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

COMMODITY FUTURES TRADING
COMMISSION,

Hon. Ann Marie Donio

Plaintiff,

vs.

Civil Action No. 04-1512

EQUITY FINANCIAL GROUP LLC, et al

NOTICE OF MOTION FOR STAY OF
ORDER COMPELLING PRODUCTION OF
TAX RETURNS PENDING APPEAL

Defendants.

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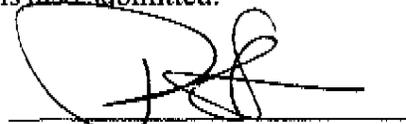
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PLEASE TAKE NOTICE that on Friday, April 20, 2007 at 10:00 A.M., or as soon thereafter as movant may be heard, the undersigned *pro se* defendant, Robert W. Shimer, Esq. ("Shimer") will move pursuant to the Local Civil Rules of the District Court for the District of New Jersey before the Honorable Ann Marie Donio., sitting at the U.S. District Courthouse at 4th and Cooper Streets, Camden, New Jersey, for an order granting defendant Shimer's Motion for Stay of Magistrate Donio's Order compelling production of certain tax returns to the Equity Receiver pending appeal by Shimer to the Third Circuit Court of Appeals of both the district court's order dated December 18, 2006 denying Shimer's motion for reconsideration of the district court's order denying Shimer's motion dated April 6, 2006 for summary judgment with respect to all counts of Plaintiff's amended complaint and the district court's order dated December 18, 2006 granting partial summary judgment in favor of Plaintiff.

In support of this motion, movant relies upon his brief submitted in support thereof. A proposed form of order granting the Motion sought is also submitted.



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**UNITED STATES DISTRICT COURT
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COMMODITY FUTURES TRADING :
COMMISSION, :

Plaintiff,

: Hon. Ann Marie Donio

vs.

Civil Action No. 04-1512

EQUITY FINANCIAL GROUP LLC, et al

Hearing Date: April 20, 2007

Defendants.

-----X

**MOTION FOR STAY OF ORDER COMPELLING PRODUCTION OF TAX RETURNS
PENDING APPEAL**

In accordance with the Local Civil Rules of the District Court for the District of New Jersey defendant Robert W. Shimer (“Shimer”), acting *pro se* respectfully moves for stay of Magistrate Ann Marie Donio’s Order filed September 1, 2006 pending Shimer’s current appeal to the Third Circuit Court of Appeals.

In support thereof, Shimer relies upon and refers Magistrate Donio to his brief filed Tuesday, March 27, 2007 in support of this Motion for Stay.

For all of the reasons stated in his brief Shimer respectfully requests that his current Motion for Stay be granted.

Dated: Monday, March 26, 2007

Respectfully submitted,

A handwritten signature in black ink, appearing to be "R. Shimer", written over a horizontal line.

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

COMMODITY FUTURES TRADING
COMMISSION,

Hon. Ann Marie Donio

Plaintiff,
vs.

Civil Action No. 04-1512

EQUITY FINANCIAL GROUP LLC, et. al.,

Motion Day April 20, 2007

Defendants.

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**BRIEF OF DEFENDANT ROBERT W. SHIMER IN SUPPORT OF MOTION FILED ON
BEHALF OF HIMSELF *PRO SE* AND A SEPARATE SIMILAR MOTION OF
DEFENDANT VINCENT FIRTH *PRO SE* FOR STAY OF ORDER COMPELLING
PRODUCTION OF TAX RETURNS**

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

COMMODITY FUTURES TRADING
COMMISSION,

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Civil Action No. 04-1512

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Motion Day April 20, 2007

Defendants.

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**BRIEF OF DEFENDANT ROBERT W. SHIMER IN SUPPORT OF MOTION FILED
ON BEHALF OF HIMSELF *PRO SE* AND A SEPARATE SIMILAR MOTION OF
DEFENDANT VINCENT FIRTH *PRO SE* FOR STAY OF ORDER COMPELLING
PRODUCTION OF TAX RETURNS**

Defendant Robert W. Shimer (“Shimer”) acting *pro se* submits this Brief in support of his Motion and a similar Motion submitted by Defendant Vincent J. Firth (Firth) for Stay of Magistrate Ann Marie Donio’s Order filed September 1, 2006 compelling certain tax returns of defendants Shimer and Firth pending the current joint appeal of Shimer and Firth to the Third Circuit Court of Appeals.

I. PRELIMINARY BACKGROUND STATEMENT

On December 22, 2005 the Temporary Equity Receiver Stephen T. Bobo (“Receiver”) filed a motion with the district court to compel production of certain tax returns of defendants Shimer and Firth. As the district court is well aware the Receiver’s only authority to ask Defendants Shimer and Firth for even the time of day is derived from the fact that both Shimer and Firth were placed in receivership by their “consent” to the district court’s Order of Preliminary Injunction dated June 24, 2004.

That “consent” was uninformed and was obtained from both Shimer and Firth as a result of certain “advice” provided to both Shimer and Firth by their then legal counsel Samuel F.

Abernethy, Esq. (“Abernethy”) of the New York law firm of Menaker & Herrmann to not dispute the receivership that was contained within and a part of that proposed Order of Preliminary Injunction. The primary “argument” advanced by Abernethy at that time for not disputing the proposed receivership of Shimer and Firth was a “lack of funds argument” even though Abernethy had been paid \$25,000.00 by Shimer approximately two months prior to that time for retention of the legal services of Menaker & Herrmann for the defense of Shimer, Firth and the corporate entity Equity Financial Group, LLC (“Equity”).

Shimer and Firth find it highly suspicious that Abernethy’s willingness to advise against disputing the proposed receivership coincided with the Receiver’s offer to Abernethy to advance to Abernethy and his firm the additional sum of \$35,000.00 from the Receivership estate. In a clever “tit for tat” proposal it appears in retrospect that the Receiver was successful in apparently “convincing” Abernethy to simply “trade” Shimer and Firth’s consent to the proposed Receivership in exchange for the proposed additional payment of \$35,000.00. As the saying goes...money talks. Shortly after Shimer and Firth “consented” to the Court’s Order of Preliminary Injunction on the advice of legal counsel that payment of \$35,000 was, in fact, made by the Receiver to Abernethy’s firm.

At the time that Shimer and Firth were “encouraged” by Abernethy to “consent” to the proposed receivership they were not informed that not a single instance existed in previous case law in which *any* federal court had *ever held* an entity such as Shimer’s legal client Shasta Capital Associates, LLC (“Shasta”) to be a “commodity pool” in the absence of a commodity trading account opened in the name of the purported “pool” entity. Moreover legal counsel also conveniently failed to ever mention to Shimer and Firth in June of 2004 that the Ninth Circuit case of *Lopez v Dean Witter Reynolds, Inc.* 805 F.2d 880 (9th Cir. 1986) [cited on page 2 of the brief of the Commodity Futures Trading Commission (“CFTC”) dated April 1, 2004 filed in support of its *ex parte* statutory restraining order and preliminary injunction] enunciated a clear and unambiguous four part test for determining whether or not a particular entity qualified as a “commodity pool”. Nor did legal counsel for Shimer and Firth take the time to point out the obvious fact that the lack of any commodity futures trading account ever opened *in the name of* the entity Shasta indicated that Shasta arguably failed to meet three if not all four of the required clear and unambiguous “tests” enunciated by the *Lopez* court.

It was not until the district court permitted Abernethy to withdraw as legal counsel for Shimer and Firth in the Spring of 2005 that Shimer had reason to assume responsibility for his own defense and read the *Lopez* decision. At that time Shimer realized the suspect nature of the

previous "advice" provided by legal counsel to not dispute the proposed receivership. Shimer and Firth then began what has become a long and tedious summary judgment process. Shimer and Firth filed respective motions for summary judgment dated July 7, 2005 supported by Shimer's brief of the same date. The CFTC filed a timely Response dated August 5, 2005 and Shimer filed a timely Reply dated August 13, 2005.

On October 4, 2005 the district court filed an Opinion denying Shimer and Firth's respective motions for summary judgment. The previously referenced motion of the Receiver dated December 22, 2005 to compel production of the tax returns of Shimer and Firth was subsequently filed with the district court. Shimer's brief dated December 30, 2005 in opposition to the Receiver's motion to compel was subsequently filed timely with the court. The Receiver through his attorneys filed a Reply Brief on January 9, 2006. Prior to any decision of the Receiver's motion Shimer and Firth filed a new motion for summary judgment dated April 6, 2006 supported by Shimer's brief of the same date.

Shimer's brief dated April 6, 2006 attached 5 separate Exhibits (Exhibits A-E) that provided extensive certified documentation from the case file of *CFTC v. Heritage Capital Advisory Services, Ltd.* Comm. Fut. L. Rep. (CCH) ¶21,627, 26,379 (N.D. Ill. 1982) examined by Shimer in mid October, 2005 at the Federal Records Center in Chicago, Illinois. That documentation clearly contradicted the CFTC's argument found in its previous Response dated August 5, 2005 that the district court case of *Heritage* provided *any* support at all for the CFTC's claim that an entity factually similar to the entity Shasta had been previously found by a federal court to be a "commodity pool". The CFTC filed a Response dated April 20, 2006 to these new motions for summary judgment by Shimer and Firth. Shimer filed a timely Reply dated April 24, 2006.

On September 1, 2006, prior to a ruling by the district court on the potentially dispositive summary judgment motions of Shimer and Firth Magistrate Ann Marie Donio filed an Order compelling production of the tax returns of both Shimer and Firth sought by the Receiver. Pursuant to L. Civ. Rule 72.1(c)(1)(B) Shimer filed a Request for Stay dated September 14, 2006 of Magistrate Donio's Order pending appeal. Shimer filed with Judge Kugler a Notice of Appeal dated September 14, 2006 of the Court's Order dated September 1, 2006. Firth filed a similar Request for Stay and Notice of Appeal. The Receiver filed a Response dated October 5, 2006 to the stay and appeal filings of Shimer and Firth.

Shimer did not even become aware of the fact that the Receiver had filed a Response until Friday, October 13, 2006. Shimer filed a Reply dated Tuesday October 17, 2006 with the

district court and Firth filed a Reply as well. The clear and obvious basis for a stay of the district court's September 1, 2006 order compelling production of Shimer and Firth's tax returns was the fact that a still then pending summary judgment decision of the district court favorable to Shimer and Firth would eliminate all authority of the Receiver to request any further private financial records of both Shimer and Firth. By Opinion dated November 16, 2006 the district court again denied Shimer and Firth's respective motions for summary judgment with respect to all counts of the CFTC's amended complaint. Shimer and Firth filed respective Motions for Reconsideration dated December 4, 2006 supported by Shimer's brief of the same date. The district court denied those motions on December 18, 2006 and on that same date granted partial summary judgment to the CFTC.

On February 9, 2007 the District Court for the District of New Jersey received with the appropriate filing fee the timely Joint Notice of Appeal to the Third Circuit Court of Appeals of Shimer and Firth. By letter dated February 21, 2007 both Shimer and Firth were advised by the Office of the Clerk, United States Court of Appeals for the Third Circuit that their joint appeal had that day been assigned Docket No. 07-1433. Shimer and Firth's Joint Appeal challenges the district court's denial on December 18, 2006 of their respective motions for reconsideration of previous motions of Shimer and Firth dated April 6, 2006 for summary judgment with respect to all counts of the amended complaint of the Commodity Futures Trading Commission ("CFTC"). Their joint appeal also challenges the district court's order dated December 18, 2006 granting partial summary judgment to the CFTC.

By letter dated February 28, 2007 Shimer, Firth as well as the CFTC received a request from the Legal Division of the Office of the Clerk to submit written arguments either in support or opposition to dismissal of the appeal for lack of appellate jurisdiction in light of the general rule that orders denying summary judgment are generally not considered final decisions of the district court as required by 28 U.S.C. § 1291. The CFTC by its Assistant General Counsel Merry Lynn, Esq. provided a timely written response dated March 12, 2007 in the form of a motion to dismiss for lack of appellate jurisdiction.

Both Shimer and Firth submitted a joint twenty six page written argument in opposition to dismissal for lack of appellate jurisdiction. That written argument was filed timely in appropriate form with the Third Circuit Court on March 20, 2007. The written arguments both in support of and in opposition to dismissal of Shimer and Firth's current appeal for lack of appellate jurisdiction will be submitted to a panel of the Third Circuit Court.

II. ARGUMENT

A. The disputed legal question now before the Third Circuit Court as a result of the current appeal by Shimer and Firth goes to the very heart of the CFTC's regulatory and enforcement authority over Shimer and Firth.

Though the district court has twice denied Shimer and Firth's respective motions for summary judgment on all counts of the CFTC's amended complaint the district court on page 5 of its opinion dated December 18, 2006 granting partial summary judgment to the CFTC (Document 419-1) clearly acknowledged and recognized that the purported "commodity pool" status of the entity Shasta is

"...the threshold issue for bringing this action under the jurisdiction of the CFTC."

While it is true that the district court clearly disagrees with appellants Shimer and Firth about the answer to that critically important and potentially dispositive threshold legal question, the resolution of disputes that involve substantial legal questions as important and significant as the one now before the Third Circuit are the very reason why appellate courts exist. If the CFTC has no "jurisdiction" (to use the very words of the district court) over the defendants Shimer and Firth the CFTC has no right to exert *any enforcement authority whatsoever* over these two private citizens.

The federal courts have consistently recognized and reiterated the clear and obvious fact that the CFTC is permitted by statute to require the registration of very specifically defined categories of entities or persons who must fall within the statutory scheme enacted by Congress. See for example *CFTC v. British American Commodity Options Corp.* 560 F.2d 135, 138 (2nd Cir. 1977) where the court stated:

"In the 1974 Amendments¹ to the Act, 7 U.S.C. § 1 et seq., Congress established the Commodity Futures Trading Commission and set up a comprehensive scheme for regulation of trading in commodity futures. Central to this statutory scheme is the requirement that *persons actively involved* in commodities trading shall be registered with the Commission."² (emphasis added)

The complete text of footnote 2 referred to in the above quote lays out very clearly the specific and exact categories of persons or entities that must register with the CFTC under the CEA:

“ See, e. g., 7 U.S.C. §§ 6d (futures commission merchants), 6e (floor brokers), 6k (associates of futures commission merchants), and 6m (commodity trading advisors and commodity pool operators).”

As has been noted by both parties in previous briefs filed with the district court the term Commodity Trading Advisor (CTA) is specifically defined by the Commodity Exchange Act (CEA) at 7 U.S.C. § 1a(6). The term Commodity Pool Operator (CPO) is specifically defined by the CEA at 7 U.S.C. § 1a(5). Congress never defined the term “commodity pool” and hence the importance of the previously cited *Lopez* decision to the threshold issue of the CFTC’s “jurisdiction” over Shimer and Firth now properly before the Third Circuit Court.

Separate and apart from the fact that neither Shimer, Firth, the entity Shasta nor the defendant entity Equity were ever “*actively involved in commodities trading*” (to use the words specifically chosen above by the Second Circuit Court) the sole purported “connection” that Shimer and Firth have to any of the above cited categories of persons that must register with the CFTC is their admitted association to the defendant entity Equity. The CFTC’s “jurisdiction” over the defendants Shimer and Firth is, therefore, premised on its allegation that the entity Equity acted as the “commodity pool operator” (CPO) of the non defendant entity Shasta. Clearly the CFTC’s jurisdictional difficulty then becomes one of establishing the fact that the entity Shasta is truly a “commodity pool”. In the absence of any commodity pool the entity Equity can hardly be held to be the “operator” of a “pool” that literally does not exist.

That potentially embarrassing jurisdictional “difficulty” for the CFTC is exacerbated by the *Lopez* decision initially cited by the CFTC in its brief dated April 1, 2004. That is true because (contrary to the CFTC’s deceptive description of the *Lopez* case found on page 2 of its Brief dated April 1, 2004) *Lopez* enunciated four clear unambiguous tests for determining whether a particular entity qualifies as a commodity pool. An objective and non biased review of the actual language of the *Lopez* decision reveals that the entity Shasta fails at least three if not all four of those clear tests. The present legal issue before the Third Circuit (potentially dispositive of all counts of the CFTC’s amended complaint) is, therefore, simply whether the non defendant entity Shasta truly is a “commodity pool”.

B. There Are Literally Two Separate Bases For The Third Circuit Court To Find That Appellate Jurisdiction Exists With Respect To The Currently Pending Appeal Of Shimer And Firth.

As noted previously Shimer and Firth filed a timely 26 page written argument in opposition to dismissal of their current appeal for lack of appellate jurisdiction. That written argument clearly acknowledged the general rule that *in most instances* the denial of a defendant's motion for summary judgment is ordinarily not a "final decision" of a district court as required by 28 U.S.C. § 1291. However there is a well established exception to that general rule found in the "collateral order" doctrine established by the Supreme Court in *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541 (1949). As a result of *Cohen* and later cited Supreme Court cases it is well recognized by the Third Circuit Court that *in some instances* an order of a district court that would not otherwise be considered "final" will be held to have sufficient "finality" for purposes of granting appellate jurisdiction pursuant to 28 U.S.C. § 1291 if it 1) determines the disputed question; 2) resolves an important issue completely separate and apart from the merits of the action; and 3) would be effectively unreviewable on appeal from a final judgment.

The order of the district court dated December 18, 2006 denying Shimer and Firth's motion for reconsideration of the court's previous Order dated November 16, 2006 denying their respective motions for summary judgment on all counts of the CFTC's amended complaint arguably satisfies all three of the above stated requirements for granting appellate jurisdiction at this time. It is not possible to review the practically identical summary judgment opinions of the district court dated October 4, 2005 (record document no. 266) and November 16, 2006 (record document no. 409-1) without concluding that the district court is clearly unwilling to *ever consider* any conclusion other than the one it has stated with respect to the disputed legal question: "Is the non defendant entity Shasta a commodity pool?" Moreover the arguably erroneous nature of that opinion does not make the district court's opinion any less determinative of that specific and extraordinarily significant legal question.

In addition to several additional collateral legal issues (set forth in Shimer and Firth's joint written argument dated March 19, 2007) all clearly separate and apart from the merits of the present civil action, the most important collateral legal issue presented by their current appeal that goes to the very heart of the final requirement for applicability of the collateral order doctrine is this: "Does the CFTC have any right whatsoever derived from its specific statutory enforcement authority to proceed to trial with respect to both Shimer and Firth (as well as with

respect to the defendant entity Equity) if Shimer, Firth and Equity were never subject to the CFTC's "jurisdiction" in the first place?

Shimer and Firth's 26 page written argument in opposition to dismissal for lack of appellate jurisdiction provided the Third Circuit Court with an extensive Supreme Court case law analysis with respect to this threshold "jurisdictional" issue upon which all counts of the CFTC's amended complaint arguably depend. If the CFTC has no right to proceed to trial by reason of its lack of any enforcement authority over either Shimer and Firth (and for that matter the defendant entity Equity as well) there exists as a matter of law a mirror entitlement by Shimer and Firth not to stand trial—not as a defense but as an entitlement grounded in the very fundamental concept of due process itself.

It is a violation of due process to force specifically named private citizen defendants such as Shimer and Firth to endure the hardship and distractions of a trial on the merits if the federal agency plaintiff had no statutory authority to name them as defendants in the first place! It is a well settled basic axiom of administrative law that Federal agencies only have authority to "...effect the will of Congress as expressed by the statute." *Dixon v. United States* 381 U.S. 68, 74 (1945). The denial of Shimer and Firth's motions for summary judgment by the district court is, therefore, arguably an appealable "final decision" within the meaning of 28 U.S.C. § 1291. It is, therefore, likely that the Third Circuit Court will grant appellate jurisdiction at this time to consider the disputed legal question upon which all counts of the CFTC's amended complaint against Shimer and Firth depend: was/is the non defendant entity Shasta a commodity pool?

The other basis for granting appellate jurisdiction need not be discussed in detail in this brief but is found in case law of the Third Circuit cited in Shimer and Firth's written argument dated March 19, 2007 for the proposition that if summary judgment was granted for the appellee, the appellate court has jurisdiction to consider the denial of the appellant's motion for summary judgment. It is true that the district court granted only partial summary judgment to the CFTC. However, as Shimer and Firth's written argument clearly points out every count upon which the CFTC was granted summary judgment hangs on the slender and tenuous thread that the entity Shasta is truly a "commodity pool".

Moreover the fact that the CFTC chose not to seek summary judgment with respect to Count I is not a bar to appellate jurisdiction at this time nor is the fact that summary judgment was not granted to the CFTC with respect to specific other counts of the amended complaint a bar to appellate jurisdiction at this time per Third Circuit case law cited in Shimer and Firth's

written argument dated March 19, 2007. All counts of the CFTC's amended complaint with respect to Shimer and Firth cannot arguably be sustained *as a matter of law*. There is, therefore, clearly no need for any further determination of the truth of *any* additional facts at trial that impact *any of the counts in the CFTC's amended complaint against Shimer and Firth* if the entity Shasta is truly not a commodity pool per *Lopez*.

C. Absent Any Enforcement Authority Of The CFTC Over Shimer And Firth The Receiver Has Absolutely No Legal Basis Whatsoever To Require Shimer and Firth To Produce Any Of The Tax Returns Sought By The Receiver.

In Shimer's Notice of Appeal dated September 14, 2006 the district court was reminded that any and all authority of the Receiver over Shimer and Firth is derived from Section 6c(a) of the CEA 7 U.S.C. § 13a-1(a). Such authority can only be sustained if the CFTC truly has any enforcement authority over private citizens such as Shimer and Firth. In his order dated March 14, 2007 denying Shimer and Firth's previous appeal to the district court of Magistrate Donio's order dated September 1, 2006 compelling production of certain tax returns Judge Kugler recognized that the Receiver's right to request specific tax returns of Shimer or Firth was clearly dependent upon whether or not Shimer or Firth were subject to the enforcement authority of the CFTC under the CEA:

“...the only argument asserted by Defendants Firth and Shimer to support their motion is that Firth and Shimer are not subject to Receivership because they did not operate a “commodity pool,” removing them from the purview of the Commodities Exchange Act;”

The fact that the district court has previously ignored the otherwise clear and unambiguous language of *Lopez* and erroneously held that the entity Shasta was indeed operating as a “commodity pool” (contrary to all prior federal case law) does not diminish but rather emphasizes the significance of the threshold CFTC “jurisdictional” issue now properly placed before the Third Circuit Court on appeal. Absent such enforcement authority on the part of the CFTC Shimer and Firth are entitled to be released from the receivership currently imposed upon them now for almost three (3) years without their informed consent.

As previously described in this brief the uninformed “consent” of Shimer and Firth to the existing receivership was obtained by the Receiver as the apparent result of offering a substantial monetary “incentive” to previous legal counsel for Shimer and Firth. The amount offered to legal counsel was later tendered by the Receiver after that uninformed consent to the

receivership was obtained. Absent the authority conferred upon the CFTC by 7 U.S.C. § 13a-1(a) to place Shimer and Firth in receivership Shimer and Firth have absolutely no obligation to give the Receiver the time of day.

D. Pending Initial Resolution Of The Initial Question Of Appellate Jurisdictional And (If Appellate Jurisdiction Is Granted) Resolution of The Basic Legal Question Raised By The Current Appeal It Is Not Appropriate For The District Court To Entertain Any Motion By The Receiver For Sanctions Against Either Shimer or Firth For Failure To Comply With The District Court's Order Dated September 1, 2006.

In light of the substantial legal question concerning the "jurisdiction" of the CFTC to engage in any enforcement authority over Shimer and Firth now on appeal before the Third Circuit it would be clearly inappropriate for the Receiver to ask the district court to impose *any sanction* upon either Shimer or Firth for resisting the Receiver's purported authority over them. It would be equally inappropriate at the present time for the district court to grant any such motion should the Receiver choose to seek the "low road" at the present time and pursue a remedy to which he well knows he is arguably not entitled.

III. CONCLUSION

For all of the reasons cited above Shimer and Firth respectfully request that pending appeal to the Third Circuit Court Magistrate Donio grant the respective separate motions of Shimer and Firth dated March 26, 2007 to stay the district court's order dated September 1, 2006 compelling production of certain tax returns.

Dated: March 26, 2007

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned does hereby certify that on March 26, 2007 he caused a true and correct copy of the foregoing Notice of Motion, Motion for Stay, Brief in support of that Motion, Certificate of Service and Proposed Order to be sent via regular U.S. Mail to the following.

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*On behalf Coyt E. Murray, Tech Traders, Inc. Ltd.,
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Capital Investments, Ltd.
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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

COMMODITY FUTURES TRADING
COMMISSION,

Hon. Ann Marie Donio

Plaintiff,

vs.

Civil Action No. 04-1512

EQUITY FINANCIAL GROUP LLC, et al.

Defendants.

-----X

**PROPOSED ORDER GRANTING DEFENDANT ROBERT W. SHIMER'S
MOTION TO STAY PENDING APPEAL TO THE THIRD CIRCUIT COURT THE
DISTRICT COURT'S PREVIOUS ORDER DATED SEPTEMBER 1, 2006
COMPELLING THE PRODUCTION OF CERTAIN TAX RETURNS**

Having read the brief of Robert W. Shimer ("Shimer") dated March 26, 2007 filed in support of Shimer's motion for stay and having reviewed and considered the Receiver's response thereto;

THE COURT FINDS:

1. That until the Third Circuit Court determines whether appellate jurisdiction exists with respect to Shimer's current appeal and, if appellate jurisdiction is granted, until an Opinion of the Third Circuit Court is issued with respect to the legal question that is potentially dispositive of all counts against Shimer in the CFTC's amended complaint it is appropriate and well considered to grant defendant Shimer's motion for stay.

IT IS HEREBY ORDERED THAT:

Defendant Shimer's motion for stay of the Court's previous order dated September 1, 2006 compelling production of certain tax returns is hereby granted.

SO ORDERED _____ May , 2007

UNITED STATES MAGISTRATE