

Elizabeth M. Streit, Lead Trial Attorney  
Scott R. Williamson, Deputy Regional Counsel  
Rosemary Hollinger, Regional Counsel  
Commodity Futures Trading Commission  
525 West Monroe Street, Suite 1100  
Chicago, Illinois 60661  
312-596-0537  
ES-2235  
SW-9752  
RH-6870

Paul Blaine  
Assistant United States Attorney  
for the District of New Jersey  
Camden Federal Building & U.S. Courthouse  
401 Market Street, 4<sup>th</sup> Floor  
Camden, NJ 08101  
856-757-5412  
PB-5422

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

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.

**Civil Action No: 04 CV 1512**

[Proposed] Order Granting  
Plaintiff's Motion for Partial  
Summary Judgment and  
Entering a Permanent  
Injunction and Other Ancillary  
Relief Against Equity Financial  
Group LLC, Vincent Firth and  
Robert W. Shimer

Judge Robert B. Kugler

This matter came before the Court on Plaintiff Commodity Futures Trading Commission's ("CFTC" or "Commission") Motion for Partial Summary Judgment Against Defendants Equity Financial Group, LLC ("Equity"), Vincent J. Firth ("Firth") and Robert W. Shimer ("Shimer") on charges that they violated §§ 4k(2), 4m and 4o(1) of the Commodity Exchange Act ("the Act"), 7 U.S.C. §§ 6k(2), 6m and 6o(1) (2002). The Commission also moves for summary judgment on its charges that Shimer aided and abetted Equity's § 4m violation and Tech Traders' violation of Regulation 4.30, 17 C.F.R. § 4.30 (2005).

On April 1, 2004, the Commission filed a Complaint against Defendants Equity, Tech Traders, Inc, Firth and Shimer seeking injunctive and other equitable relief for violations of the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. §§ 1 et seq. (2002), and Regulations promulgated thereunder, 17 C.F.R. §§ 1 et seq. (2005). On June 24, 2004, the Court granted a Consent Order of Preliminary Injunction and Other Ancillary Relief Against Equity, Firth and Shimer. On August 10, 2004, the Court granted the Commission's Motion to Amend the Complaint and on August 12, 2004, the Commission filed its First Amended Complaint, adding defendants Tech Traders, Ltd., Magnum Capital Investments, Ltd., Magnum Investments, Ltd., Coyt E. Murray and J. Vernon Abernethy to its action. The Court having considered all moving papers, filings and exhibits as well as the record in this case grants Plaintiff's Motion For Partial Summary Judgment as follows:

## **I. FINDINGS**

The Court makes the following findings of fact:

1. This Court has jurisdiction over the subject matter of this action and all parties hereto pursuant to Section 6c of the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. § 13a-1 (2001), which authorizes the Commission to seek injunctive relief against any

person whenever it shall appear that such person has engaged, is engaging or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation or order thereunder.

2. Venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2001), in that the Equity Defendants are found in, inhabit, or transact business in this district, and the alleged acts and practices in violation of the Act have occurred, are occurring, or are about to occur within this district, among other places.

3. Plaintiff 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.* (2005).

4. 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. Equity was the manager of Shasta Capital Associates; a Delaware limited liability company ("Shasta"). Shasta was a commodity pool. But for 1% of initial deposits, Shasta's funds fed to the Tech Traders' "super fund" master pool.

5. Equity is not and has never been registered with the CFTC in any capacity, nor has it filed an exemption from registration.

6. Defendant Vincent J. Firth ("Firth") resides in Medford, New Jersey and is the President and sole shareholder of Equity.

7. Defendant Robert W. Shimer ("Shimer") resides in Leesport, Pennsylvania and is legal counsel for Shasta Capital Associates, LLC ("Shasta") and Equity.

8. Defendant Coyt Murray (“Murray”) was the president and CEO of Tech Traders and was Tech Traders’ primary contact person in dealing with potential participants. Murray and Tech Traders operated out of an office in Gastonia, North Carolina. 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.

9. From June 2001 through March 2004, defendants Equity, Firth and Shimer solicited almost \$15 million of onshore and offshore investments via Shasta and New Century Trading LLC (“New Century”) 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.

10. Defendants Tech Traders and Murray solicited and accepted almost \$15 million from Equity, Firth, and Shimer to trade commodity futures contracts. 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.

11. 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. 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. 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 at least \$7.6 million trading commodity futures contracts and other financial instruments in the accounts that held Shasta, and other third-party funds.

12. 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 ("PPM").

13. 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. The Shasta PPM falsely states that Firth holds an NASD Series 7 license. The Shasta PPM does not disclose that Firth has no prior experience with commodity futures trading or with operation and management of a commodity pool.

14. 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. 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.

15. 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. He took and passed the Series 3 examination required for APs in the futures industry in 1986. Shimer was not registered as an AP of Equity.

#### **Defendants’ Past Business Dealings**

16. In January 1999, Shimer was involved in the formation of a Nevada corporation called Kaivalya Holding Group, Inc. (“Kaivalya”). Shimer was an officer, director and shareholder in Kaivalya. Through Kaivalya, Shimer and others collected money from investors for various investments.

17. Shimer and others collected a total of over \$ 2 million from investors for investments that failed. The last investment, involving over \$1.3 million of investor money, was supposed to be invested in a trading system developed by Coyt Murray, through Jerry LaTulippe (“LaTulippe”) and Thomas Leonard (“Leonard”). None of these failed investments is disclosed in the Shasta PPM.

18. Shimer received a lot of pressure from unhappy Kaivalya investors who had not been repaid. He was threatened with lawsuits and told by investors that they would report him to governmental authorities.

19. Shimer met Coyt Murray in 1999 in the Bahamas in connection with his investment of Kaivalya money through LaTulippe and Leonard. Murray told him he had licensed his system to Hubert Pinder.

20. Firth and Shimer met in 1998 or 1999, during an (ultimately) failed investment deal known as Badische Trust ("Badische.") 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. The Shasta PPM does not disclose this failed investment deal.

#### **The Formation of Shasta**

21. 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. 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. 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.

22. 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. Murray also told Shimer that he returned money given to him for trading to Pinder after suffering a loss

23. 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.

24. 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 money to David Perkins, a former Kaivalya associate and principal of Universe, a Shasta investor.

25. Shimer prepared Shasta's PPM, Shasta's Operating Agreement and all attendant subscription documents. 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.

26. 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 PPM.

27. 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. This agreement, and the \$1.3 million paid under it, were not disclosed in the Shasta PPM and were not otherwise disclosed to Shasta investors or potential investors.

28. 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.

29. 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.

30. Equity solicited interest in Shasta by various means, including individual solicitations by Shimer and Firth, distribution of the PPM drafted by Shimer, 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>. 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. As of March 2004, the web site reported purported returns totaling over 130% for the period March 2003 to February 2004.

31. Shimer wrote the content that appeared on the Shasta website, with the technical help of James George and Jeff Evans, webmasters.

32. 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. 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. As of February 23, 2004, the information Meyer had complained about was still on the website.

33. 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. Firth read, approved and signed this Agreement.

34. 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. The Investment Agreement also provided that all investors' funds would be treated equally in the superfund.

35. Shasta's first PPM, issued as of June 30, 2001, 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, Coyt's son, and chosen by Shimer. Four of the five hedge funds were all run by entities then registered with the Commodity Futures Trading Commission as commodity pool operators ("CPOs"). The PPM was revised in February and September 2003. In the February revision, the option to invest in the hedge funds was removed. No Shasta funds were ever invested in the hedge funds. However, these hedge funds were still listed on Shasta's website as Funds A through D for comparison purposes to the Tech Traders' performance numbers.

36. With limited exceptions, Equity, Firth and Shimer did not identify to actual or prospective Shasta investors the identity of Tech Traders. Nor did Equity, Firth and Shimer identify to actual or prospective Shasta investors the identity of the publicly traded hedge funds.

37. Equity used the mail and interstate telephone lines to communicate with investors.

38. Shimer and Firth took as compensation from Equity roughly equal amounts each month. 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 took out \$335,000 more from Equity than the 5% management fee allowed. Shimer determined how much money to take out of Tech Traders each month.

#### **Defendants' Failure to Properly Investigate Tech Traders**

39. Murray told Shimer repeatedly throughout their relationship that he did not want Shimer or any investors to know how much he had in trade.

40. 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.

41. While Shimer was forming Shasta and a foreign investment vehicle, New Century Trading LLC ("New Century"), he was still trying desperately to pay back Kaivalya investors to keep them quiet.

42. 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. He mainly relied on Shimer's statements to him that Shimer had placed personal money with Tech Traders and received good results to go forward with the formation of Shasta.

43. 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. He decided to balance those interests by employing a certified public accountant ("CPA") to verify Tech Trader's trading results.

44. Equity employed Elaine Teague from the accounting firm Puttman & Teague to verify Shasta's investment with Tech Traders. Shimer chose Teague, who was a dear friend for 20 years, from a small accounting firm in Portland, Oregon. Shimer knew that a larger, more established accounting firm may not want to take this engagement and that is why he choose Teague.

45. Firth had few dealings with Teague. Most of Teague's interactions on the engagement were through Shimer.

46. Originally, Teague was going to perform the independent verification of Tech Traders' trading results. However, she wanted to look at original brokerage statements and bank statements but Murray did not want these documents to leave his office. Therefore, it was decided that a CPA local to Murray would be engaged.

47. Murray's long-time accountant, Robert Collis, turned down the engagement because of concerns that a) Tech Traders should be registered, b) his firm did not have the expertise to verify investment returns and c) the engagement would have required an additional

insurance premium. 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.

48. 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”). Each letter gave a monthly, and sometimes quarterly, return number. 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.

49. Shimer created this process by which Teague would receive verification of Tech Trader’s trading results and pass them along to Equity. Firth relied on him to handle the process. Teague performed no independent review of those numbers.

50. These AUPs were faulty. Shimer did not understand them. 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.

51. Abernethy produced these AUP letters or reports covering Tech Traders’ trading performance from June 2001 through February 2004.

52. Neither Firth, Shimer or Teague knew what Abernethy was reviewing to arrive at a rate of return. 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.

53. The AUP letters Abernethy produced showed gains for every month or quarter reported on from June 2001 through February 2004. 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.

54. 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. He was also uncomfortable with Abernethy and wanted Murray to replace him. But he never discussed replacing Abernethy with Murray.

55. 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. The AUP letter Abernethy wrote did not contain the same procedures that were in the PPM. He also did not fully understand the AUP letter Abernethy produced each month. 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 acknowledged that the CPA verification process was put in place to provide comfort to investors that the trading results were authentic.

56. 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. 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.

57. Shimer formulated the mechanism for determining profits in the Tech Trader accounts. Shimer knew that his method for determining profits was not as complicated as the methods being used by registered CPOs, which were methods approved by the CFTC. He also knew that Abernethy was not using one of the approved methods to calculate a rate of return.

58. 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. Shimer was central in dealing with any delays, miscommunications or issues in establishing the agreed upon procedures and verification process.

59. Shimer had information that should have lead him to question what Abernethy was reviewing to verify Tech Traders' rate of return. He knew that language he had drafted that indicated that Abernethy had full access to Tech Traders' FCM statements and was reviewing original statements was crossed out by Abernethy in a draft letter Teague was to send to Equity passing along Abernethy's "verified" return number.

60. Shimer created Shasta's own account statements from Tech Traders. Firth knew he was doing this. Both defendants thus knew that they were not receiving information from Tech Traders' about what Shasta's true balance was with the trading company.

61. Shimer asked Murray to have Abernethy verify that Tech Traders had enough funds on deposit to cover Shasta's investments to it. He never asked Murray to have Abernethy

verify that Tech Traders had enough on deposit to cover all its investors because he knew that Murray would not allow Abernethy to do that. Murray would not allow Abernethy to verify even that Tech Traders had enough on deposit to cover all the accounts that Shimer controlled – Shasta, New Century and Shadetree, even after he told Murray that his lawyers had told him the CFTC would look at Shasta as a Ponzi scheme. Murray's reluctance to verify that Tech Traders could cover all its investors' funds should have put Shimer on notice that Tech Traders might be a Ponzi scheme.

62. Shimer also knew that Murray did not like sudden withdrawals from Tech Traders, even of amounts of money that were far smaller than the alleged balances Shasta, New Century and Shadetree had with Tech Traders.

#### **Equity's Failure to Register**

63. Shimer knew as early as May 2001 that Tech Traders likely had a registration requirement under the Commodity Exchange Act.

64. Shimer also researched the Commodity Exchange Act and the Regulations governing CPOs and CTAs (the Part 4 Regulations) in the fall of 2001, before the first investment by a Shasta investor, and acquired the requisite knowledge that Equity was required to register, or seek an exemption from registration, under the Commodity Exchange Act.

65. Shimer, on behalf of Shasta, hired the law firm of Arnold & Porter in October 2003. Arnold & Porter partners Geoffrey Aronow and Susan Lee worked on the engagement. They were both experienced commodities counsel who had previously held high-level positions at the CFTC.

66. 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. 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.

67. Arnold & Porter expressed to Shimer and Firth in three separate communications in December 2003 that the firm was concerned that Shasta was exposed to charges that it was running an illegal commodity pool and aiding and abetting Tech Traders' operation of an illegal commodity pool, which could expose it to substantial penalties and a trading ban.

#### **Solicitation of Investors**

68. Both Shimer and Firth solicited investors for Shasta.

## **II. CONCLUSIONS OF LAW**

### **A. Equity, Shimer and Firth Violated §4o(1)(B) of the Act by Employing Devices, Schemes or Artifices to Defraud and Engaging in Practices that Operated as a Fraud on Shasta Participants.**

During the relevant time period, Equity acted as a CPO in that it engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise and in connection therewith, has solicited, accepted or received funds, securities or property from others for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility.

Firth and Shimer acted as associated persons ("APs") to Equity in that they solicited pool participants to invest in Shasta.

From at least January 2002 through the present, Equity, Firth and Shimer have violated Section 4o(1) of the Act, 7 U.S.C. § 6o(1), in that they have employed devices, schemes or artifices to defraud and engaged or are engaging in transactions, practices or a course of business

which operated as a fraud or deceit upon commodity pool participants by means of the acts and practices described above.

The actions and omissions of Firth and Shimer described in this count were done within the scope of their employment with Equity. Therefore, Equity is also liable for Firth's and Shimer's violations of Section 4o(1) of the Act, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2a(1)(B).

**B. Equity Violated §4m by Failing to Register as a CPO, and Shimer and Firth Are Liable as Control Persons, and Shimer is Liable as an Aider and Abettor, for Equity's Violation of §4m of the Act.**

Equity acted as a CPO, used the mails and other means or instrumentalities of interstate commerce, directly or indirectly, to engage in business as a CPO without the benefit of registration, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2002).

Firth and Shimer, controlled Equity and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting Equity's violations alleged in this count. Firth and Shimer are thereby liable for Equity's violations of Section 4m(1), pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b).

Shimer facilitated Equity's §4m violation by accepting Shasta participants' funds in an attorney escrow account in his name, drafting a PPM and preparing all Shasta's regulatory filings with the Securities and Exchange Commission and the states. He reviewed the Commodity Exchange Act and its Regulations and was told by experienced commodities counsel that registration by Shasta, or its CPO, Equity, was necessary unless it qualified and filed for an exemption. Consequently, Shimer willfully aided, abetted Equity's violation of Section 4m(1) of the Act, and is liable for the violation of Section 4m(1) of the Act by Equity as a principal pursuant to Section 13(a) of the Act, 7 U.S.C. § 13c(a).

**C. Shimer and Firth Violated Section 4k(2) of the Act by Failing To Register as APs of Equity and Equity is Liable for Their Violations Pursuant to Section 2(a)(1)(B) of the Act.**

Firth, as President of Equity and Shimer as legal counsel and control person, were each associated with Equity, a CPO, in a capacity that involved the solicitation of funds for participation in Shasta, a commodity pool without the benefit of registration, in violation of Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2002).

The actions and omissions of Firth and Shimer described above were done within the scope of their respective employment with Equity. Therefore, Equity is also liable for Firth's and Shimer's violations of Section 4k(2) of the Act, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2a(1)(B).

**D. Shimer Aided and Abetted Tech Traders' Violation of §4.30 of the Regulations by Facilitating Tech Traders' Trading Shasta Funds in it Own Name.**

Tech Traders was the CTA for Shasta and others in that, for compensation or profit, it advised the Shasta commodity pool and others as to the advisability of trading in commodity futures contracts.

As CTA for the Shasta pool and others, Tech Traders violated Regulation 4.30 by accepting their funds and trading them in its accounts at FCMs under its own name.

Shimer aided and abetted Tech Trader's violation of Regulation 4.30 pursuant to Section 13(a) of the Act, 7 U.S.C. § 13c(a), by drafting an investment agreement between Shasta and Tech Traders that provides that pool funds will be held in the name of Tech Traders. Shimer also drafted the PPM that also sets out that funds will be held in the name of the trading company.

### III. Order For Permanent Injunction

IT IS THEREFORE ORDERED THAT:

1. Defendants Equity, Firth and Shimer and all persons insofar as they are acting in the capacity of their agents, servants, employees and attorneys, and all persons insofar as they are acting in concert or participation with them, are permanently restrained, enjoined and prohibited from directly or indirectly:

- A. In the capacity of a commodity trading advisor or commodity pool operator, or associated person of a commodity trading advisor or commodity pool operator, by use of the mails or any means or instrumentality of interstate commerce, employing any device, scheme or artifice to defraud any client or participant or prospective client or participant or engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or participant or prospective client or participant, in violation of Section 4o(1) of the Act, 7 U.S.C. § 6o(1); and
- B. Associating with a commodity pool operator, as a partner, officer, employee, consultant, or agent (or acting in a similar status or performing similar functions), in a capacity that involves the solicitation of funds, securities or property for participation in a commodity pool or supervising any person so engaged without the benefit of registration in violation of Section 4k(2) of the Act, 7 U.S.C. § 6k(2).

2. Defendants Equity, Firth and Shimer are further restrained, enjoined and prohibited from directly or indirectly operating as commodity pool operators, or Shimer from aiding and abetting the operation of a commodity pool operator, engaged in the business of soliciting, accepting or receiving from others, funds, securities, or property, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market without being registered with the Commission as a commodity pool operator, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1).

3. Defendant Shimer is restrained, enjoined and prohibited, from directly or indirectly aiding and abetting Tech Traders' solicitation, acceptance or receipt from an existing or prospective client funds, securities or other property in Tech Trader's name to purchase,

margin, guarantee or secure any commodity interest of the client, in violation of Regulation 4.30, 17 C.F.R. § 4.30.

4. Equity, Shimer and Firth are further permanently restrained, enjoined and prohibited, from directly or indirectly:
- A. Engaging in, controlling or directing the trading for any commodity futures or options accounts for or on behalf of any other person or entity, whether by power of attorney or otherwise;
  - B. Entering into any commodity futures or options transactions for their own accounts, or for any accounts in which they have a direct or indirect interest, and/or having any commodity futures or options traded on their behalf;
  - C. Introducing customers to any other person engaged in the business of trading in commodity futures and options; and
  - D. Otherwise engaging in any business activities related to commodity futures and options trading that require registration.

#### **IV. Order For Other Equitable Relief**

##### **IT IS FURTHER ORDERED THAT:**

##### **A. RESTITUTION**

Upon entry of this Order, Equity, Shimer and Firth are liable, jointly and severally, for and a judgment is entered against them in the amount of \$8,291,269.99, as restitution to Shasta investors ("Restitution Amount") and prejudgment interest in an amount to be determined. Post-judgment interest after the date of this Order until the restitution is paid in full shall be paid at the post-judgment interest rate set forth in 28 U.S.C. § 1961. All payments made pursuant to this Order shall first be paid to the Equity Receiver appointed by this Court for further distribution to claimants whose claims all allowed in the claims process. After the termination of the Receivership, restitution shall be made on a *pro rata* basis according to the Final Order of Distribution to claimants with allowed claims until those amounts (including

interest) are fully satisfied. All payments after satisfaction of the restitution shall be applied to the civil monetary penalty described below.

Within thirty days of the date of this Order, Equity, Firth and Shimer shall pay the Restitution Amount to Stephen T. Bobo, Equity Receiver.

**B. DISGORGEMENT**

Upon entry of this Order, Shimer is liable for \$1,453,030.00 in disgorgement, prejudgment interest in an amount to be determined and post judgment interest. Firth is liable for \$449,400 in disgorgement, prejudgment interest in an amount to be determined and post judgment interest. Post judgment interest from the date of this Order until the civil monetary penalty is paid in full shall be paid at the post-judgment interest rate set forth in 28 U.S.C. § 1961. All payments of disgorgement shall be in accordance with the instructions for payment of civil monetary penalties, described below.

**C. CIVIL MONETARY PENALTY**

Upon entry of this Order, Equity, Shimer and Firth are liable for civil monetary penalties in the following amounts: Equity: \$1,837,500, Shimer: \$4,359,090, Firth: \$1,348,200. Judgments are entered against them for civil monetary penalties in these amounts, plus post-judgment interest. Post judgment interest from the date of this Order until the civil monetary penalty is paid in full shall be paid at the post-judgment interest rate set forth in 28 U.S.C. § 1961. Equity, Shimer and Firth shall pay such civil monetary penalties by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier's check, or bank money order, made payable to the Commodity Futures Trading Commission, and sent to Dennese Posey, or her successor, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, under

cover of a letter that identifies Equity, Shimer and Firth and the name and docket number of the proceeding; Equity, Shimer and Firth shall simultaneously transmit a copy of the cover letter and the form of payment to the Director, Division of Enforcement, Commodity Futures Trading Commission, at the following address: 1155 21st Street, NW, Washington, D.C. 20581.

Any acceptance by the CFTC or the Equity Receiver of partial payment from Equity, Shimer or Firth of their restitution and/or civil monetary obligations shall not be deemed a waiver of their obligations to make further payments pursuant to this Order, or a waiver of the CFTC's right to seek to compel payment from Equity, Shimer, or Firth of any remaining balance.

Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each Shasta investor listed in the Final Order of Distribution is explicitly made an intended third-party beneficiary of this Order and, after termination of the Receivership, may seek to enforce obedience of this Order to obtain satisfaction of any portion of the restitution which has not been paid by Equity, Shimer or Firth.

Equity, Shimer and Firth shall immediately notify the CFTC if any of them make or has previously made any agreement with any customer obligating him or it to make payments outside of this Order. Equity, Shimer or Firth shall also provide immediate evidence to the CFTC of any payments made pursuant to such agreement

Equity, Shimer and Firth shall not transfer or cause others to transfer funds or other property to the custody, possession, or control of any other person for the purpose of concealing such funds from the Court, the CFTC, or any Shasta pool participant until restitution has been paid in full.

All notices required by this Order shall be sent by certified mail, return receipt requested, as follows:

Notice to CFTC:

Director, Division of Enforcement  
Commodity Futures Trading Commission  
1155 21st St. NW  
Washington, DC 20581

Notice to Equity:

Samuel F. Abernethy  
Menaker & Herrmann LLP  
10 East 40th Street  
New York, NY 10016

Notice to Shimer:

Robert W. Shimer  
1225 W. Leesport  
Leesport, PA 19533

Notice to Firth:

Vincent J. Firth  
3 Aster Court  
Medford, NJ 08055

In the event that Equity, Shimer or Firth change their residential or business telephone number(s) and/or address(es) at any time, they shall provide written notice of the new number(s) and/or address(es) to the CFTC within twenty (20) calendar days thereof.

The injunctive provisions of this Order shall be binding on Equity, Shimer and Firth, upon any person insofar as he or she is acting in the capacity of officer, agent, servant, employee or attorney of Equity, Shimer or Firth, and upon any person who receives actual notice of this Order by personal service, facsimile or otherwise insofar as he or she is acting in active concert or participation with Equity, Shimer or Firth. Nothing shall serve to amend or



modify this Order in any respect whatsoever, unless: (1) reduced to writing; (2) signed by all parties hereto; and (3) approved by order of this Court.

The failure of any party to this Order to require performance of any provision of this Order shall in no manner affect the right of such party at a later time to enforce the same or any other provision of this Order. No waiver in one or more instances of the breach of any provision contained in this Order shall be construed as a further or continuing waiver of a breach of any other provision of this Order.

Defendant shall pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2);

This Court shall retain jurisdiction of this cause to assure compliance with this Order and for all purposes related to this action.

IT IS SO ORDERED.

Dated: \_\_\_\_\_, 2006

\_\_\_\_\_  
Hon. Robert B. Kugler  
United States District Court Judge