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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 DATE:
May 5, 2006**

**STATEMENT OF MATERIAL FACTS IN SUPPORT OF
THE CFTC'S MOTION FOR PARTIAL SUMMARY JUDGMENT
AGAINST EQUITY FINANCIAL GROUP LLC, ROBERT W. SHIMER AND
VINCENT J. FIRTH**

The Parties and Overview of the Fraud¹

1. Plaintiff Commodity Futures Trading Commission (“Commission” or “CFTC”) is an independent federal regulatory agency that is charged with responsibility for administering and enforcing the provisions of the Commodity Exchange Act, as amended (the “Act”), 7 U.S.C. §§ 1 *et seq.* (2002), and the Regulations promulgated thereunder, 17 C.F.R. §§ 1 *et seq.* (2004). [Answer of Equity, Robert W. Shimer and Vincent J. Firth to the First Amended Complaint [Docket Document No. 79](hereinafter “Answer”) at ¶ 1.]
2. Defendant Equity Financial Group, LLC, (“Equity”) is a New Jersey limited liability company formed on September 1, 1998, with an address of 3 Aster Court, Medford, New Jersey 08055. [Answer at ¶ 1.] Equity was the manager of Shasta Capital Associates, a Delaware limited liability company. [Exhibit 49.] It was originally formed by Firth for a real estate project. [Firth Deposition at 49-50.] Shasta was a commodity pool. [Opinion dated 10/4/05 – Docket Document No. 266.] But for 1% of initial deposits, Shasta’s funds fed to the Tech Traders’ “super fund” master pool [Shimer Deposition at 558-59.]
3. Equity is not and has never been registered with the CFTC in any capacity, nor has it filed an exemption from registration. [Answer at ¶¶ 1, 29.]
4. Defendant Vincent J. Firth (“Firth”) resides in Medford, New Jersey and is the President and sole shareholder of Equity. [Answer at ¶1.]
5. Defendant Robert W. Shimer (“Shimer”) resides in Leesport, Pennsylvania and is

¹ This Statement of Material Facts is supported by documentary and testimonial evidence found in three Appendices submitted with this filing.

legal counsel for Shasta Capital Associates, LLC (“Shasta”) and Equity. [Answer at ¶¶ 1, 31.]

6. Defendant Coyt Murray (“Murray”) was the president and CEO of Tech Traders and was Tech Traders’ primary contact person in dealing with potential participants. [Answer at ¶ 20.] Murray and Tech Traders operated out of an office in Gastonia, North Carolina. [Answer at ¶ 19; Firth Deposition at 512-13.] Murray represented to Firth and Shimer that Tech Traders used a “portfolio” system for successful trading of selected exchange-traded financial futures contracts, including the NASDAQ 100 and S&P 500. He told Firth and Shimer that the success of the portfolio system derived from the fact that it utilized many different, allegedly non-correlated, separate systems traded concurrently on different time frames using proprietary algorithms, which not only helped filter out market noise for the purpose of more correctly determining the real direction of market trends, but also would balance and smooth the performance of the system. [Answer at ¶ 20.]
7. From June 2001 through March 2004, defendants Equity, Firth and Shimer solicited almost \$15 million of onshore and offshore investments via several investment vehicles for trading by Tech Traders in commodity futures contracts. Equity, Firth and Shimer touted the “astonishing” performance of the Shasta commodity pool, claiming that the pool had earned trading profits of approximately 100% per annum since inception. [Answer at ¶ 4; Affidavit of Stephen T. Bobo (“Bobo Affidavit”) at ¶¶ 5, 12]
8. Defendants Tech Traders and Murray solicited and accepted almost \$15 million from Equity, Firth, and Shimer to trade commodity futures contracts. [Answer at ¶¶ 21,

34; Bobo Affidavit at ¶¶ 5, 12.] In total, Tech Traders received a total of approximately \$43.1 million from Shasta and other investors. At the time Tech Traders' assets were frozen by the Court, Tech Traders, Inc. had returned a total of \$11.3 million of principal to investors, paid approximately \$638,000 in fictitious profits to investors, transferred \$2.4 million to its predecessor entity Magnum Investments, Ltd., used nearly \$2 million for operating expenses, and transferred nearly \$2.2 million to Equity and other entities controlled by Robert Shimer or Vincent Firth. In order to make its investors whole, the receivership estate of Tech Traders, Inc. would need approximately another \$15 million plus costs of administration. [Bobo Affidavit at ¶¶ 7, 9.]

9. Firth and Shimer knew that Tech Traders and Murray accepted money from third parties and in its bank accounts pooled these funds with Shasta's funds. [Shimer Deposition at 696; Firth Deposition at 348.] But for one trading account where power of attorney was given to a registered commodity trading advisor, Tech Traders made all the trading decisions for those funds that it deposited in trading accounts. [Shimer Deposition at 693; McCormack Declaration at ¶ 7.] However, Tech Traders ultimately deposited only a portion of those funds in commodity futures trading accounts it maintained in its own name, using the funds in other ways such as business operations, commissions, referral fees, profit sharing, and to pay back other investors. From 2001 to April 1, 2004, Tech Traders lost approximately \$7.6 million trading commodity futures contracts and other financial instruments in the accounts that held Shasta, and other third-party funds. [Bobo Affidavit at ¶¶ 7, 8.]

10. Firth is a controlling person of Equity. He was the sole signatory on Equity's bank account and made decisions on disbursements out of that account. He reviewed, approved and distributed Shasta's Private Placement Memorandum [Answer at ¶¶ 29, 30, 48; Firth Deposition at 345, 386.] Firth also issued the monthly account statements to Shasta investors. [Firth Deposition at 236-37.]
11. Firth never registered with the Commission as an associated person ("AP") of Equity, but was registered in the securities industry as a registered representative of several broker-dealers between 1981 and 1990. [Answer at ¶ 30.] The Shasta PPM falsely states that Firth holds an NASD Series 7 license. [Answer at ¶ 49; Exhibit 93.] The Shasta PPM does not disclose that Firth has no prior experience with commodity futures trading or with operations and management of a commodity pool. [Answer at ¶ 49; Firth Deposition at 15-16.]
12. Firth and his wife have filed for bankruptcy under Chapter 13 of the Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* (2003). The Shasta PPM failed to disclose that information. [Answer at ¶ 49; Firth Deposition at 269.] Shimer did not perform any research to find out if Firth had ever filed for bankruptcy, but knew that would have been important to disclose to potential investors [Shimer Deposition at 681.]
13. Shimer was legal counsel for Shasta and Equity. He is an attorney and has been a member of the Massachusetts Bar since 1973. From June to December 1986, he was registered as an associated person ("AP") of Churchill Commodities, a former commodity pool operator ("CPO") that had been registered with the Commission. From December 1988 to April 1989, he was registered as an AP of Capital Management Partners, a former introducing broker. [Answer at ¶¶ 29, 31; Shimer

Deposition at 6, 8, 1504.] He took and passed the Series 3 examination required for APs in the futures industry in 1986. [Shimer Deposition at 24.] Shimer was not registered as an AP of Equity. [Shimer Deposition at 8; Exhibit 371.]

14. Shimer indicated to a potential insurer that he worked full-time on a permanent basis for Equity in 2003. [Shimer Deposition at 1459; Exhibit 481.]

The Defendants' Past Business Dealings

15. Firth and Shimer met in 1998 or 1999, during an (ultimately) failed investment deal known as Badische Trust("Badische."). [Firth Deposition at 276-77; Exhibit 77.] Firth had introduced several parties to Badische to secure financing. Badische absconded with the parties' commitment fees. At least two parties that Firth introduced to Badische brought legal action against Firth and secured judgments or other relief against Firth. [Answer at ¶ 18; Firth Deposition at 17, 22-24.] The Shasta PPM does not disclose this failed investment deal. [Exhibit 93.]

16. In January 1999, Shimer was involved in the formation of a Nevada corporation called Kaivalya Holding Group, Inc. ("Kaivalya"). [Shimer Deposition at 396-397.] Shimer was an officer, director and shareholder in Kaivalya. [Perkins Deposition at 47-48; Shimer Deposition at 46, 257; Exhibit 171.] Through Kaivalya, Shimer and others collected money from investors for various investments. [Shimer Deposition at 44, 60, 73, 144-45; T. List Deposition at 29-30; Omaha Boy at 15-17, 30-32; Green Deposition at 14-15.]

17. The first Kaivalya investment was through an individual named David Rowe and a foreign entity called Cambridge. In February 1999, Shimer and others collected

\$669,000 for investment in a certificate of deposit (“CD”) that was supposed to provide a 9% return. [Shimer Deposition at 49-50, 66, 107.] Kaivalya’s investors would receive 4 or 4 ½ % of the 9%. [Shimer Deposition at 66-67; Exhibit 590. Perkins Deposition at 45-46.] Shimer collected \$272,000 through an attorney escrow account for this investment. [Shimer Deposition at 64-65.] The CD paid interest for about a year and then stopped paying. [Shimer Deposition at 1551-52.] At the time, the investors did not recover their principal. The investors were later partially repaid principal from funds derived from Tech Traders. [Shimer Deposition at 76-78.]

18. The second Kaivalya investment was for the” Lynchberg” deal, which allegedly involved some kind of investment in treasury bills. [Shimer Deposition at 86.] In April 1999, Shimer and others collected \$325,000 from investors, paid someone named Laurie Scott \$75,000 of that and wired the remaining \$250,000 to the escrow account of an attorney for someone named Cimini. [Shimer Deposition at 75, 86-87, 90-92, 1562-64]. Kaivalya issued promissory notes to investors who gave money for this deal that promised interest rates of 50 -100% per month. [Omaha-Boy Deposition at 29-32; Exhibits 639, 374; Shimer Deposition at 80-87.] This investment turned out to be an international scam. Shimer was interviewed by the FBI about it. None of the \$250,000 was ever recovered. [Shimer Deposition at 71-73.]

19. The third Kaivalya investment was made through Jerry LaTulippe (“LaTulippe”) and Tom Leonard (“Leonard”). Shimer had met LaTulippe on a flight to Grenada in early 1999 and was impressed with him. [Shimer Deposition at 107-10.] LaTulippe told him that he had an exclusive relationship with a trader who was obtaining

phenomenal results trading the markets. [Shimer Deposition at 112-13.] That trader was Coyt Murray. Shimer did not know what markets the trader was trading.

[Shimer Deposition at 115.] Nonetheless, he invested \$100,000 in early September 1999. [Shimer Deposition at 113-14.] Shimer then visited a trading platform owned by someone named Hubert Pinder in the Bahamas in October 1999. There he met Coyt Murray and Murray told Shimer that he had licensed his system to Pinder.

[Shimer Deposition at 120.] After this meeting in the Bahamas, Shimer collected over \$1,300,000 from investors and wired the money to an account in the name of Good Works, which he was told was a company controlled by LaTulippe. [Shimer Deposition at 143-45; Exhibit 376.] Shimer drafted promissory notes guaranteeing investors return of principal and a possible 20-25% return starting in 90 days.

[Shimer Deposition at 177-78; Exhibit 612.]

20. This third investment through Kaivalya also failed. No payments were made in 90 days and Shimer received a series of excuses for over a year about what had happened to investor money. [Shimer Deposition at 204-06; Exhibits 188, 202.] Some of these investors were also later repaid part or all of their Kaivalya investments from payments Tech Traders gave to Shimer. [Shimer Deposition at 88-89, 340.]
21. Shimer received pressure from investors who had not been repaid from the three failed investment deals. Some investors threatened to sue him and/or his associates or go to governmental authorities to complain about their loss. [Shimer Deposition at 242-43, 269-70, 279-81, 320-21; Exhibits 384, 387, 389, 393.] Even after receiving

investor complaints, Shimer continued to solicit funds for Good Works, Inc. [Shimer Deposition at 296-99; Exhibit 390.]

The Formation of Shasta

22. In the fall of 2000, Shimer tracked down Murray to find a solution to the money Kaivalya owed investors. Murray told him he was just beginning to trade and that he had been back-testing his trading system for a year, although he had told Shimer in 1999 he licensed it to Pinder the year before. [Shimer Deposition at 347-48.] Although Shimer had been told by LaTulippe and Leonard that Murray was successfully trading the system in 1999 through Pinder, Shimer did not ask Murray a lot of questions about his relationship with Pinder. [Shimer Deposition at 350-52.] Murray told Shimer that he had never received the money from LaTulippe that was supposed to be invested in his trading system. Nonetheless, Murray agreed to help Shimer repay the Kaivalya investors. Shimer did not disclose the failed Kaivalya investment history to potential Shasta investors or to Elaine Teague. The Shasta PPM did not disclose these facts either. [Answer at ¶ 51; Shimer Deposition at 499-501; Stevenson Deposition at 40-41; Teague Deposition at 643; Exhibits 49, 404.]
23. Murray told Shimer that he had returned money to Pinder after being advised by his attorneys to do so because Pinder was misusing investor funds. [Shimer Deposition at 363-64.] Murray also told Shimer that he returned money given to him for trading to Pinder after suffering a loss. [Shimer Deposition at 366-67.] In October 2002, Shimer sent Murray a letter in which he warned Murray that investors were contemplating suing Pinder and that they might go after Pinder's trader too. [Exhibit 476; Shimer Deposition at 1435-36.]

24. The solution that Shimer and Murray agreed on to solve Shimer's Kaivalya debt was for Murray to share his "profits" with Shimer. The two struck a deal by which Murray would share profits otherwise allocated to him with a Nevis trust called Shadetree. This trust had no bank account. All payments made by Murray pursuant to this agreement were made to domestic bank accounts that Shimer controlled. [Shimer Deposition at 378-79, 1015-17; Firth Deposition at 75; Exhibits 96, 203.] Both Firth and Shimer had internal Shadetree "accounts." [Shimer Deposition at 923-26; Firth Deposition at 428, 433; Exhibits 441, 103².]
25. This secret split of the profits would be used to compensate Shimer and repay the Kaivalya investors, but it was also used to pay a mortgage for Firth and for Shimer to give \$82,000 to a former Kaivalya associate and principal of Universe³, David Perkins. [Shimer Deposition at 381-82, 948-49, 1117, 1119-22, 1454-55; McCormack Declaration at ¶ 13.]
26. Shimer met Firth through LaTulippe in the fall of 1999 when Shimer was introduced to Firth as LaTulippe's lawyer. Firth was told that Shimer was representing LaTulippe in seeking to invest funds in some real estate projects. [Firth Deposition at 53-54.]
27. Shimer prepared Shasta's PPM, Shasta's Operating Agreement and all attendant subscription documents. He was responsible for all of Shasta's filings with the Securities and Exchange Commission and for all required notice filings in every state.

² These exhibits are quite voluminous – 80 and 79 pages respectively. Therefore, only pertinent excerpts have been included.

³ Universe was a limited liability corporation formed to invest in Shasta. It had 40 investors who collectively invested \$3.4 million in Shasta. [McCormack Declaration at ¶ 16.]

Shimer also tried to review every document Firth sent out for Equity. In addition to preparing legal documents for Equity, Shimer also directly and indirectly solicited funds for Shasta, approved all subscription documents submitted to Shasta, accepted participant funds and deposited them into his attorney escrow account for further transmittal to Tech Traders and other entities and was Equity's primary contact person for dealing with Murray. He handled all the details for Shasta. [Answer at ¶ 31; Firth Deposition at 169; Shimer Deposition at 454, 950, 1141-42.]

28. After an initial 1% or 2% preferential rate of return to Shasta investors, Tech Traders was entitled to 15% of the "profits" from trading for trading and operational expenses and 50% of any remaining "profits", under the terms of the Shasta Private Placement Memorandum. [Exhibit 49⁴ at p.6.]

29. On August 3, 2001, an agreement was executed between Tech Traders Ltd. and Shadetree. This agreement was drafted by Shimer. The agreement provided that Tech Traders would allocate 5% of the 15% of "profits" for trading and operational expenses provided for in the Shasta PPM to Shadetree and ½ of the 50% of any remaining "profits" allocated to Tech Traders under the Shasta PPM to Shadetree. [Exhibit 96.] This agreement and the \$1.3 million paid under it, were not disclosed in the Shasta PPM and was not otherwise disclosed to Shasta investors, potential investors or to Elaine Teague. [Exhibit 49; T. List Deposition at 109; Green Deposition at 48-49; Teague Deposition at 376-77, 677-78; Stevenson Deposition at 71-74; Firth Deposition at 199-200.]

⁴ Exhibit 89 is the same document as Exhibit 49, the Shasta PPM as of June 30, 2001. Exhibit 89 has not been submitted to the Court to reduce the volume of the submitted exhibits. References to Exhibit 89 in the testimony, therefore, refer to the June 2001 Shasta PPM which is submitted as Exhibit 49.

30. All payments Tech Traders made to Shadetree were actually wired to an account in the name of Kaivalya that was under the control of Shimer. Payments of \$1,314,930 were wired to these accounts under the control of Shimer. [McCormack Declaration at ¶¶ 8, 13.]
31. Firth knew that Shimer owed Kaivalya investors a lot of money and about the secret profit split to Shadetree that was not disclosed in the Shasta PPM. [Firth Deposition at 200-02.]
32. Shimer had conversations with Murray concerning some of the people who circulated around Murray. These included LaTulippe, Leonard and Chuck Harkey. Murray told Shimer that Harkey was a scam artist who took money from investors and used it for purposes other what he had told investors he would use it for. Harkey was a friend of Murray's. [Shimer Deposition at 152-53.] Harkey had been present when Shimer visited Pinder's trading platform in 1999. [Shimer Deposition at 119, 152.]
33. Between at least June 2001 and April 1, 2004, Equity, Shimer and Firth solicited and received over \$14 million from 65 investors for participation interests in Shasta and transmitted most or all of those funds to Tech Traders. [Answer at ¶ 40; Bobo Affidavit at ¶ 5.]
34. Equity solicited interest in Shasta by various means, including individual solicitations by Shimer and Firth, distribution of the PPM drafted by Shimer, and reviewed and approved by Firth, operation of a website, <http://www.shastacapitalassociates.com> (the "Shasta website"), and provision of information to third parties that tout hedge funds to investors on various web sites, including <http://www.hedgeco.net>, <http://www.barclaygrp.com> , and <http://www.hedgefundresearch.com>. [Answer at

¶¶ 29, 42.] The Shasta website reflected the identical trading performance of Tech Traders as reported beginning June 2001 through February 2004, by Tech Traders' accountant, Vernon Abernethy [Answer at ¶ 44; Shimer Deposition at 635; Abernethy Deposition at 371; Exhibit 51.] As of March 2004, the web site reported purported returns totaling over 130% for the period March 2003 to February 2004. [Answer at ¶ 44.]

35. Shimer wrote the content that appeared on the Shasta website, with the technical help of James George and Jeff Evans, webmasters. [Firth Deposition at 477; Shimer Deposition at 354.]

36. On February 17, 2004, Dennis Meyer emailed Firth alleging copyright and piracy violations for the math pages on Shasta's website. Shimer wrote Murray about these communications. [Exhibit 144; McCormack Declaration at ¶ 4.] He was concerned because he had obtained the information on the website from Murray in 2001 and Murray had told him that the information was proprietary and represented a unique trading system he and his son had developed. When Shimer confronted Murray after the contact by Meyer, Murray told him that he had licensed Meyer's system and that he was not using the system anymore. [Shimer Deposition at 1463-70, 1480-81.] The information that Meyer had complained about was still on the Shasta website on February 23, 2004. [McCormack Declaration at ¶ 4.]

37. Shimer drafted an investment agreement between Shasta and Tech Traders, Inc, dated July 6, 2001 that provides that pool funds will be held in the name of Tech Traders. The PPM, also drafted by Shimer, also sets out that funds will be held in the name of the trading company. [Answer at ¶¶ 29, 104; Shimer Deposition at 646, 1023, 1050;

Exhibits 91 at p.10 and 49 at p.11]. Firth read, approved and signed this Agreement. [Firth Deposition at 374-75, 384-85.]

38. The Investment Agreement between Shasta and Tech Traders provided that Shasta's funds would be intermingled with the funds of Tech Trader's other investors. Shimer understood that Shasta's funds would be commingled with the funds of Tech Trader's other investors. [Shimer Deposition at 695; Exhibit 91.] The Investment Agreement also provided that all investors' funds would be treated equally in the superfund. [Exhibit 91; Shimer Deposition at 696-97.]

39. Shasta's first PPM, issued as of June 30, 2001, provided that Shasta "was formed for the sole purpose of providing a limited number of accredited investors with access to a privately managed accelerated equity-growth stock index futures trading "portfolio" system." [Exhibit 49 at 1; Firth Deposition at 346-47.] The first PPM also gave Shasta investors the option to invest a portion of funds with certain managed futures trading funds with a minimum three year track record. The names of these funds, called the hedge funds, were provided by Coyt or Lex Murray and chosen by Shimer. [Exhibits 49 at p. 4 and 485; Firth Deposition at 319.] Four of the five hedge funds were all run by entities then registered with the Commodity Futures Trading Commission as CPOs. [Shimer Deposition at 825; Teague Deposition at 328; Firth Deposition at 319; McCormack Declaration at ¶ 3.] The PPM was revised in February and September 2003. [Exhibits 460 and 93.] In the February revision, the option to invest in the hedge funds was removed. [Shimer Deposition at 1261-62; Exhibit 460.] No Shasta funds were ever invested in the hedge funds. [Firth Deposition at 320; Shimer Deposition at 663-64.] However, information comparing

the hedge funds' performance, to Tech Traders' performance, appeared on Shasta's website. [McCormack Declaration at ¶ 3.]

40. With limited exceptions, Equity, Firth and Shimer did not identify to actual or prospective Shasta investors the identity of Tech Traders. [Answer at ¶ 32.] Nor did Equity, Firth and Shimer identify to actual or prospective Shasta investors the identity of the publicly traded hedge funds. [Teague Deposition at 796.] On the Shasta web site, they are referred to as Funds A through D and Tech Traders is referred to as the Trading Company.
41. Equity used the mail and interstate telephone lines to communicate with investors. [Firth Deposition at 396, 411; Stevenson Deposition at 98.]
42. Shasta had no separate bank account, but operated solely through Shimer's attorney escrow account. [Firth Deposition at 525.] Shimer opened that account, was the sole signatory on it and controlled all funds deposited to it by Shasta investors and wired out to Tech Traders. [Shimer Deposition at 598-99.]
43. Shimer and Firth took as compensation from Equity roughly equal amounts each month. [Firth Deposition at 217; Shimer Deposition at 940; McCormack Declaration ¶ 9.] In addition to taking out payments pursuant to the 5% management fee Equity was entitled to under the Shasta PPM, Shimer and Firth took out other payments pursuant to the undisclosed Shadetree agreement with Tech Traders. Shimer and Firth also took out \$335,000 more from Equity than the 5% management fee allowed. [McCormack Declaration at ¶ 10.]

44. Shimer determined how much money to take out of Tech Traders each month.

[Shimer Deposition at 938.]

45. Murray preferred to use the term “credits”, rather than profits, on the account statements he issued to investors. [Exhibit 474.] He described the term to Shimer as a posting to the account of conditional profit. He also told Shimer that a “credit” was not a profit because of tax implications, which did not make sense to Shimer.

Nonetheless, Shimer did not press Murray on whether the term “credits” meant profits. [Shimer Deposition at 409-11, 1427-30.]

46. On January 10, 2001, Coyt A. “Lex” Murray, sent Shimer an email describing Tech Trader’s trading system. Lex was Coyt E. Murray son and worked with him. He stated that the system had made 52.7% in 19 days which was 26,291 annual percentage rate. Shimer stated that 26,291% was ridiculous. [Exhibit 339; Shimer Deposition at 493-96.]

47. On February 16, 2001, Shimer sent Murray a letter about a prospective investor David Kaplan, who was the developer of a condominium Shimer and his wife owned. [Exhibit 404; Shimer Deposition at 499.] Kaplan was a successful business man and sophisticated investor who had engaged in commodities trading in the past. He told Murray in the letter that he had told Kaplan that he had a client that was trading the futures market with real success, that Murray and his trading company were his legal clients and that he had been following Murray’s trading progress for a year. He told Murray that he had told Kaplan that he would receive 3% return on his investment each month, that 15% would be subtracted for trading and operational expenses and remaining profit would be split 50/50. He asked Murray not to tell Kaplan about the

failed Kaivalya deal with LaTulippe and Leonard (“the Tom and Jerry fiasco”) or the further profit splitting arrangement with Firth and Shimer. [Exhibit 404 at RSC 349, 350, 351.]

48. On March 1, 2001, Shimer wrote another letter to Murray about their meeting with Kaplan. The letter mentioned that Murray was uncomfortable with Kaplan’s questions. [Exhibit 405 at RSC 353.] Kaplan had asked Murray how much money he had in trade, how much profit Murray had made and what future commission merchants (“FCMs”) he traded through. Murray never wanted to tell anyone how much money he had in trade whenever someone asked him and expressed that concern to Shimer again and again. [Shimer Deposition at 505-07.] Shimer noted in his letter to Murray that Kaplan’s question was legitimate and was simple due diligence on his part. Shimer noted an inherent conflict between Murray’s need to maintain his financial privacy and an investor’s need to receive information. [Exhibit 405 at RSC 353.]
49. Kaplan was willing to let Murray trade his money pursuant to a power of attorney in an account in Kaplan’s name. He wanted to keep control of his money. Other investors had also expressed an interest in letting Murray or Tech Traders trade their funds held in the investors’ accounts. [Exhibit 47.] However, Murray told Shimer that he was concerned that the investor could reverse engineer his system if the investor saw trading account statements. [Shimer Deposition at 509-10, 1445-49.] Kaplan never became a New Century or Shasta investor. [Shimer Deposition at 511.]

50. After Shimer's meeting with Kaplan and Murray, Shimer noted that there was an inherent conflict between Murray's need to maintain his financial privacy and an investor's need to do simple due diligence about the soundness of the investment. He told Murray that potential investors would want some assurance that Murray had demonstrated in real time with real dollars an ability to perform consistently and successfully in the futures market. It was then that he first mentioned the idea of obtaining independent verification of Tech Traders returns to Murray. [Exhibit 405; Shimer Deposition at 513.]
51. The Shasta PPM was designed to meet Murray's desire for privacy while providing comfort to investors that the trading results were legitimate. [Exhibit 414.] It provides that all invested funds will be traded in the name of the trader but does not disclose the name of the trader. It also provides for independent verification of the trader's trading results through two undisclosed CPAs. [Exhibit 93 at CFTC 300-02-0011, 0015.]
52. In February or March 2001, Murray told Shimer that he was still communicating with Leonard and that he was thinking of taking money from Leonard for his trading system. [Shimer Deposition at 518.] In February 2002, Shimer learned from a third party that Murray had met with Leonard and a doctor and that Leonard had taken money from the doctor for investment with Murray. [Exhibit 195; Shimer Deposition at 871-72.]
53. Shimer knew that Tech Traders had investors other than Shasta as early as May 2001. He also knew that Tech Traders could be jeopardized by large withdrawals by those investors. [Exhibit 85 at 2.]

54. On April 11, 2001, Shimer sent Murray a letter which described his printing and binding of PPMs for New Century Trading LLC (“New Century”), a Nevis, West Indies limited liability company for foreign investors to invest in Tech Traders. [Exhibit 143.] In the letter, Shimer also stated that he hoped a snafu at a bank would not affect Murray’s ability to pull \$39,000 out of Magnum, a predecessor entity to Tech Traders, to keep Kaivalya investors (“Tom and Jerry people”) at bay. Shimer noted that he was late in making his March payments and that he was trying desperately to keep problem Kaivalya investors quiet while they got the project up and running. [Exhibit 143 at 2.]
55. Shimer first formed New Century Trading LLC in April 2001 for foreign investors to invest in Tech Traders. [Firth Deposition at 134-35, 149-50; Shimer Deposition at 610; Exhibit 405 at RSC 355.] New Century’s manager was Allied International Management, Ltd. [Shimer Deposition at 610; Bobo Affidavit at ¶ 13.] New Century only obtained two investors, International Investment Alliance and MetalChem. [Firth Deposition at 141.] Later, Shimer formed Shasta formed as a Delaware Limited Liability Company. [Shimer Deposition at 396; Exhibit 49.]
56. The PPM stated that the Manager, Equity, had received from Tech Traders “intimate disclosure of the Trading Company’s [Shasta] proprietary System, adequate information about the Trading Company’s real time trading to date, as well as the opportunity for direct “on site” review of its trading operations including real time trade execution to satisfy the Company’s Manager that an investment of a substantial portion of the Company’s funds with the Trading Company presents an extraordinary

opportunity to significantly increase the overall return on investment to the Company while providing intelligent management of investment risk.” [Exhibit 49 at 10.]

57. Before starting Shasta, Firth had visited Tech Traders’ office and watched trading on computer screens. He never saw any documentation of Tech Traders’ trading results. He had no experience with commodity pools, did not know if he had ever reviewed a commodity futures account trading statement and admitted that he had no experience with commodities trading, commodity pool accounting or pool statement preparation. [Firth Deposition at 14-15.] He mainly relied on Shimer’s statements to him that Shimer had placed personal money with Tech Traders and received good results. [Firth Deposition at 359-60.]

58. After initial meetings with Murray in 2000, Firth had very little contact with Murray. Murray preferred to deal with Shimer. [Shimer Deposition at 950-51; Firth Deposition at 169.]

The CPA Verification Process

59. It was Shimer’s idea to obtain an independent certified public accountant (“CPA”) to verify Tech Trader’s trading results. [Shimer Deposition at 525.]

60. Equity employed Elaine Teague from the accounting firm Puttman & Teague to verify Shasta’s investment with Tech Traders. [Exhibit 49 at p. 18.] Shimer chose Teague, who was a dear friend for 20 years, from a small accounting firm in Portland, Oregon. [Exhibit 405, Shimer Deposition at 524-25; Teague Deposition at 304-05.] Shimer knew that a larger, more established accounting firm may not want to take this engagement and that is why he choose Teague. [Shimer Deposition at 533, 636.] Shimer believes Teague is an honest person. [Shimer Deposition at 791.]

61. Neither Teague nor Shimer had any experience calculating rates of return for commodity pools. [Teague Deposition at 306; Shimer Deposition at 38-40.] Teague told Shimer she did not have such experience. [Shimer Deposition at 526-27; Teague Deposition at 307-308.]
62. Shimer told Murray that it was his job to build a “ring of legal protection” between Murray and potential investors while still honoring each investor’s legitimate desire for some type of independent verification of Tech Trader’s performance each month. [Exhibit 405.]
63. Firth had few dealings with Shasta accountant, Elaine Teague (“Teague”). Most of Teague’s interactions on the engagement were through Shimer. [Teague Deposition at 323.]
64. Originally, Teague was going to perform the independent verification of Tech Trader’s trading results. However, Teague wanted original brokerage statements sent to her. She also wanted to review Tech Trader’s bank statements, so that she could verify how much money came into and went out of Shasta, determine how much was traded and verify profits and losses. Murray did not want original statements to be sent anywhere; he wanted statements to be reviewed in his office. Therefore, it was decided that a third party would perform the independent verification. [Firth Deposition at 154-55, 324-26; Shimer Deposition at 625-26.]
65. Originally, Murray had planned to hire Robert Collis, a CPA with Collis and Associates, to perform the independent verification of Tech Traders’ trading performance. [Exhibit 415; Shimer Deposition at 624.] Collis’ accounting firm had performed audits of companies owned by Coyt Murray in the 70’s and 80’s and Collis

had recently prepared Coyt Murray's personal tax returns. [Collis Deposition at 9-10.] Collis declined the engagement, however, because of concerns that the business Tech Traders was in might need to be registered under the securities law, Collis and Associates did not have the expertise to verify performance returns for an investment and the CPA firm's insurer would require an extra premium to cover the engagement. [Collis Deposition at page 18-19; Exhibit 588.] Murray then decided to hire J. Vernon Abernethy ("Abernethy"), a local CPA who had had an office in the same building as Tech Traders, to review and verify Tech Traders' trading results, and supply a monthly trading performance rate of return figure to third parties. [Answer at ¶ 22; Abernethy Deposition at 34-35.]

66. It was decided that Abernethy would perform the verification of Tech Traders' trading results through a set of Agreed Upon Procedures ("AUP"). These procedures were described in a letter that he sent each month to Murray ("AUP letter"). [Abernethy Deposition at 79-80.] Each letter gave a monthly, and sometimes quarterly, return number. [Exhibit 27.] This AUP letter was then forwarded each month by Murray or Abernethy to Teague. Teague took Abernethy's performance number, inserted it into her own letter to Equity and then forwarded her letter with the performance number obtained from Abernethy on to Firth. [Firth Deposition at 159-60.]

67. In order to address investor concerns about profitability, Shimer created the procedure through which Teague would receive verification of Tech Trader's trading results and pass them along to Equity. [Shimer Deposition at 628-69; Teague Deposition at 423.] Firth relied on him to handle the process. [Shimer Deposition at 843.] Teague

performed no independent review of those numbers. But Shimer and Firth made her available to answer investor questions. [Firth Deposition at 160-62.] She was allowed to confirm the performance number each month, but she was not allowed to give investors the name of either Tech Traders or Abernethy. [Exhibits 627, 655; Shimer Deposition at 636.]

68. Abernethy produced these AUP letters or reports covering Tech Traders' trading performance from June 2001 through February 2004. [Answer ¶ 25.]
69. These AUPs were faulty. [Shimer 843-44.] Shimer did not understand them. [Shimer Deposition at 780-789, 976 -978.] Abernethy, claiming to use the formula for determining profit that was written into the contract between Shasta and Tech Traders by Shimer, did not properly account for additions and withdrawals into the Tech Traders' superfund, thus skewing those results and producing a positive rate of return number when there was actually a negative rate of return. [Abernethy Deposition at 131-32; Report of Expert Susan Koprowski at ¶ 10.]
70. Neither Firth, Shimer or Teague knew what Abernethy was reviewing to arrive at a rate of return. [Exhibit 27; Shimer Deposition at 842-43, 861-62.] Shimer knew that Teague did not know what Murray was giving Abernethy to review to determine a rate of return number and he never asked Murray either. [Shimer Deposition at 842-43.]
71. The AUP letters Abernethy produced showed gains for every month or quarter reported on from June 2001 through February 2004. [Answer at ¶¶ 3, 27.] Abernethy reported double-digit gains for at least 23 of the 33 months during this period. The worst performance reported was a purported gain of 4.11% for the month of June

2001, and the next worst performance reported was a purported gain of 9.02% for the month of January 2004. [Answer at ¶¶ 3, 27.]

72. Firth did nothing to investigate Abernethy's background and did not know what, if anything, Shimer or Teague had done to investigate Abernethy's background. [Firth Deposition at 155.]. He was also uncomfortable with Abernethy and wanted Murray to replace him. But he never discussed replacing Abernethy with Murray. [Firth Deposition at 167-69.]
73. Firth did not know why the procedures laid out in the PPM for independent CPA verification of trading company results were structured the way they were structured. [Firth Deposition at 365-69; Exhibit 49 at 18.]. The AUP letter Abernethy wrote did not contain the same procedures that were in the PPM. [Firth Deposition at 365; Exhibit 108.] He also did not fully understand the AUP letter Abernethy produced each month. [Firth Deposition at 471-77.] He thought Abernethy was looking at bank statements although the AUP letter did not say Abernethy was because Shimer told him Abernethy was looking at bank statements. But Firth did nothing independently to assure Abernethy was looking at such statements. [Firth Deposition at 326-27.] Firth acknowledged that the CPA verification process was put in place to provide comfort to investors that the trading results were authentic [Firth Deposition at 160-62.]
74. Shimer first met Abernethy in July 2001. [Shimer Deposition at 675.] He told Teague that he was impressed by Abernethy and that he believed Abernethy had the right credentials to verify Tech Traders' trading performance. [Teague Deposition at 384; Exhibit 655.] Although the PPM stated that Teague would perform due diligence on

the qualifications and reliability of Abernethy, Shimer did nothing to assure that took place. [Shimer Deposition at 644, 672-74.] Shimer had many face-to-face meetings with Abernethy during the engagement and also spoke to him on the telephone frequently. [Exhibits 39, 40, 42, 43, 44, 48, 50, 421, 434, 489, 491, and 516.] Teague never met Abernethy and spoke to him by phone on only four occasions. [Shimer Deposition at 675; Teague Deposition at 488-89, 619; Abernethy Deposition at 276-77, 281-82.] She had no input into the decision to employ Abernethy. [Teague Deposition at 373, 382, 386.] When she did call Abernethy to ask him a question about whether investments were marked to market at the end of the day or the end of the month, he told her that her questions were inappropriate and that she should ask Murray or her client. He expressed irritation that Shimer had made so many requests on him. [Teague Deposition at 629-31; Exhibit 514.]

75. Shimer knew that Abernethy was having financial difficulties. When Shimer first met Abernethy, Shimer learned that Abernethy was getting divorced and splitting up his CPA practice which he had shared with his wife. He was in the process of moving out of his office and starting a practice out of his home when Shimer met him. [Shimer Deposition at 757.] Murray suggested that Equity allow Abernethy to solicit investors for it to make extra money. Abernethy did refer and solicit potential investors to Shimer and Firth and brought one into the Shasta pool – Jerry Pettus. [Answer ¶ 28; Exhibits 435, 475; Firth Deposition at 437; Shimer Deposition at 869-70, 1431-32.]

76. Shimer formulated the mechanism for determining profits in the Tech Trader accounts. [Shimer Deposition at 526, 531.] It was a simple method that Shimer said any sixth grader could do. [Shimer Deposition at 38-39, 530-31, 712-13, 813-14.] He defined it in the Investment Agreement entered into between Shasta and Tech Traders. [Shimer Deposition at 703-04; Exhibit 91.] But he never discussed that this was the method to be used with Abernethy. [Shimer Deposition at 716.] Teague sent Shimer emails in which she explained different CFTC approved methods of calculating rates of return in connection with hedge funds that she was following for Shasta. [Exhibits 426, 430, 433; Shimer Deposition at 857-60.] She told Shimer that she did not have any information on how the performance calculation was done for Tech Traders. [Exhibit 426; Shimer Deposition at 825-26.] These hedge funds all had registered commodity pool operators and all used more complicated methods for determining rates of return than the method established by Shimer. Shimer found Teague's emails describing the various approved methods confusing. He knew that the approved methods were more complicated than what Abernethy was doing to calculate a rate of return. [Shimer Deposition at 812-14.]

77. Teague asked Abernethy what method he was using to calculate the rate of return for Tech Traders. [Exhibit 431.] Abernethy did not answer her question. However, Shimer told her that the method being used was not a CFTC approved method, but a simpler method that he had set up. [Teague Deposition at 504, 542-44; Exhibit 434.]

78. The verification process was slow to get started in 2001. Though Abernethy was hired in July 2001, his first AUP letter verifying returns was not issued until October 2001. This was frustrating to Shimer because he considered it a simple process. [Shimer Deposition at 815-16.]
79. Shimer was Teague's main point of contact on her engagement by Shasta. He was also her point of contact in dealing with Murray and Abernethy to develop agreed-upon procedures to verify the Tech Trader trading results. [Teague Deposition at 302, 322-25, 439-41.] Shimer was central in dealing with any delays, miscommunications or issues in establishing the agreed upon procedures and verification process. [Teague Deposition at 452-56, 458-61, 693-95; Exhibits 489, 491.]
80. At the beginning of her engagement, Teague had expected to receive a report of trading performance created by Coyt Murray along with Abernethy's agreed upon procedures letter verifying the returns. However, Shimer called her and told her that she would not receive the report because Murray had told him it contained information about funds other than Shasta's to which Murray did not want her to have access. [Teague Deposition at 416, Exhibit 37.]
81. Shimer edited the verification letter that Teague sent to Shasta, care of Equity, which passed along Abernethy's verification of Tech Trader's results. [Shimer Deposition at 819-20.] Shimer added to Teague's draft letter explicit language that stated that Abernethy was granted full access to the in-house trading records of Tech Traders and was given the opportunity to review original brokerage statements. [Teague Deposition at 508-10; Shimer Exhibit 19; Exhibits 496, 497; Shimer Deposition at

827-32.] When Abernethy requested a copy of Teague's draft verification letter to review, Shimer, not Teague, sent it to him. [Shimer Deposition at 844, Exhibit 39.] Abernethy crossed out the language in Teague's draft verification letter that stated he was granted full access to records and original brokerage statements. He replaced it with language which stated that Shasta Capital Associates has received and accepted as reasonable and reliable for the purpose for which it is to be used the agreed-upon procedures established between Abernethy and Tech Traders. Shimer did not tell Teague that Abernethy had made those changes to her letter. [Teague Deposition at 515-17.] He also did not object to Abernethy's changes but accepted them all word-for-word. [Exhibit 40; Shimer Deposition at 833-35.] When Abernethy requested copies of Teague's final verification letter, Shimer sent them to him, not Teague. [Shimer Deposition at 844; Teague Deposition at 530-31; Exhibit 42.] Despite Abernethy's edits, the Shasta PPM continued to state that original brokerage statements were being reviewed. [Exhibits 49, 460, 93.]

82. Sometime in early 2002, Shimer took over the drafting of Tech Traders' monthly reports (account statements) to Shasta. Because Murray was slow in getting account statements to Equity, Shimer went back to the beginning of the relationship and recomputed all the balances based on Shimer's own records. He took the verified performance number that Abernethy reported to Teague each month, accounted for Shasta's additions and withdrawals each month and computed Shasta's ending balance, then sent the report to Murray, who sometimes gave him mathematical corrections. Murray was supposed to forward the report to Firth, but that did not always happen. [Shimer Deposition at 885-93; Exhibit 439.] Sometimes Shimer gave

it directly to Firth. [Exhibit 439; Shimer Deposition at 886-87.] Then Firth sent it on to Teague. [Id.] Firth knew that Shimer was preparing Tech Trader's reports to Shasta. [Firth's Response to CFTC's Requests to Admit at ¶ 5.]

83. Teague relied on Tech Trader's report on Shasta as a third party confirmation of Shasta's balances with Tech Traders. [Teague Deposition at 363-65.] She did not know that Shimer was preparing these reports. [Shimer Deposition at 1362-63; Exhibit 466.] In fact, Shimer sent her an email that stated that he would request that Tech Traders reissue a Tech Traders statement to Shasta that did not have an adjusting entry on it for Equity's management fee. [Exhibit 520 at CFTC-404-01-1252-53.]
84. At the beginning of the engagement, in July 2001, Shimer sent Teague sample letters to be sent by her to both Shasta and New Century that showed the type of information Shasta wanted to see from her and her firm. [Exhibit 419.] The sample letter contemplated Teague computing the beginning and ending balances of Shasta's balance with Tech Traders. Teague told Shimer that Shasta's beginning and ending balance information should come from Tech Traders, not Shasta and not Puttman & Teague. [Teague Deposition at 429-32.]
85. Shimer was not pleased that he had to prepare Tech Traders' reports to Shasta each month. He told Murray that sufficient funds were being generated from the trading to hire a bookkeeper to do the reports and told Murray he should do that. Murray said he would do so and asked Shimer to provide instructions for the bookkeeper to take over preparing the reports. Shimer put together detailed instructions for such a

bookkeeper but Murray told Shimer he never hired one and Shimer continued to prepare the reports. [Shimer Deposition at 900-02; Exhibit 98.]

86. At some point, Shimer and Murray agreed that they would assume that Shasta's fund began trading 8 days after Shimer sent them to Tech Traders. At the end of the month, Shimer would ask Murray how many trading days there had been in the month then compute the rate of return on the funds based on the assumption that Tech Traders began trading them 8 days after Shimer sent the funds to it. [Shimer Deposition at 897-900.]
87. One of the subscription documents that each Shasta investor received and signed was an Agreement for Independent Verification of Shasta Capital Associates Profits and Losses. [Exhibit 97; Shimer Deposition at 846; Stevenson Deposition at 91-92]. This agreement was created to "fully describe the mechanism and procedure to provide [Shasta investors] "with reasonable assurance that the numbers regarding profit and loss reported by Shasta to [the investor] as a result of[Shasta's] investment with [Tech Traders] [were] accurate." [Exhibit 97 at 1.] Shimer drafted this agreement. [Shimer Deposition at 846.] The agreement also states that Shasta's CPA "has received separate written verification that the original unaltered brokerage statements of the trading company were reviewed and verified by an independent CPA for the monthly reporting period in question. [Exhibit 97 at 3.] Although the agreement described what Shasta's accounting firm was supposed to do for Shasta investors, Teague never saw the agreement. [Teague Deposition at 532-33.]
88. Shimer wanted Abernethy to verify that Tech Traders had on deposit with its brokerage firms sufficient funds to cover the amount Shasta and a small foreign fund,

New Century, had on deposit with Tech Traders and spoke to Abernethy about performing this additional verification. He told Teague that he did not need verification of Tech Traders' actual balance, although he was aware that Tech Traders had other investors besides Shasta and New Century. [Exhibits 44, 85, 434, 483; Teague Deposition at 561-62; Shimer Deposition at 718, 1022, 1473.] Teague never spoke to Abernethy about this minimum account verification. [Teague Deposition at 563-64.]

89. Shimer drafted a letter to Abernethy from Teague and a reply from Abernethy to Teague which would verify that the amount of funds Tech Traders held in brokerage accounts exceeded Shasta's and New Century's deposits with Tech Traders. He sent the proposed verification letters to Abernethy. [Shimer Deposition at 1347-48; Teague Deposition at 568-69; Exhibits 44, 465.] Abernethy told Shimer that he would not verify anything with regard to a foreign company like New Century but would only verify that Tech Traders had enough on deposit to cover Shasta's deposits. Shimer told Teague that was fine as New Century investors would not call and ask her about Tech Traders' balances. [Exhibit 501.] Teague talked to Shimer about why Abernethy could not confirm New Century's balances too and Shimer told her he did not understand why Abernethy would not but he was willing to go ahead with a minimum account verification that included only Shasta. [Teague Deposition at 578-79.]

90. Teague told Shimer on more than one occasion that Abernethy's verification that Tech Traders had an amount on deposit that exceeded Shasta's deposits to Tech Traders did not go far enough because it did not assure that Tech Traders had enough

on deposit to cover all investors' deposits to the super fund. [Teague Deposition at 573-74.] On December 30, 2003, she sent Shimer an email in which she again stated that Abernethy's verification that the minimum amount in the super fund balance is at least the amount Shasta has in trade at the end of a reporting month really didn't say much unless he verified that the trader can account for everyone's funds at the end of the month. She asked Shimer what Abernethy was verifying and noted that if he charged that much, he should be verifying that if the fund closes, all accounts could be paid in full. [Exhibit 470.] Teague thought that it should be a simple process for Abernethy to verify the entire Tech Traders account if he is looking at the brokerage statements. [Teague Deposition at 660-62.] Shimer does not recall giving Teague any response to her questions or email. [Shimer Deposition at 1407-09.]

91. Abernethy did not want to verify that Tech Traders had enough on deposit to cover Shasta's deposits to it because such verification did not assure that Tech Traders had enough on deposit to cover all of Tech Traders' investors. [Abernethy Deposition at 330-33.] Shimer had to press Abernethy and Murray to get Abernethy to provide the balance verification, even though Shimer thought it would be a simple task. Only after Shimer told Murray that he would have Teague provide the verification instead did Murray tell Shimer that Abernethy would do it. [Shimer Deposition at 853-54.]

92. Abernethy did not use Shimer's draft letters for this minimum account verification. [Shimer Deposition at 1351; Exhibit 465.] Eventually, he agreed only to add a sentence to his AUP letters quarterly, rather than monthly, that stated that the amount in Tech Trader's brokerage accounts exceeded a particular amount. [Abernethy Deposition at 334; Exhibits 34, 502; Teague Deposition at 579-81.] This statement

did not verify that the amount Tech Traders held in its brokerage accounts at least equaled or exceeded the amount Shasta had on deposit with Tech Traders. [Shimer Deposition at 1355-58.] Abernethy was initially paid an extra \$500 to add this sentence, and later paid \$1000. [Exhibit 47, 447.] Abernethy only sporadically performed this minimum balance verification. On three occasions, he verified a minimum balance that was lower than the amount Shasta's statements reflected it had on deposit with Tech Traders. [McCormack Declaration at ¶ 5.]

93. On December 29, 2003, Teague emailed Shimer that an investor, Paul McManigal, was concerned because one of his other hedge funds had closed due to fraudulent activity. He was concerned about the minimum account verification because just verifying Shasta's amount did not verify that the overall fund could be short. Teague asked Shimer if Abernethy could verify there was enough in Tech Traders' accounts to cover all investors for year end 2003. Shimer responded that McManigal had spoken to Firth about this concern on several occasions. However, Shimer did not want to re-negotiate what Abernethy was doing and told Teague that McManigal could just lighten up his investment if he was concerned- the minimum verification that Tech Traders had enough to cover Shasta only was enough for Shasta's purposes. Teague continued to press Shimer the next day, asking what Abernethy was doing and noting that he must already be doing something like an account balance verification. [Exhibits 447, 470; Teague Deposition at 657-60.]

94. On January 20, 2004, Shimer sent Murray a letter in which he requested that Abernethy send Teague an additional sentence about the minimum amount in Tech Traders' brokerage accounts, which he had been providing every quarter. Shimer

also stated that Shasta had placed enough funds that the minimum account verification should be done every month. He stated that this minimum account verification would be particularly helpful because Arnold & Porter had told him the CFTC would look at Shasta as a Ponzi scheme because the performance numbers were so good. He asked if Abernethy could verify that there were more funds in the account than Shasta had deposited and noted that the net amounts being reported to New Century and Shadetree were \$2.8 million and the amount Shasta had on deposit was \$12,076,871. He asked Murray to have Abernethy verify that there was \$14.5 million in the trading accounts. [Exhibit 48; Shimer Deposition at 996-998.]⁵ He emailed Teague on January 21, 2004 to tell her that he had requested that additional verification. [Exhibit 516.] This additional verification, had it occurred would not have satisfied Teague because it still did not assure that Tech Traders had enough on deposit to cover all investors. [Teague Deposition at 662-63.] However, Abernethy persisted in verifying only an amount that covered Shasta's deposits by adding a sentence at the bottom of his January 2004 AUP letter that stated that total funds in the brokerage accounts as of December 31, 2003 exceeded \$12.7 million. [Exhibit 517.] Shimer emailed Teague on February 3, 2004 to tell her that she would receive a revised letter from Abernethy referencing the \$12.7 million balance as of the end of December and stating that Murray only wanted Abernethy to refer to what Shasta's balance was and not have Abernethy verify more, which did not make a lot of sense to him. However, he told Teague that she would receive the minimum verification every month from then on. [Exhibit 449.]

⁵ Note – the reference in the Shimer Deposition excerpt to Exhibit 449 is an error. The exhibit that was discussed at that point in the deposition was exhibit 48.

95. On February 16, 2004, Teague emailed Firth that she thought Abernethy was going to verify the Shasta funds in Tech Traders' account on a monthly basis. He had not done so for January 2004. Firth replied that he would have to talk to Shimer as Shimer had dealt with Murray and Abernethy on the issue. [Exhibit 531.]
96. As of April 3, 2004, two days after this case was filed, Shimer was still attempting to get Abernethy to provide the minimum account verification on a monthly, rather than a quarterly, basis, albeit still only a verification that Tech Traders held funds that would cover Shasta's deposits only. [Exhibit 448.] This monthly verification never occurred. [Teague Deposition at 673-74.]

Other Red Flags About Murray and Tech Traders

97. On August 7, 2003, Shimer sent a letter to Murray in which he told Murray that he had just wired \$103,950 to him and asked Murray to send the money directly to Kaivalya's account rather than to invest it for Shasta. This was investor money. Shimer was asking for it to give to Firth. He did not ask for the money from Shadetree's account with Tech Traders because Murray did not like Shimer to request to withdraw money right away. [Shimer Deposition at 940-41, 948-49; Exhibit 443.]
98. Shimer also asked Murray for at least \$220,000 from the Shadetree account to Shimer's Kaivalya bank account on January 20, 2004. [Exhibit 48.] Murray was balking at this withdrawal request because the CFTC was looking at Tech Traders now. He told Shimer he was also concerned that he might have large withdrawals from other "lenders" because they were not accredited investors. Shimer said that did not make a lot of sense to hold up a \$220,000 withdrawal, given that there was a

balance of about \$15 million between Shasta, New Century and Shadetree. [Shimer Deposition at 1000-01.]

99. Murray did not want anyone to know the amount Tech Traders had in its trading accounts. Shimer was willing to accommodate Murray and did not insist on knowing how much money was in the super funds. [Shimer Deposition at 731-33; Exhibit 91.] Shimer never told Teague that Murray would not allow Abernethy to verify the whole superfund. Had she known this, it would have been a big red flag as she did not know of a legitimate reason why Murray would not disclose this information. [Teague Deposition at 660.] Shimer also never told Arnold & Porter this information. [Lee Deposition at 38.] Lee would have been concerned had she know this information that the investors would not be able to get their money back. [Id.]

100. Some investors and prospective investors of Shasta asked why the fund was not audited. [Exhibit 446; Shimer Deposition at 515-16.] Teague told Shimer that an audit of Shasta would be meaningless without an audit of Tech Traders because all the funds of Shasta were with Tech Traders. [Shimer Deposition at 801, 1244-45.] She also suggested that Shasta and Tech Traders obtain auditors recognized in the industry because she and Abernethy were not. [Exhibit 445.]

101. Shimer told investors that Equity was considering an audit in 2004. But he knew that an audit might never occur. He told Teague that the lack of an audit would mean that institutional investors would never invest in Shasta but that he did not care, as long as Murray was happy. And Murray did not want Tech Traders audited. [Exhibit 446 at CFTC 404-01-2527, 2529.]

102. Murray explained to Shimer that he was concerned that an audit could disclose his trading methods. Shimer did not know how an audit would disclose those methods. [Shimer Deposition at 1380-81.] Firth and Teague did not think it likely that an auditor would try to figure out Murray's trading methods. [Firth Deposition at 485-87; Teague Deposition at 647-48; Exhibit 468 at page CFTC 404-01-2525-2526.] Teague explained to Shimer in an October 2003 email how an auditor obtains information from a client for an audit, that it would take a lot for an auditor to figure out Murray's trading methods and that it was not the job of an auditor to determine whether Murray's method of trading was correct, just to determine that trading is done legitimately, documented properly and accounted for correctly. She suggested that she or Shimer talk to other hedge fund managers to determine how they conducted audits. Shimer did not follow Teague's suggestion because he knew Murray was not ready for an audit and it would therefore be a waste of time for him to talk to hedge fund managers. [Shimer Deposition at 1386-91; Teague Deposition at 646-49.]

103. Teague really began to push Shimer for an audit of Tech Traders at the end of 2003 because all of Shasta's money was invested in Tech Traders and there were more investors and more money than when she began the engagement. [Teague Deposition at 636-39.]

Notice of Equity's Registration Requirements

104. While in the formation stages of Shasta and New Century in the spring of 2001, Shimer was concerned that Murray and Tech Traders were bringing other

investors besides Shasta into an investment vehicle that was not in compliance with the law. [Shimer Deposition at 572.]

105. On June 14, 2001, Shimer sent Murray a letter in which he stated that it is his understanding that when Tech Traders or Magnum take money from investors, they may be required to register with the CFTC as a commodity trading advisor (“CTA”) or CPO. He asked Murray in the letter if he had researched this issue thoroughly with his attorney. [Exhibit 414.] Murray told him that he had received a legal opinion that Tech Traders did not have to register because it had less than 15 investors. Shimer just accepted that explanation without questioning it. [Shimer Deposition at 576-78.]

106. The issue of whether Shasta had to register as a CPO with the CFTC first came up in the fall of 2001 when Shimer had Firth send a copy of the Shasta PPM to an attorney friend, Andre Alonzo, who had contacts with sophisticated corporate investors. Alonzo sent the PPM to a client named Chuck who worked for Chase Manhattan Bank. Chuck asked if Shasta was required to register with the CFTC. [Shimer Deposition at 579-81.] Shimer then researched CFTC regulations and put together a memorandum that concluded that Shasta did not have to register as a CPO. [Exhibits 411, 412.] Shimer forwarded the memorandum to Alonzo who forwarded it to Chuck who forwarded it to Chase’s legal department. Shimer then received a verbal response through Alonzo that Shasta did not have to register. After receiving this third-hand verbal feedback, Shimer did nothing more until 2003 to determine Shasta’s or Equity’s registration requirements. [Shimer Deposition at 583-85, 591.]

107. Shimer reviewed the CFTC Part 4 regulations in 2001 and was aware that even if a CPO qualified for an exemption from registration with the CFTC, that CPO

had to file a notice of exemption with the NFA or the CFTC. [Shimer Deposition at 589-590; 607; Exhibits 410, 411.]

108. Shimer did not do anything else to assure that Shasta or Equity was in compliance with registration requirements until the fall of 2003, when a prospective investor, Mark Munson, called the CFTC with investor Nicholas Stevenson to inquire about Shasta's registration requirements. [Shimer Deposition at 696.] Munson and Stevenson were told that Shasta was required to register and called Shimer and Firth to tell them that. [Firth Deposition at 395-98; Stevenson Deposition at 80-81.] After receiving this phone call from Munson and Stevenson, Shimer hired Arnold & Porter to review Shasta's registration requirements. [Shimer Deposition at 1304; Exhibits 538, 657.]

109. Arnold & Porter was hired in October 2003. [Exhibit 535.] Arnold & Porter attorneys Geoffrey Aronow and Susan Lee ("Lee") worked on the engagement. [Lee Deposition at 17; Exhibit 549 at 4.] Aronow was Director of Enforcement of the CFTC from 1995 to 1999 and Lee served as Chief of Staff of the CFTC from 1996 to 1999. [Exhibit 549.] Most of Lee's contact on the engagement was with Shimer. [Lee Deposition at 24-25; Exhibit 536.]

110. Arnold & Porter told Shimer at the beginning of the engagement that Shasta was a commodity pool and that they believed Tech Traders was a commodity pool. [Lee Deposition at 21-22.] Arnold & Porter also told Shimer at the beginning of the engagement that Tech Traders could not trade Shasta's funds in its own name or commingle its funds with Shasta's. The firm told Shimer that that was one of the

aspects of the relationship between Shasta and Tech Trader's that would have to be changed. [Lee Deposition at 30-31.]

111. Arnold & Porter reviewed Shimer's legal analysis, which Shimer updated in 2003, which concluded that Shasta was not a commodity pool because it was not directly trading commodity futures contracts and told him that the firm disagreed with that analysis. The firm told him that he was not taking into account the Commissions regulations that state that a fund-of-funds like Shasta is itself a commodity pool. The firm also told him his analysis that Shasta or Equity did not receive compensation because it was only paid if there were profits was incorrect. [Lee Deposition at 57-59; Shimer Deposition at 607; Exhibit 412.]

112. Arnold & Porter told Shimer that Equity might qualify for an exemption from registration as a fund-of-funds if Tech Traders was in regulatory compliance. However, the firm needed to know more about Tech Trader's structure to complete its analysis. Shimer understood that Equity would have to file for an exemption if it qualified for one. [Shimer Deposition at 592-95; Lee Deposition at 12-14, 23-24.]

113. Arnold & Porter told Shimer and Firth that because Shasta's registration requirements hinged on Tech Trader's registration requirements, it was advisable to go to the CFTC with Tech Traders to cure regulatory deficiencies. [Shimer Deposition at 592-93.]

114. Arnold & Porter advised Shimer that Tech Traders should retain its own counsel experienced in commodities law to determine its requirements to register under the Commodity Exchange Act. [Lee Deposition at 53-54; Exhibit 540.]

115. Arnold & Porter told Shimer that Shasta should meet with the CFTC with Tech Trader's counsel as soon as possible to attempt to cure any regulatory deficiencies. [Exhibits 543, 548.] Although Arnold & Porter expressed a sense of urgency in contacting the CFTC, Shimer reported to Arnold & Porter that Tech Traders did not share that sense of urgency. Lee sent Shimer two emails in December 2003, on the 2nd and the 11th, in which she emphasized the urgency in meeting with the CFTC to deal with regulatory issues. Firth received both of these emails. In the email on December 2, Lee told Shimer that her firm was growing increasingly concerned about Tech Trader's failure to come forward on registration issues and its motives for ignoring Shimer's suggestions to seek counsel on the matter. Lee also told Shimer that Arnold & Porter was concerned that Shasta was exposed to charges that it was operating an unregistered and illegal commodity pool. [Exhibit 543.]

116. On December 11, 2003, Lee spoke to Shimer again about her firm's concerns and the urgency of coming forward to the CFTC. [Exhibit 548.] Shimer had met face-to-face with Coyt Murray the day before. He reported to Lee that Murray continued to assert that Tech Traders did not have to register and that he was concerned that any registration would require him to disclose his specific trades and trading strategies to investors. Lee told Shimer that Arnold & Porter was concerned that Murray did not have a correct understanding of Tech Trader's legal obligations, including an obligation to register once it accepted other investor's funds. Lee also told Shimer that CPO registration would not require Tech Traders to disclose specific trades or trading strategy. [Exhibit 548.]

117. Lee also told Shimer that Arnold & Porter was concerned that as of December, Tech Traders had had two months to obtain counsel and had not yet done so. Shimer told Lee in response that Shasta had had to exercise patience with Tech Traders and let it proceed at its own pace. Lee repeated Arnold & Porter's concern expressed in the December 2, 2003 email, that Shasta could be exposed to charges that it was an illegal commodity pool and that it aided and abetted Tech Trader's operation of an illegal commodity pool, which could expose it to substantial penalties and a trading ban. [Exhibit 548.] These concerns were repeated yet again in a memorandum Arnold & Porter sent to Shimer and Firth on December 18, 2003. [Exhibit 553.]
118. Shimer repeated Lee's concerns to Murray in a letter on December 12, 2003. He told Murray that he had been thinking about how to avoid a CFTC enforcement action. He reiterated Arnold & Porter's concerns that Shasta was taking an unnecessary risk in failing to contact the CFTC first and that Lee had told him that one of the possible enforcement actions could be that Shasta would be forced to withdraw all its funds from trade with Tech Traders. [Exhibit 549.]
119. Lee also told Shimer that Shasta could not just register on its own if Tech Traders was not in regulatory compliance because the CFTC would not let Shasta trade through an illegal commodity pool. [Lee Deposition at 85-88.] She told Shimer and Firth that Shasta would likely have to sever its relationship with Tech Traders if it met with the CFTC without Tech Traders. [Lee Deposition at 93-95; Exhibit 544.]
120. Aronow told Shimer and Firth that Murray was apparently unable to articulate why Tech Traders did not need to register under the Commodity Exchange Act and

that Tech Traders needed to get legal representation to determine its position so that Arnold & Porter could represent Shasta's interests. He also expressed the urgency in doing so that Lee had expressed to Shimer. [Exhibit 547.]

121. Shimer often told Lee that Coyt Murray was a secretive man that had to be treated with kid gloves. Shimer could work with him but had to exercise patience because Murray had made it clear that Shasta would not be allowed to trade through Tech Traders if Shasta did not like the way Tech Traders traded. Shimer told Lee that Shasta wanted to continue to trade through Tech Traders because it was a very good opportunity for them. [Lee Deposition at 106-07; Exhibit 538 at p. 1 and 548.]

122. Lee spoke to Shimer about the performance verification process. He told her that the local CPA (Abernethy) who was verifying the returns was independent and was a very qualified individual. [Lee Deposition at 34.]

123. Finally, on December 31, 2003, Tech Traders hired McDermott, Will & Emery ("McDermott") to represent it. [McCormack Declaration at ¶ 17.]
McDermott hired Bud Hallberg as a consultant. Shimer discussed possible ways Tech Traders could avoid registration with Budd Hallberg and Coyt Murray. He suggested that Shasta become a direct investor in Tech Traders as a shareholder holding preferred non voting shares and that the Tech Traders' other "lenders" be restructured as similar shareholders or become investors of Shasta. [Exhibits 483, 579.]

124. On January 13, 2004, Shimer sent Lee a letter attaching a facsimile he had received from a Shasta investor. The Shasta investor, Dr. Alfred Lopez, had sent Shimer a letter from the CFTC which indicated that the CFTC was conducting an

investigation. [Exhibit 558; Lee Deposition at 136-37, 140.]

125. Lee and Aronow had a conversation with Shimer in December 2003 after Lee and Aronow reviewed part of the Shasta website and saw the high performance returns. They asked Shimer how he had assured himself that Tech Traders was not a Ponzi scheme. He told the lawyers that he had visited Tech Traders, was confident that Murray was doing the trading he said he was doing and that there was independent verification by not one but two CPAs. [Lee Deposition at 38-40, 122-24; Exhibits 48, 536.]

Solicitation of Shasta Investors

126. Teague talked to prospective and actual investors of Shasta usually after they had spoken to Firth or Shimer. She often provided feedback to Shimer about what she had said to investors and Shimer gave her feedback about how she had handled the investors or prospective investors. [Teague Deposition at 603-05, 649-52; Exhibits 510, 468, 469.]
127. Both Shimer and Firth talked to investors and prospective investors about investing in Shasta.. Shimer told investors that he had done proper due diligence on Tech Traders and the CPAs involved in the verification process. Both Shimer and Firth talked to investors about Tech Traders' trading philosophy and the performance verification process. [Stevenson Deposition at 45-48; Exhibits 404, 405, 446, 449.]
128. Shimer did not give Abernethy's name to investors. He was referred to in the Shasta PPM only as "the accounting firm located near the trading company" and Teague was prohibited from revealing Abernethy's name. [Teague Deposition at 656;

Exhibits 93 (at CFTC 300-02-0015) and 515; Stevenson Deposition at 50-51.]

Instead, Shimer vouched for Abernethy's credentials and ability. [Stevenson Deposition at 99-100, 115.] When a prospective investor, Mark Munson, requested to speak to Abernethy directly, Shimer put him off. He complained to another investor, Stevenson, that his written assurance as an attorney in good standing with the Massachusetts Bar for 30 years was not sufficient reliable verification that the local CPA had excellent references and was in good standing. [Exhibit 656 at CFTC 308 03 0012-13.]

129. Shimer did not want potential investors to circumvent Equity so he restricted their access to Coyt Murray. He did not want to lose out any potential commissions. [Shimer Deposition at 418-19.] Shimer drafted a non-disclosure agreement which he made investors sign before they could meet Coyt Murray, the principal of Tech Traders. The non-disclosure agreement required that an investor forfeit all "profits" from the venture if he or she disclosed the trader's name to anyone. [Shimer Deposition at 983; Firth Deposition at 461-63; Stevenson Deposition at 118-19; Exhibits 107 and 659.]

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Respectfully submitted,



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