of \$8.24 for expenses incurred from October 1, 2004 through December 31, 2004;
2. Authorizing the Receiver to pay FGМК the amount of \$112,188.88 in fees and \$8.24 in expenses from the receivership estate; and
3. Providing such further relief as may be appropriate in these circumstances.

Respectfully submitted,

STEPHEN T. BOBO,
Equity Receiver

By: 
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