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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

COMMODITY FUTURES TRADING COMMISSION,	)	
Plaintiff,	)	
vs.	)	**Civil Action No.: 04CV 1512**
EQUITY FINANCIAL GROUP, LLC, TECH TRADERS, INC., TECH TRADERS, LTD., MAGNUM INVESTMENTS, LTD., VINCENT J. FIRTH, ROBERT W. SHIMER, COYT E. MURRAY, and J. VERNON ABERNETHY,	)	**Honorable Robert B. Kugler** **Hearing Date: March 4, 2005**
Defendants.	)	

REPLY OF STEPHEN T. BOBO, EQUITY RECEIVER, TO
OBJECTIONS TO MOTION FOR AUTHORITY TO MAKE INTERIM DISTRIBUTION

Although Stephen T. Bobo (the "Receiver"), the Equity Receiver, has not yet begun the formal objection process, fifteen claimants have filed objections to his motion for authority to make interim distributions. Plaintiff Commodity Futures Trading Commission ("CFTC") and Defendant Equity Financial Group, LLC ("EFG") also have filed limited objections.

The objections raise a wide variety of issues. Some objections dispute the proposed method for determining individual distributions. Others focus on the merits of individual claims on the Disputed Claims list. This is primarily a response to the former category of objections. The Receiver recommends that the Court first determine the overall plan of distribution and consider issues concerning specific disputed claims after the Receiver files specific objections to those claims. The Receiver addresses below various issues raised on a point-by-point basis and identifies the specific investors who have raised specific issues in their objections. With one possible exception, the objections present no valid reason to alter the proposals set forth in the distribution motion.

1. Receipt of Tech Traders Funds in Repayment of Investments in Kaivalya Holding Group, Inc.

Several investors disagree with the Receiver's listing of their claims on the Disputed Claims list because they received from Defendant Tech Traders, Inc. ("Tech Traders") as "repayment" for some or all of their investments in a separate entity, Kaivalya Holding Group, Inc. ("Kaivalya"). Marsha Green, Nancy Omaha Boy and Thomas List raise this issue. The details of the Kaivalya repayment issue are addressed on pages 22 and 23 of the memorandum in support of the Receiver's distribution motion. The Receiver intends to file specific objections to the claims of investors who received Tech Traders funds on behalf of their Kaivalya investments. This issue is appropriately adjudicated through resolution of those claim objections.

Nancy Omaha Boy also contends that a distribution is premature at this time because not all facts are known to be able to determine whether to consolidate Tech Traders and the Magnum entities for purposes of distribution. (*See* Response and Objections of Claimant Nancy Omaha Boy to Motion of Equity Receiver for Authority to Make Interim Distribution on Account of Investor Claims at ¶ 1.) She also argues that no distribution should be made until it can be

determined whether losses from other Shimer-related investments (presumably including Kaivalya) "should be entitled to recover losses related to those other investments in this proceeding." (*See id.*) She also asserts that all prior withdrawal amounts should be recovered and the claims of the investors receiving withdrawals should be disallowed until the withdrawals are repaid. (*See id.* at ¶ 3.)

The first and third objections were anticipated and are addressed on pages 8-9 and 14-15 of the memorandum in support of the Reciever's distribution motion. Regarding her second objection, there is no reason to delay a distribution to consider the inclusion of other Shimer-related investment activities. Other than Shasta Capital Associates, LLC ("Shasta"), the only Shimer-organized entity that invested with Tech Traders is New Century, LLC ("New Century"). New Century only had two investors, and their claims are disputed and are slated to receive nothing in the interim distribution. None of the funds invested with Shasta or New Century went to any investment other than Tech Traders, and there is no indication that funds from any these other Shimer-related investments went into Tech Traders. The investors who did invest in Tech Traders should not have to share the limited remaining funds with others who invested in unrelated enterprises. These objections lack merit and should be overruled.

2. Alison Shimer

Alison Shimer also objects because her claim is on the Disputed Claims list. Even apart from the fact that Ms. Shimer is one of the people who received Tech Traders funds in repayment of her Kaivalya investment, the Receiver has several reasons to dispute her claim. The funds for the Shasta investment in her name came from the joint account she maintained with her husband, Defendant Robert Shimer. That same joint account was used for numerous

transfers of funds to and from Shimer's various entities, including Kaivalya and Edgar Hold Group. Some of the transferred funds originated from Tech Traders.

In addition, Alison Shimer had some involvement with the affairs of Defendant EFG and Shasta and their dealings with Tech Traders for which she apparently received payments from EFG. EFG's 1099-MISC Report indicates that, in 2003, EFG paid Alison Shimer $12,000. Further, Vincent Firth testified in his April 22, 2004 deposition that EFG made payments to Alison Shimer in 2002 as well. The Receiver intends to file a specific objection to Alison Shimer's claim and the various issues raised by her claim should be determined through resolution of that objection.

3. Paul McManigal

Paul McManigal ("McManigal") takes issue with the Receiver's treatment of investors who maintained multiple accounts with Defendants. McManigal contends that his two accounts with Shasta should be treated as "two entirely separate items" for purposes of distribution on the ground that to do otherwise will "serve an undo hardship" on him. (*See* Request for Independent Treatment of IRA and Separate Property Trust Funds of Paul G. McManigal, Claim Nos. 41 & 42 at pp. 1-2.) Unfortunately, Defendants' Ponzi scheme has caused many investors to suffer undue financial hardship. The fact remains that McManigal maintained two accounts with Shasta—a personal account and an IRA account—and withdrew $366,000 of the $466,000 invested in the two accounts before April 1, 2004 when the Court entered the initial restraining order. To allow him to treat these two accounts "as two entirely separate items" would result in his receipt of a disproportionately large distribution compared to other investors who each maintained single accounts with the Defendants.

Even if the Receiver were to accept McManigal's contention that his wife maintained a one-half beneficial interest in his IRA account with Shasta,[1] the result for McManigal would remain the same. Under the Receiver's proposed plan of distribution, investors who represent a "group" of beneficial owners of a particular investor account share in the account equally, as discussed on pages 19 and 20 of the memorandum in support of the Receiver's distribution motion. Therefore, assuming for the sake of discussion that Mr. and Mrs. McManigal each own a one-half interest in Mr. McManigal's IRA account with Shasta, each would have already received a withdrawal equal to their share in that account, or $183,000. Thus, McManigal would be credited with having received $183,000 as a return on his total investment of $283,000 ($183,000 would be his one-half share of his IRA account and $100,000 is the amount invested in his personal account). Since $183,000 far exceeds 38 percent of $283,000, McManigal would not be entitled to receive a distribution at this time based on the 38 percent gross distribution amount.

4. ICC Finance Corporation

ICC Finance Corporation ("ICC") objects to its claim being listed as a Disputed Claim. Shlomo Bitensky, on behalf of ICC, presents no objection to the distribution method proposed in the Receiver's motion other than to complain that he has not received sufficient information, although he, until this objection, has never requested any information.[2]

[1] California is a community property state, and, therefore, McManigal asserts that Mrs. McManigal has an equal interest in his IRA account.

[2] In its objection, ICC professes to have invested $400,000 and withdrawn $114,678. This information conflicts directly with the claim form submitted (and sworn to) by ICC, in which it claims to have invested $400,000 and withdrawn $411,115. In its claim form, ICC states that only $300,000 of the $400,000 invested by ICC involves cash funds; the remaining $100,000 comprised alleged "earned profits and interest" reinvested in Tech Traders by ICC. ICC, therefore, may only be credited with investing $300,000 with Tech Traders, as the additional $100,000 was not profits at all, but rather consisted of other victims' monies. Of even greater importance, these figures allegedly invested by ICC are inconsistent

5. Treatment of Shasta Investors Who Claim Their Funds Remained in Shasta's Account at Time of Initial Restraining Order

Several Shasta investors object to the Receiver's proposed pro rata distribution, requesting instead that the Court allow them to trace their deposits into Shasta's bank account and receive either a greater percentage distribution or a full refund of their investments. Over the last century, the courts of this country have expressly rejected tracing as a means to repay similarly situated investors who fall victim to an investment scheme. Examples of those cases are cited on pages 11 and 12 of the memorandum in support of the Receiver's distribution motion. Because the three Shasta investors who have raised this issue present different factual situations and legal arguments, the Receiver will address each investor's objection in turn.

a. Donald Zinman

Donald Zinman ("Zinman") requests that the Court refund the full $100,000 he invested on March 26, 2004 and that the Court return a higher percentage (than 38 percent) of the $150,000 he invested on February 25, 2004.[3] For the Court's convenience, the chart following this paragraph shows the activity in the Shimer escrow account used for Shasta immediately before and after the Court's initial restraining order. With regard to Zinman's objection to a 38 percent distribution on his March 26, 2004 investment, Zinman argues that these funds were never at risk because Shasta had not transferred the funds to Tech Traders' bank account. (*See* Investor Don Zinman, Through His Attorney J.R. Nerone, Hereby Objects at ¶ 3.) This

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with the amounts shown on Tech Traders' bank statements. According to the bank statements, ICC deposited $299,980 and withdrew $411,115; well in excess of the $114,678 ICC now claims to have withdrawn. The statements show that ICC has received well over 100 percent return on its investment, and the Receiver, therefore, does not support an additional distribution to ICC.

[3] According to Shasta's bank records, Mr. Zinman's $100,000 investment was deposited on March 26, 2004, *not* March 29, 2004 as Zinman claims in his objection.

argument ignores two critical facts that require the Receiver to apply the same pro rata distribution for Zinman and others whose funds allegedly were in Shasta's account at the time of the freeze order. First, as the Receiver explained in the memorandum in support of his distribution motion, Shasta served as a mere conduit—automatically transferring investor funds to Tech Traders *without discretion over the use of the funds*. Shasta investors transferred funds to Shasta for one purpose alone: to invest with Tech Traders. (*See id.* at Ex. C ("Initial Capital contributions and additional capital received from each Member shall be allocated as follows: 99% of each Member's capital contribution (whether initial or additional) shall be allocated to that Member's Trading Capital Account for placement with the Trading Company [Tech Traders].").) Second, Zinman and others overlook the fact that EFG, Shasta's manager, and those who controlled it, Robert Shimer and Vincent Firth, are named Defendants who, among other things, allegedly operated a commodity pool in violation of the Commodity Exchange Act.[4] For these reasons (and others in the Receiver's distribution motion and supporting memorandum), all Shasta investor funds were effectively at risk as soon as they were deposited into any one of the Defendants' bank accounts.

The following chart summarizes the activity in the Citibank bank account used for Shasta just before and just after the entry of the restraining order. The table is authenticated in the affidavit of Stephen T. Bobo attached as Exhibit A.

[4] In its First Amended Complaint, the CFTC alleges: "Equity, Firth and Shimer violated Sections 4b(a)(2)(i)-(iii) and 4o(1) of the Act by misrepresenting and failing to disclose material information about their expertise and qualifications, recklessly misrepresenting the performance of the Shasta commodity pool and the role of the independent CPA, and accepting disbursements to which they were not entitled. Equity violated Section 4m(1) by failing to register with the Commission as a CPO. Firth and Shimer violated Section 4k(2) of the Act by failing to register as APs of Equity. Shimer has also violated Section 4m(1) and Regulation 4.30 by aiding and abetting Equity's failure to register and Tech Trader's holding of pool participant funds in its own name." (*See* Compl. at II.6.b.)

Activity in Robert W. Shimer Escrow Account from March 26, 2004 through April 7, 2004:

Date	Payee/Depositor	Deposit	Payment	Balance
3/26/04	Universe Capital Appreciation	$70,000.00		$208,025.41
3/26/04	Donald Zinman	$100,000.00		$308,025.41
3/26/04	Equity Financial Group		*$4,012.50	$304,012.91
3/29/04	Steve Corcoran	$50,000.00		$354,012.91
3/29/04	Returned Check		**$100,010.00	$254,002.91
3/29/04	Ryan Allan Ltd.	$100,000.00		$354,002.91
3/29/04	Triester International Trading Corp.	$100,000.00		$454,002.91
4/01/04	Citco Global Custody for Stable Absolute Return	$250,000.00		$704,002.91
4/01/04	Chicago Freight Car Leasing (Dale Putz)	$100,000.00		$804,002.91
4/01/04	Dale Putz	$50,000.00		$854,002.91
4/02/04	Tech Traders (at 7:03 a.m., this wire transfer is executed)		*$480,289.50	$373,713.41
4/02/04	Withdrawal		$100.00	$373,613.41
4/02/04	Frozen by Restraining Order		$373,613.41	$0.00
4/02/04	Marsha Green	$47,000.00		$47,000.00
4/05/04	Broadtree Reinsurance	$150,000.00		$197,000.00
4/05/04	Jolin Investments LLC	$100,000.00		$297,000.00
4/07/04	Michael Duff	$200,000.00		$497,000.00

* includes $12.50 wire transfer fee
** includes $10.00 fee for deposited check returned unpaid

Next, Zinman requests that he receive a higher percentage distribution on the $150,000 he invested on February 25, 2004 than the 38 percent proposed by the Receiver. The sole support for his proposed tracing theory is *Clayton's Case*, 1 Merivale 572 (1816 Ch.). Both the United States Supreme Court and Courts of Appeals have rejected the rule in *Clayton's Case* as a method of providing relief to investors in a Ponzi scheme. Zinman's reliance on English common law perpetuates both falsehood and inequity. To start, the rule in *Clayton's Case* rests upon the presumption that defendants intended to convert victims' funds in the order in which they were deposited into defendants' accounts. Applying the rule in *Clayton's Case* to the instant matter, Shasta would have converted Zinman's $100,000.00 deposit *before* the subsequent deposits made by Steven Corcoran, Ryan Allan Ltd., Triester International Trading

Corp., Stable Absolute Return, Chicago Freight Car Leasing Co. and Dale Putz. However, the offered affidavit of Robert Shimer (based on what he refers to as his "meticulous" record keeping) suggests that the subsequent deposits made by Steven Corcoran, Stable Absolute Return and Chicago Freight Car Leasing Co. funds were actually converted *before* Zinman's $100,000.00 investment. (*See id.* at Ex. B.) Thus, the supposed facts of this case, upon which Zinman relies, contradict the very presumption upon which the rule in *Clayton's Case* rests.

Further, the "*Clayton's Case* solution," as Zinman refers to it, would allow him to elevate his position over that of other investors similarly victimized, thereby creating inequitable results. (*See id.* at ¶ 5.) Zinman contends that in the interests of fairness and equity, the Court should hire a professional expert to apportion loss based upon the time the investors' monies were in the charge of Murray, Magnum, Tech Traders, and/or any of Murray's companies. (*See id.*) Zinman's suggested approach may allow him to recoup close to 100 percent of his investment, but only at the expense of other similarly victimized investors. His objection should be overruled.

b. Steven Corcoran

Steven Corcoran ("Corcoran") apparently requests return of all his funds because "these funds were only in the Tech Traders account for one day and probably were never traded." (*See* Re: Objection to: the Motion of the Equity Receiver for authority to make an interim distribution on account of investor claims in the Shasta case filed by S. Corcoran at 2.) Notwithstanding the short time these funds were in the account of either Shasta or Tech Traders, Corcoran transferred $50,000 to Shasta *before* the freeze order. Accordingly, consistent with the reasons discussed above in reply to Zinman's objection, the Receiver proposes the same 38 percent distribution to Corcoran. This objection should similarly be overruled.

c. Triester International Trading Corporation

Rather than participate in the Receiver's proposed plan to distribute this estate pro rata, Triester International Trading Corporation ("Triester") also seeks to better its position by using what can only be described as tracing to make a claim for a full restitution of the $100,000 invested with Shasta on March 29, 2004. Specifically, Triester requests that the Court allow it to trace and recover its $100,000 because these funds purportedly were in Shasta's account at the time of the Court's freeze order. (*See* Objection of Triester International Trading Corporation to Motion of Equity Receiver for Authority to Make Interim Distribution on Account of Investor Claims at ¶ 14.) According to Triester, its funds should be treated differently than the funds of other Shasta investors because Triester's funds were "segregated" from the funds in Tech Traders account at the time of the freeze order. (*See id.*) Triester appears to be making a distinction without a difference. Whether in the account of Shasta or Tech Traders at the time of the freeze order, these funds are part of the receivership estate, they had already been invested in an illegal commodity pool, and if they remained in the Shasta account, it was merely fortuitous that they did so at the exact moment of the freeze. There is no reason to give Triester the preferential treatment it seeks at the expense of the other investors.

6. Edgar Holding Group, Inc.

Jeffrey and Barbara Marrongelle object to their claim being on the Disputed Claims list. Although this issue should be resolved during the formal claim objection process, the Receiver will briefly address their objection. In summary, the issue with the Marongelle's claim is similar to the Kaivalya issue discussed above. The Marongelles previously invested in a Shimer-organized entity called Edgar Holding Group, Inc. ("Edgar"). Edgar in turn invested funds with Defendant Magnum Investments, Ltd., not with Tech Traders. However, Edgar repaid the

Marrongelles with funds that came from Tech Traders, not Magnum. Because no determination has been made to consolidate the assets and liabilities of Tech Traders and Magnum, the Receiver recommends that the issues raised by the Marongelles be considered through a specific objection to their claim.

7. Stable Absolute Return

Stable Absolute Return ("SAR") objects to being included in a pro rata distribution. SAR contends that it is entitled to the return of all of the $250,000 it sent to Shasta on the afternoon of April 1, 2004, shortly before the entry of the initial restraining order. SAR argues that it never was a "customer" of Shasta because it never received back its Subscription Agreement signed by Shasta and Shasta never acknowledged receipt of SAR's funds. (Certification in Support of Objection to the Receiver's Proposed Partial Distribution to Stable Absolute Return Master, FOF, Ltd. at ¶¶ 8-11.) But, because the entry of the initial restraining order later on the afternoon of April 1 froze the operations of the Shasta pool and prohibited further actions relating to the pool and its investors, Shasta was precluded from providing the confirmations and documentation that SAR claims were essential to it becoming an investor. SAR clearly sent in its funds and its Subscription Agreement before the restraining order for the sole purpose of investing in Shasta. Despite SAR's suggestion to the contrary, its documents contain no "condition precedent" regarding any need to sign the Subscription Agreement and confirm net asset value before the investment could become legally effective.

SAR also contends that it could not have been a customer because it never received the acknowledgement of receipt of Shasta's Disclosure Document required by CFTC Regulation and Shasta never confirmed the "net asset value of the funds to be purchased." (*See id.* at ¶ 11.) There is no indication that Shasta either distributed a CFTC-required Disclosure Document or

confirmed the net asset value of investments to any of its investors, so this argument does not provide a basis for returning SAR's funds. For all of these reasons, there is no merit to SAR's objection and it should be overruled. SAR should be treated on par with other Shasta investors.

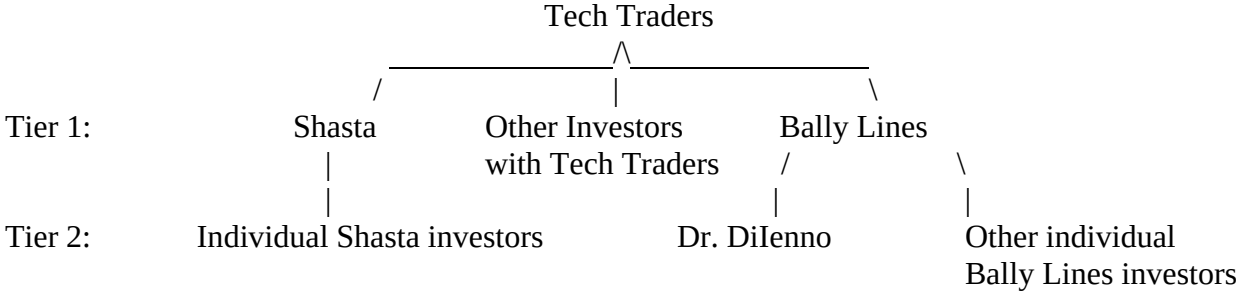
8. Treatment of Individual Members of an Investment Groups

Several claimants raise the issue of the fairness of the proposed treatment of members of entities that pooled the funds of various investors to invest with Tech Traders. The objection of Donald DiIenno ("DiIenno"), who invested with Tech Traders through Bally Lines, Ltd. ("Bally Lines"), focuses on the impact of the proposed distribution to Bally Lines rather than directly to him. Underlying his complaint is the economic reality that Bally Lines has already received significant withdrawals from the funds it invested with Tech Traders, although DiIenno received none of the funds from those withdrawals. Any proposed distribution to Bally Lines would be reduced by the amount of those withdrawals, thereby reducing the amount of funds available for Bally Lines in turn to distribute to him. DiIenno may well have recourse against Bally Lines or its other investors to correct any inequity resulting from the distribution.

a. DiIenno's Proposal For Special Treatment Should Be Rejected

Although DiIenno did not invest directly with Tech Traders or Shasta, he now wants to be treated as if he had so that he will not be affected if Bally Lines' claim is disallowed or if the net amount of the distribution to Bally Lines is insufficient to fund a 38 percent distribution from Bally Lines to him. (*See* Objection to the Agreed Claims Distribution Schedule at ¶ 1.) He complains that he should be treated on par with the Shasta investors, since both Shasta and Bally Lines pooled investor funds and sent them to Tech Traders for commodity trading purposes. (*See id.*)

A diagram may help clarify the discussion of the relative positions of the various parties. Since Shasta and Bally Lines were among the entities that invested directly with Tech Traders, for the sake of clarity, the Receiver will refer to them as "Tier One" investors. The investors in the Tier One entities, including Shasta and Bally Lines, will be referred to as "Tier Two" investors. The following chart illustrates these relationships.



In proposing a combined Tech Traders and Shasta distribution, the Receiver's motion differentiates between Shasta and the other Tier One entities for several reasons. The most significant difference between Shasta and Bally Lines is that Shasta's managing member, EFG, is a Defendant in this case and Shasta is under the control of the Receiver, while Bally Lines is neither a Defendant nor under the control of the Receiver. Because Shasta is a receivership entity, the Receiver has accurate information available regarding Shasta's transactions and the identity of all of its investors. A claim process for those investors could be implemented. The Receiver can recommend making a distribution to Shasta's investors with a reasonable degree of confidence that it is fair and equitable.

By contrast, the Receiver does not know the identities or addresses of most of the individual investors in the other Tier One entities, so it would be impractical to either commence a claim process or propose a distribution directly to their Tier Two investors. The Receiver also does not know whether, like Shasta, each of the other Tier One entities acted as mere conduits to Tech Traders, or whether some or all of them also engaged in other economic activities.

Similarly, the Receiver is not in contractual privity with those other Tier Two investors and there may well be reasons why the course of dealing between other Tier One entities and their Tier Two investors would require different allocations of a distribution between those entities and investors. The Receiver has attempted to address this last issue by proposing that Tier One entities submit for advance approval their proposed allocation of any distribution amounts they would receive.

In addition, the separate treatment of all Tier Two claims would likely increase the aggregate distribution amount they would receive and necessarily dilute the amount available for all other claimants. Individual Tier Two investors who received no withdrawals would receive a greater distribution amount if considered separately than if considered as part of the Tier One investor's claim where the Tier One investor had received prior withdrawals from Tech Traders and had distributed those amounts to other members of its Tier Two investor group. This appears to be the case with DiIenno. The direct distribution that he contends is necessary to treat him fairly would have the effect of increasing the total amount of funds distributed to him and diluting the recoveries of all other investors. For all these reasons the Receiver opposes making distributions directly to DiIenno and other non-Shasta Tier Two investors.

b. Alternative For Equivalent Treatment of Shasta and Other Tier One Entities

One aspect of the DiIenno objection does, however, merit further consideration and suggests an alternative approach towards Shasta. DiIenno complains that Shasta Tier Two investors are receiving better treatment only because Shasta is a named defendant placed under receivership. He implies that this arbitrary reason should not lead to disparate economic treatment between the Shasta Tier Two investors and other Tier Two investors, such as DiIenno. In theory, DiIenno is correct that the distribution motion treats the Shasta investors somewhat

differently than other Tier Two investors for the reasons outlined above. But, this difference does not necessarily inure to the benefit of Shasta investors. There is probably no practical way to treat all other Tier Two investors (assuming they all could be identified and after a new claim process) on a par with what is proposed for the Tech Trader Tier One investors and the Shasta Tier Two investors.

If the Court is concerned that the method of determining distributions for Shasta Tier Two investors should be the same as all other Tier Two investors, the distribution plan can be amended to accomplish that. Instead of grouping Shasta Tier Two investors with the other Tier One investors for purposes of a single joint distribution, Shasta in the aggregate could be treated as a Tier One investor. Shasta would receive a pro rata distribution from Tech Traders and in turn make a pro rata distribution to its Tier Two investors.[5]

Shasta would have a claim in the amount of $14,363,658.20, which is the total dollar amount it transferred to Tech Traders. The 38 percent gross distribution amount on that claim would be $5,458,190.12, less all amounts Tech Traders previously repaid to Shasta, which total $1,613,858.00. The net distribution amount to Shasta would be $3,844,332.12. This amount would be added to the approximately $426,000 in funds that the Receiver maintains in a separate escrow account for Shasta.[6] This combined amount would be used to fund a separate distribution to Shasta's Tier Two investors.

[5] This same approach would be used in theory for the Tier One entity New Century Trading also organized by Defendant Robert Shimer. The two New Century Tier Two investors are currently included on the Disputed Claims list because they both received withdrawals well in excess of 38 percent and no distribution is proposed for either. However, to be consistent, a distribution determination would be made at the New Century Tier One level, and then New Century in turn would distribute anything it received to its Tier Two investors. In this instance there is no affect on the outcome because no distribution relating to New Century would be paid at either a Tier One or a Tier Two level.

[6] This $426,000 amount does not include the amounts invested after the freeze that the Receiver proposes in the distribution motion to return to the respective investors.

However, if a distribution to Shasta investors were to be conducted separately from the Tech Traders distribution, several additional issues must be considered. First, as detailed in the chart in Section 5 above, Shasta wired funds to Tech Traders the morning after this Court entered its restraining order. The wire transfer in the amount of $480,277.00 was initiated by Shasta's bank at 7:03 a.m. on April 2, 2004 and received a minute later by Tech Traders' bank. Although the Receiver is informed that the restraining order had been served on the banks late in the day of April 1, 2004, the wire transfer was apparently able to go through before the banks could effectively freeze the accounts. This transfer should be reversed and the funds returned to Shasta if Shasta were to be treated as a separate pool of funds for purposes of distribution.

The other issue that would need to be resolved is the extent to which a separate Shasta pool of funds should bear a portion of the costs of administering the receivership estate. While most of the Receiver's efforts have been focused on Tech Traders and its investors generally, including the Shasta investors, certain administration matters relate only or primarily to Shasta. These matters particular to Shasta include but are not limited to Shasta tax matters, accounting for Shasta and its related entities, and investigating and possibly litigating potential claims against its accountant. To date, no part of the estate's professional fees have been allocated to Shasta or paid from the Shasta escrow account. The Receiver recommends that at least $200,000 be held in reserve for that purpose and not distributed at this time.

If the April 2, 2004 wire transfer were reversed and those funds returned to Shasta and if at least $200,000 were reserved for bearing a reasonable portion of the costs of administration, then Shasta would have sufficient cash available to make its own 38 percent distribution to its investors, with each Shasta investor to receive the same distribution treatment as outlined in the schedules attached to the distribution motion as Exhibits B and C. The amounts shown for

Allowed Claims could be distributed from Shasta, and the amounts shown for Disputed Claims could be reserved in a separate Shasta reserve account until the objections were resolved for each claim.

This alternative method of a separate Shasta distribution would also obviate certain other issues that would otherwise have to be sorted out in the final distribution of funds. These include the application of the funds remaining in Shasta's bank account and how to account for the one percent deduction that Shasta took from each investment it received for the stated purpose of defraying its legal and accounting costs. The Receiver originally intended to adjust for these and other possible distinctions between Shasta's Tier Two investors and the other Tier One investors in the final distribution. However, a separate Shasta distribution as discussed above would make these issues moot.

On balance, a separate Shasta distribution (and, in theory, a separate New Century distribution) adds a certain amount of additional complexity and cost, but provides a treatment of Shasta and its investors which is more theoretically consistent with the treatment of the other Tier One entities and their Tier Two investors. Assuming that the April 2, 2004 Shasta to Tech Traders wire transfer is reversed, then Shasta would have sufficient funds available to make the same percentage interim distribution as proposed for the Tech Traders investors. This parity of distribution levels between Tech Traders and Shasta would not necessarily exist in subsequent distributions. Shasta could well have either a greater or a lesser percentage amount available to distribute to its investors than to Tech Traders. Perhaps most fundamentally, separate distributions for Shasta and New Century would cause these entities to be treated essentially the same as the other Tier One investors, and Shasta's Tier Two investors would be entitled only to their proportionate share of Shasta's own funds, for better or worse, just as other Tier Two

investors should be entitled only to a proportionate share of the funds available in the entities in which they invest.

The Receiver would not object to modifying the method of determining Shasta and New Century distributions as set forth above, but will leave it up to the Court to decide whether the original proposal of a joint distribution to Tech Trader and Shasta (and, in theory, New Century) investors or the alternative of separate distribution to Shasta and New Century investors is more appropriate under the circumstances.

9. James Roberts

James Roberts ("Roberts") is situated similarly to DiIenno, having invested with Tech Traders through an investment group. Roberts invested $150,000 with Tech Traders through the Dream Venture Group entity. Roberts, however, does not articulate the reasoning espoused in DiIenno's objection. Rather, Roberts implores the Court to refund $145,318, the full amount he invested with Tech Traders through Dream Venture Group, minus previous withdrawals, in order to provide his family "with some relief." Surely, all those victimized by this Ponzi scheme wish to receive, at a minimum, a 100 percent refund of their initial investment with Defendants. But, the assets under the Receiver's control are insufficient to repay the investors in full. The Receiver, therefore, proposes an equitable distribution of the remaining assets held in the receivership estate to the defrauded investors. Although Roberts' situation is sympathetic, he is in no different a position than every other investor. Roberts cannot be permitted full recovery to the detriment of other investors.

10. Sterling Entities

The Sterling entities' three arguments against the Receiver's motion lack merit. First, the Receiver cannot consider each of the claims submitted by the Sterling entities separately for a

number of reasons. As a general proposition, the Receiver believes that multiple accounts under common control or with joint beneficial ownership should be aggregated for the purpose of distribution. Investors with multiple accounts should not receive a higher distribution percentage than those with single accounts. There is no reason not to apply this general approach to the Sterling entities. They are under the common control of a small group of people, including Howell Woltz and Vernice Woltz.[7] Although the identities of some of the owners of the Sterling entities themselves is known, much of the ultimate beneficial ownership of the funds invested through the Sterling entities into Tech Traders has not been disclosed. Instead, a large number of trusts are shown as beneficial owners of much of those funds. The Receiver has yet to receive a substantive response on his requests for more information on this point.[8]

In addition, the accounts of the Sterling entities with Tech Traders show a number of transfers between them. Not all of the transfers are adequately documented, and nothing reflects

[7] As Mr. Howell Woltz has testified at his recent deposition, a small group of people control and own all the Sterling entities: Howell and Vernice Woltz, Fertina Turnquest, Samuel Currin, Joseph Brice, Hiram Martin, Thom Goolsby, Walt Hannen, Wendell Skeete and Lewis Borsellino. For example, Howell Woltz is the managing director and President of Sterling ACS Ltd., a director and President of Sterling (Anguilla) Trust, a director of Sterling Casualty & Insurance Ltd. and Sterling Bank Ltd., was the incorporator of Sterling Investment Management Ltd., is co-owner of Sterling Alliance Ltd. and signed the claim form submitted by Strategic Investment Portfolio LLC, which, he testified, does not exist but was Vernon Abernethy's "idea." Mr. Woltz also owns 30% of the stock of Sterling ACS Ltd., 9% voting stock of Sterling (Anguilla) Trust, 25% of Sterling Casualty & Insurance Ltd., 10-11% of Sterling Bank Ltd. and 100% of Sterling Alliance Ltd. with his wife, Vernice Woltz. Vernice Woltz is CFO of Sterling ACS Ltd., a director and President of Sterling (Anguilla) Trust, part owner of Sterling Bank Ltd. and co-owner of Sterling Alliance Ltd. One or both of the Woltzs, moreover, had signatory authority over all the domestic bank accounts known to be held in the names of the Sterling claimants for most of the life of those accounts and received the majority of monthly activity statements from the banks. (Declaration of Joy McCormack, attached hereto as Exhibit B, ¶¶ 8-9).

[8] On October 29, 2004, counsel for the Receiver sent a letter to counsel for the Sterling entities regarding various deficiencies in their claim forms. Sterling's counsel responded to this letter on December 3, 2004; however, many questions were not addressed. The Receiver's counsel intended to ask numerous questions regarding these claim forms during Howell Woltz's deposition on December 10, 2004; however, in the interest of time, the parties agreed to address these questions at a later date. In fact, Woltz and his counsel offered to contact the Receiver's counsel to schedule a meeting to provide answers to these questions. After almost two months passed without hearing from counsel for the Sterling entities, the Receiver's counsel sent a follow up letter on February 2, 2005 with additional detailed questions based on deficiencies in the claim forms.

that they were authorized by the ultimate beneficial owners of the invested funds. Instead, the transfers reflect a group of entities under common control. In one case, transfers were made on Tech Traders' books from an account of one of the Sterling entities to an account of another Sterling entity without any actual funds supporting such transfers. The Sterling entities themselves clearly treated the accounts as part of a unified group before the receivership. Given these facts, there is no reason to treat the Sterling entities' claims differently than what is proposed for all other groups of related claims.

Even the Sterling entities' proposal that with separate treatment they should be entitled to nearly $342,000 of additional distributions is clearly inequitable on its face. The chart on page 7 of its objection acknowledges that Sterling Trust (Anguilla), Ltd. made no cash investment into Tech Traders but received a withdrawal of $100,000. Although Sterling wants a larger distribution at the expense of other investors, it ignores this windfall admittedly received by Sterling Trust (Anguilla), Ltd. Instead, Sterling wants to keep the windfall and receive full 38 percent distributions on the claims of each of its other entities. This is a clear illustration of the need to aggregate related accounts in the distribution in order to achieve an equitable result.

Finally, any perceived disparity between the distributions proposed for the Sterling entities collectively and any individual Sterling entity could readily be ironed out among them. A Sterling entity that previously received withdrawals may have to transfer some value to its affiliated company that received none. That is neither unrealistic nor inequitable given the common control and overlapping ownership between them. The other investors should not have to bear the cost of balancing the distributions between the Sterling entities.

Second, there is no need to parse each Sterling entity's claim into contested and "uncontested" portions, as the Sterling entities argue. As a threshold matter, aggregation of the

claims as discussed above renders this problematic, at the very least. Even if the claims were not aggregated, moreover, treating each claim as a whole is entirely consistent with the Receiver's proposed plan for interim distribution for all investors. There is no reason to treat the Sterling entities differently. Even assuming that each of the claims submitted by the Sterling entities could be parsed into "uncontested" portions, which may be difficult or impossible, the Receiver does not believe it prudent to make partial interim distributions on account of claims for which claimants have provided inadequate supporting information and documentation. The Receiver does not merely question a "handful of deposits and withdrawals," as the Sterling entities argue. Instead, the thread of outstanding deficiencies runs through most of the claim forms submitted by the Sterling entities. Because there is no way to predict what facts the curing of these deficiencies will reveal, a partial distribution may later prove to have been improvident. This request for special treatment should be denied.

Third, the Receiver continues to oppose releasing the funds held in Account #37923 in the name of Sterling Trust (Anguilla), Ltd. at Man Financial. Notwithstanding Sterling's selective presentation of the facts relating to this account, its request must be denied at this time for a number of reasons: (1) contrary to Sterling's contentions, all but $350,000 of the deposits into Account #37923 can be traced to non-Sterling entities, including over $1.1 million which came from Tech Traders. However, Sterling has already withdrawn $925,000 from the account. (Declaration of Joy McCormack, attached hereto as Exhibit B, ¶¶ 4 and 5); (2) although the account was not in Tech Traders' name, included in the account opening documents was an agreement that gave Tech Traders discretionary trading authority over the account and the account was originally linked to Tech Traders so that it was to have received the same return from Tech Traders' management as Tech Traders' own trading program (Exhibit B, ¶ 3); and (3)

Sterling Trust (Anguilla), Ltd.'s claim form, like those of the other Sterling entities, lacks supporting documentation, including deposits to, and withdrawals from, the Man Financial account. In addition, in the table on page 7 of its objection, Sterling indicates that Sterling Trust (Anguilla), Ltd. made no cash investment with Tech Traders yet received a $100,000 withdrawal, as noted above. Sterling fails to address that apparent windfall. Many of the other payments that Tech Traders made to Sterling Trust (Anguilla), Ltd. that can be traced to this account were not in exchange for reasonably equivalent value and thus are avoidable as fraudulent conveyances under applicable state law.

The cases Sterling cites for the proposition that its funds must be released because it is not accused of wrongdoing are irrelevant under the present circumstances. The first two reasons cited above, at a minimum, strongly suggest that the funds in Account #37923 are tainted by Tech Traders' wrongdoing – more than $1.1 million can be traced to Tech Traders entities and the account had significant linkages to Tech Traders. In addition, the Receiver is advised that the CFTC has made significant discovery requests to Sterling relating to Sterling Trust (Anguilla), Ltd. that have not been satisfied. Before all the material facts are known, the status quo with respect to this account should be preserved.

11. Commodity Futures Trading Commission

Plaintiff CFTC states that one investor, Quest For Life, should not yet be included on the Agreed Claims list because of information it has uncovered regarding Quest For Life. The Receiver has no objection to placing Quest For Life on the Disputed Claims list at this time in order to preserve the claim's status quo pending the conclusion of the CFTC's investigation.

12. EFG

Defendant EFG's objection is so cursory that it is difficult to respond thoroughly. EFG objects to the extent that receivership funds may be distributed to claimants for whom the Receiver does not know the beneficial owners or where the beneficial owners may bear "some responsibility for the loss." With the exception of three Shasta investor entities, A Wall Street Fund, BPU Banca Populare Commercio, Industria International, and SAR (recognized on the Agreed Claims list as Citco Global Custody N.V.), the identities of all beneficial owners of claims on the Agreed Claims list have been disclosed to the Receiver under oath.[9] Further, any claims submitted to the Receiver that suggest wrongdoing or misconduct by a claimant remain at this time on the Disputed Claims list. EFG also objects to the extent that investors of Tech Traders (or investors of other Coyt Murray entities) are given preference over "investors who acquired their interests through New Century, Edgar, or Shasta." The Receiver has proposed a fair and equitable pro rata distribution plan, without preference to any particular claimant.

Respectfully submitted,

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[9] These Shasta investors could be placed on the Disputed Claims list until the information is disclosed.