

Matthew H. Adler (MA-4720)  
Jeffrey A. Carr (JC-1103)  
Pepper Hamilton LLP  
(A Pennsylvania Limited Liability Partnership)  
301 Carnegie Center  
Suite 400  
Princeton, NJ 08543  
(609) 452-0808

*Counsel for Equity Receiver*

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

COMMODITY FUTURES TRADING	)	
COMMISSION,	)	
	)	No.: 04-cv-1512 (RBK)
Plaintiff,	)	
	)	
vs.	)	
	)	
EQUITY FINANCIAL GROUP, LLC,	)	
TECH TRADERS, INC., TECH	)	
TRADERS, LTD., MAGNUM	)	Hearing Date: February 16, 2007
INVESTMENTS, LTD., MAGNUM	)	
CAPITAL INVESTMENTS, LTD.,	)	
VINCENT J. FIRTH, ROBERT W.	)	
SHIMER, COYT E. MURRAY, and J.	)	
VERNON ABERNETHY,	)	
	)	
Defendants.	)	

**EQUITY RECEIVER’S MEMORANDUM IN SUPPORT OF MOTION  
TO DISALLOW CERTAIN UNIVERSE INVESTOR CLAIMS BASED ON  
REPAYMENTS RECEIVED FROM KAIVALYA HOLDING GROUP, INC.**

Stephen T. Bobo, the Equity Receiver of Defendants Equity Financial Group, LLC, Tech Traders, Inc., Robert W. Shimer and others (the “Receiver”), moves to disallow, in whole or in part, the claims of seven Tier 3 investors who transferred funds to Universe Capital Appreciation, LLC (“Universe”), a Tier 2 investment group that invested over \$3 million with Shasta Capital Associates, LLC (“Shasta”). The Receiver moves to disallow these claims based

on the fact that these seven Tier 3 investors received Tech Traders' funds as repayment of earlier investments they made with Kaivalya Holding Group, Inc. ("Kaivalya"). Because Kaivalya did not invest funds with Tech Traders or otherwise provide value to Tech Traders, these repayments prejudiced other Tech Traders' investors. In support of this motion, the Receiver states as follows:

1. On May 9, 2006, the Receiver filed a Motion to Disallow Certain Universe Investor Claims (the "Motion"). (*See* Motion attached as Ex. A to Equity Receiver Stephen T. Bobo's Affidavit in Support of Motion to Disallow Certain Universe Investor Claims Based on Repayments Received from Kaivalya Holding Group, Inc. (the "Affidavit").) The Receiver moved to disallow these claims, in whole or in part, on one of three grounds: (1) failure to submit a claim with supporting documentation; (2) receipt of Tech Traders' funds as repayment of earlier investments with Kaivalya; and (3) need for aggregation of related claims for distribution purposes.

2. On December 18, 2006, the Court granted the Receiver's Motion in part. (*See* Opinion and Order attached as Exs. B and C to Affidavit.) Specifically, the Court ordered that Joan Dixon be barred from participating in the claim process because she failed to submit a claim form, and that the claims of three entities (Vico, Inc., Trinidad and Pinnacle) be aggregated for distribution purposes. The Court denied the Motion as to the Receiver's proposed treatment of investors who received Tech Traders' funds as repayment of earlier investments with Kaivalya because the Motion failed to provide sufficient evidentiary references to support the relief sought.

3. The Receiver submits this Memorandum in Support of Motion to Disallow Certain Universe Investor Claims Based on Repayments Received From Kaivalya Holding

Group, Inc., along with his supporting Affidavit, to provide factual support for his motion to disallow the claims of the seven Universe investors who received Tech Traders' funds as repayment of earlier investments with Kaivalya.

**Factual Background on Kaivalya**

4. Before forming Defendant Equity Financial Group, LLC, Defendant Robert Shimer, with the assistance of business associates David Perkins and William Pfalz, created Kaivalya as an investment opportunity for family and friends. (*See* Shimer Dep. 43:24-50:20, Oct. 18, 2005, attached as Ex. D to the Affidavit.) Through Kaivalya, Shimer and Perkins pooled investors' funds and intended to use the funds, in part, for trading with Defendant Coyt E. Murray ("Murray"). (*See* Shimer Dep. 137:15-146:1, Oct. 18, 2005, attached as Ex. E to the Affidavit.) The Kaivalya investors' funds however never reached Murray and instead were improperly diverted to other uses. (*See id.*; Perkins Dep. 115:12-117:16, Feb. 8, 2005, attached as Ex. F to the Affidavit.) An intermediary responsible for transferring the investors' funds to Murray apparently absconded with the funds. (*See id.*)

**Funds From Tech Traders' Investors Transferred to Kaivalya**

5. Thereafter, from July 2002 through March 2004, Shimer caused over \$1.3 million of funds from Tech Traders to be transferred to Kaivalya. (*See* financial summary prepared by the Receiver's accountant FGMK, LLC, attached as Ex. G to the Affidavit; Shimer Dep. 1082:16-1083:19, Nov. 3, 2005 attached as Ex. H to the Affidavit.) These funds originated from Tech Traders' investors. Kaivalya, however, gave no value to Tech Traders in exchange for these funds. (*See* Shimer Dep. 288:7-290:6, Nov. 16, 2005, attached as Ex. I to the Affidavit.) In addition, the Tech Traders' investors whose funds were transferred to Kaivalya knew nothing about, and had no relationship with, Kaivalya or its investors.

6. During this time, Kaivalya had no other significant source of funds. In fact, the \$1.3 million that Tech Traders transferred to Kaivalya represents over 95% of the total funds directly deposited into Kaivalya's account at Patriot Bank (now Susquehanna Bank). (*See* financial summary prepared by the Receiver's accountant FGMK, LLC, attached hereto as Ex. J.)

**Kaivalya's Transfer of Funds to Its Investors As Repayment of Previous Investments**

7. Upon receiving the \$1.3 million from Tech Traders, Kaivalya then transferred these funds to its investors as repayment of their earlier investments. (*See* financial summary prepared by the Receiver's accountant FGMK, LLC, attached as Ex. G to the Affidavit; Shimer Dep. 1082:16-1083:19, Nov. 3, 2005 attached as Ex. H to the Affidavit.) Among the Kaivalya investors who received repayments were Robert Cooper, Amanda Graves, Cory Gubler, Harry Schmalz, the George Shimer Trust, Trinidad, and Harland and Donna Wedel. In sum, these individuals and entities received \$197,000 in funds originating from Tech Traders, as illustrated in the following table:

<b>Claimant</b>	<b>Tech Traders' Funds Received from Kaivalya</b>
Robert Cooper	\$35,000
Amanda Graves	\$25,000
Cory Gubler	\$15,000
Harry Schmalz	\$20,000
The George Shimer Trust	\$22,000
Trinidad/Vico/Pinnacle	\$50,000
Harland and Donna Wedel	\$30,000

(*See* wire transfer advices and cancelled checks supporting the repayments attached as Ex. K to the Affidavit.)

8. These same seven individuals and entities also invested funds with Universe. In fact, many of them also received distributions from Universe, including Robert Cooper, Cory

Gubler, the George Shimer Trust, Trinidad, and Harland and Donna Wedel.<sup>1</sup> As part of the Universe investor claim process (discussed in Paragraph 8 of the Affidavit), the Receiver provided these seven Universe investors with notice of the motion to distribute receivership funds to the Universe investors, which accounted for the investors' investments with and withdrawals from Universe, as well as their repayments from Kaivalya.<sup>2</sup> None of these investors responded to or otherwise disputed the motion or the information contained therein. Relevant information contained in the motion has been captured in the table in Paragraph 12.

**Receiver's Proposed Treatment of Universe Investors Who Received Funds From Kaivalya**

9. The Receiver proposes that these investors be allowed to retain the previous withdrawals they received from Kaivalya and Universe, but such withdrawals should be credited against the investors' respective pro rata shares, calculated based on total funds invested. Simply put, the distribution on these investors' claims should be calculated only *after* taking into account their earlier receipt of funds from Kaivalya and Universe. This approach is consistent with the proposed distribution plan in the Receiver's motion for authority to make an interim distribution to investors, which the Court ultimately approved in October 2005.

10. Fraudulent conveyance law and equitable principles also support this approach. *See* N.J. Stat. Ann. §§ 25:2-24, 25:2-25 (2006) ("A transfer made or obligation incurred by a debtor is fraudulent...if the debtor made the transfer or incurred the obligation without receiving a *reasonably equivalent value* in exchange for the transfer or obligation....") (emphasis added). As discussed in Paragraph 5 above, these investors received Tech Traders' funds, but did not invest funds with or otherwise provide value to Tech Traders in exchange for the funds. These

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<sup>1</sup> In light of the Court's December 18, 2006 Order, the Receiver has aggregated Trinidad's claim with the claims of Vico, Inc. and Pinnacle.

<sup>2</sup> Relevant bank records from Universe's account at Zions Bank and Kaivalya's account at Patriot Bank confirm the information contained in the motion.

investors therefore benefited to the detriment of the other Tech Traders' investors. In an effort to minimize this prejudice, these funds should be treated as previous withdrawals by the investors.

11. The following formula illustrates how each investor's claim would be treated: (Actual dollars invested x Pro-rata multiplier) - Previous withdrawals, including Tech Traders' funds received from Kaivalya = Distribution amount. For example, for Harry Schmalz, the formula would be \$140,000 of actual dollars invested x 28.5 percent - \$20,000 in Tech Traders' funds previously received from Kaivalya = Initial interim distribution of \$19,900. If and when the Receiver distributes additional funds to Universe investors, Mr. Schmalz would be eligible for another pro-rata distribution, in addition to the \$19,900.

12. The following table summarizes the Receiver's proposed treatment of these seven investors' claims:

<b>Claimant</b>	<b>Total Funds Invested</b>	<b>28.5% of Total Funds Invested</b>	<b>Previous Withdrawals</b>	<b>28.5% of Total Funds Invested Less Previous Withdrawals</b>	<b>Tech Traders' Funds Received from Kaivalya</b>	<b>Receiver's Proposed Treatment (28.5% of Total Funds Invested Less Withdrawals, Including Tech Traders' Funds Received from Kaivalya)</b>
Robert Cooper	\$50,000	\$14,250	\$24,000	\$0	\$35,000	\$0
Amanda Graves	\$100,000	\$28,500	\$0	\$28,500	\$25,000	\$3,500
Cory Gubler	\$175,000	\$49,875	\$175,000	\$0	\$15,000	\$0
Harry Schmalz	\$140,000	\$39,900	\$0	\$39,900	\$20,000	\$19,900
The George Shimer Trust	\$35,000	\$9,975	\$54,834	\$0	\$22,000	\$0
Trinidad/Vico/Pinnacle	\$199,200	\$56,772	\$108,100	\$0	\$50,000	\$0
Harland and Donna Wedel	\$65,800	\$18,753	\$8,000	\$10,753	\$30,000	\$0
<b>TOTALS:</b>				<b>\$79,153</b>		<b>\$23,400</b>

As this table illustrates, and consistent with the Court's April 17, 2006 Order ruling on the Receiver's Amended Motion for Authority to Make Interim Distribution to Certain Tier 3 Universe Investors, the Receiver continues to hold \$79,153 in reserve for these seven investors' claims. If the Court adopts the Receiver's proposed treatment of these claims, then a total of \$23,400 of the \$79,153 held in reserve would be distributed to two of the investors who are still eligible for distributions. Specifically, Amanda Graves would receive \$3,500 and Harry Schmalz would receive \$19,900.

13. The Receiver has given these seven investors notice of this motion to disallow their claims based on the repayments they received from Kaivalya.

14. In order for Tech Traders to recover the value of its previous payments to these seven investors, the Receiver recommends that the remaining amount of \$55,753 (\$79,153 less \$23,400) be transferred from the Shasta general account to the Tech Traders general account.

WHEREFORE, the Receiver respectfully requests that the Court enter an order adopting the Receiver's proposed treatment for the seven claims discussed above.

DATED: January 19, 2007

Respectfully submitted,

STEPHEN T. BOBO  
Equity Receiver

By: s/ Jeffrey A. Carr  
One of his attorneys

Stephen T. Bobo  
Raven Moore  
Sachnoff & Weaver, Ltd.  
10 South Wacker Drive, Suite 4000  
Chicago, IL 60606  
(312)207-1000

Matthew H. Adler (MA-4720)  
Jeffrey A. Carr (JC-1103)  
Pepper Hamilton LLP  
Suite 400, 301 Carnegie Center  
Princeton, NJ 08543-5276  
(609) 452-0808