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**In The United States District Court
For The District Of New Jersey
Camden Vicinage**

Commodity Futures Trading Commission,
Plaintiff,

vs.

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,
Defendants.

Hon. Robert B. Kugler
District Court Judge

Hon. Ann Marie Donio
Magistrate

**Civil Action No: 04-1512
(RBK)**

**Motion to Strike Equity
Defendants' Cross Claims**

Plaintiff Commodity Futures Trading Commission (“CFTC” or “Commission”) moves pursuant to Federal Rule of Civil Procedure 12 (f) to strike the cross-claims of Defendants Equity Financial Group LLC, Vincent Firth and Robert W. Shimer (“the Equity Defendants”) for the reasons stated below.

1. On February 2, 2005, the Equity Defendants filed cross-claims against Defendants Tech Traders, Inc., Tech Traders, Ltd., Magnum Investments, Ltd., Magnum Capital Investments, Ltd., Coyt E. Murray and J. Vernon Abernethy. These cross claims should be stricken for the following reasons.
2. First, the filing of the cross-claims violates the stay imposed by the Statutory Restraining Order and Order Appointing Receiver, entered on April 1, 2004 (“SRO”). The terms of that order, except where modified, remain in full force and effect as stated in the Consent Order of Preliminary Injunction and Other Ancillary Relief against Equity Financial Group LLC, Vincent Firth and Robert W. Shimer, entered on June 24, 2004 (“Consent Order”) at p.8 ¶11. The SRO requires leave of Court before any actions can be brought during the pendency of the receivership. *See* SRO, ¶VI. The receivership is still open and the Equity Defendants did not seek leave of Court to file their cross-claims.
3. Second, the cross-claims violate the Federal Rules of Civil Procedure. The Equity Defendants’ cross-claims should have been contained in their answer to the First Amended Complaint. *See* Fed.R.Civ.P. 12(b). In order to file cross-claims, the Equity Defendants must amend their Answer. Since well over 20 days have passed since they filed their Answer, the Equity Defendants must seek leave of Court to file an amended Answer containing their cross-claims. *See* Fed.R.Civ.P. 15(a). Again, the Equity Defendants have not sought leave of Court to file these cross-claims.

4. Finally, cross-claims against co-defendants are not appropriate in governmental actions for injunctive relief brought to protect the public interest, as set forth in the caselaw described in the Commission's accompanying Brief.

Wherefore, Plaintiff respectfully requests that this Court grant its motion to strike the cross-claims of the Equity Defendants.

Date: February 24, 2005

Respectfully submitted,



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