VINCENT J. FIRTH, *Pro Se*
3 Aster Court
Medford, NJ 08055
(609) 714-1981

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

COMMODITY FUTURES TRADING COMMISSION,

Plaintiff,

vs.

EQUITY FINANCIAL GROUP LLC, TECH TRADERS, INC., TECH TRADER, LTD., MAGNUM CAPITAL INVESTMENTS, LTD., VINCENT J. FIRTH, ROBERT W. SHIMER, COYT E. MURRAY, & J. VERNON ABERNETHY

Defendants.

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Hon. Anne Marie Donio

Civil Action No. 04-1512

Request For Stay Of Order Pursuant to L. Civ Rule 72.1(c)(1)(B)

REQUEST FOR STAY OF ORDER PENDING APPEAL

Defendant Vincent J. Firth ("Firth") hereby respectfully requests that Magistrate Ann Marie Donio grant a stay of her order dated September 1, 2006 and served upon Firth September 7, 2006 by regular mail granting the Temporary Equity Receiver's previous Motion to Compel certain tax returns of Firth.

Defendant Firth respectfully requests that a stay of the Court's order dated September 1, 2006 be granted pending appeal for the following reasons:

1) Firth has today filed a timely appeal from that order pursuant to L. Civ Rule 72.1 (c)(1)(A).
2) Currently pending before Judge Kugler is a dispositive motion in the form of a motion for summary judgment dated April 7, 2006 filed with the Court by Firth that

calls into serious question the Plaintiff Commodity Futures Trading Commission's (CFTC"s) attempt to mischaracterize Firth's association with and as an officer of Shasta Capital Associates, LLC ("Shasta") as a "commodity pool" and Firth's association with and as an officer of Equity Financial Group, LLC ("Equity") as, therefore, the "operator" of the alleged "pool" entity Shasta thereby invoking the several sections of the Commodity Exchange Act ("CEA"), 7 USC §§ 1 *et seq.* allegedly violated by Firth.

3) It is clear established federal case law that federal agencies such as Plaintiff CFTC have only such authority as has been conferred upon them by Congress (see previous Defendant Shimer's Brief dated April 6, 2006).

4) Plaintiff CFTC's purported authority to name Firth as a defendant in the current matter before the court alleging a violation of the CEA was critically dependent upon Plaintiff's allegation contained in both the Original and First Amended Complaint that Defendant Equity Financial Group, LLC ("Equity") was a Commodity Pool Operator (CPO) under current law.

5) Absent the ability of Plaintiff to establish that the entity Shasta Capital Associates, LLC ("Shasta") was a commodity pool under current law, there is no basis now for concluding that the entity Equity was a commodity pool operator.

6) Absent an activity of Firth specifically prohibited by the CEA that brings him within the purview of that statute there is no basis for the continued appointment of a Temporary Receiver with respect to Firth pursuant to the authority conferred upon Plaintiff CFTC by Congress in Section 6c(a) of the CEA, 7 USC § 13a-1(a).

7) Absent the authority conferred upon Plaintiff to seek appointment of a Receiver with respect to Firth pursuant to Section 6c(a) of the CEA, 7 USC § 13a-1(a) the Receiver Stephen T. Bobo has no legal basis for asserting any right or authority over Defendant Firth and, therefore, no right to seek copies of Firth's tax returns.

8) The arguments offered to the Court in support of Firth's Motion for Summary Judgment dated April 7, 2006 are not frivolous or inconsequential.

9) Defendant Shimer has pointed out to the Court in his Brief filed in support of his motion for Summary Judgment and Defendant Firth's motion for Summary Judgment and Shimer's Reply Brief dated April 24, 2006 all of the following:

a. The only precedent Plaintiff CFTC has cited in support of its deceptive argument that "feeder funds such as Shasta have been found to be commodity pools") [1] is the case of *CFTC v Heritage Capital Advisory Services* ("Heritage").

b. Shimer's Brief dated April 6, 2006 attached extensive documentary evidence in the form of attached Exhibits A-E providing the Court with certified copies of documents retrieved with respect to the *Heritage* case from the National Archives and Records Administration in Chicago that directly contradicted Plaintiff's repeated erroneous assertion that the facts of Shasta are "similar" to the facts of *Heritage*.

c. In light of the clear and obvious factual disparity between *Heritage* and the current matter before the Court, the Plaintiff CFTC is without any legal precedent for its contention that an entity such as Shasta is a commodity pool because the entity Shasta admittedly never opened a commodity trading account *in its name* at a futures commission merchant (FCM) *or ever represented to anyone* that it intended to open such an account.

d. The Illinois District Court case of *Heritage* cited frequently by Plaintiff is completely compatible with the apparently controlling four-part test later enunciated by the Ninth Circuit Court of Appeals in the case of *Lopez v. Dean Witter Reynolds, Inc.*

e. One obvious reason the two cases of *Heritage* and *Lopez* are completely compatible is the obvious fact that the later *Lopez* decision issued by the Circuit Court of Appeals for the Ninth Circuit cited the District Court case of *Heritage* when creating its clear four-part test.

f. The Temporary Equity Receiver Stephen T. Bobo is in a unique position to well know that the critically dispositive fact that a commodity trading account was, indeed, opened in the name of the entity Heritage in the *Heritage* case because Mr. Bobo, was an attorney assigned by Plaintiff CFTC to the case of *Heritage* when Mr. Bobo was an attorney employed by Plaintiff CFTC in 1982.

[1] See pages 3-5 of Plaintiff's previous Response dated August 4, 2005 to Shimer's previous Brief dated July 7, 2005

g. The only way the four tests of *Lopez* make any sense at all is when they are *read together and applied to the account of the entity alleged to be a commodity pool*—just as they were applied by the Ninth Circuit when these four tests were enunciated by that Court in the *Lopez* case.

h. The attorney escrow account of Defendant Shimer in New York—the only bank "account" ever opened in the name of the entity Shasta clearly fails most if not all four of the *Lopez* tests.

i. The court in *Lopez* found that if even one of its four enumerated tests is not present, the entity in question is not a "commodity pool".

j. The legislative history of the Commodity Exchange Act *does not* support a finding that Congress intended that entities such as Defendant Equity are entities subject to the registration requirements of the CEA when they control or manage entities such as Shasta (that never opened commodity trading accounts and never engaged in commodity trading or represented to anyone an intention to directly engage in the activity of commodity futures trading.

k. The Plaintiff CFTC's admittedly "narrowed" definition of the term "pool" according to its own statements at the time that definition was revised in 1980 [now found at 17 C.F.R. § 4.10(d)(1)] specifically defines a "pool" to be an entity "operated for the purpose of trading commodity interests" and is completely compatible with both Defendant Shimer's stated analysis of the *Lopez* decision and the lack of any indication in the legislative history of the CEA that Congress intended that entities such as Equity be required to register with the CFTC as CPO's.

l. To decide otherwise would be to broaden the definition of "commodity pool" far beyond the clear and obvious intent of Congress when the CEA was enacted.

m. Such a decision is not compatible with the CFTC's enabling statute, the CFTC's regulations governing commodity pool operators and all known federal case law and would result in an unjustified broadening of the term "commodity pool" to business entities that have never in the history of the CEA been required to register with Plaintiff.

n. The Regulations intended to apply to CPO's promulgated by the CFTC found at 17 C.F.R. §4.22 (CPO account statement requirements) §4.23 (CPO record keeping requirements) and at §4.24 (CPO disclosure requirements) are perfectly compatible with Defendant Shimer's discussion in his Brief filed with the Court in support of Firth's motion for Summary Judgment dated April 6, 2006 of the *Lopez* and *Heritage* cases as well as Defendant Shimer's discussion of the legislative history of the CEA in that same Brief.

o. The above-cited regulations of the CFTC are incompatible *on their face* with Plaintiff's position with respect to the issue of whether or not the entity Equity is a commodity pool operator.

p. The testimony of the CFTC's own expert witness in the *Heritage* case (as disclosed in Exhibit E attached to Shimer's April 6, 2006 Brief) supports and confirms Defendant Shimer's repeated assertion that the existence of a commodity trading account opened at an FCM *in the name of the entity alleged to be a commodity pool* is a critical and essential prerequisite to any finding that the entity in question is a commodity pool.

q. The testimony of the CFTC's own expert witness in the *Heritage* case also found in that same attached Exhibit E confirmed that for any member of the investing public to become "involved" in the futures market they must open an account at a brokerage firm known as a Futures Commission Merchant (FCM).

r. If (according to the CFTC's own expert witness) members of the investing public *must open a commodity trading account at an FCM* to become "involved" in the futures market, how is it possible to sustain any argument by the CFTC that an entity such as Shasta (that has never opened a commodity trading account at any FCM in its name) somehow qualifies as a commodity pool—a specialized commodity related investment entity more "narrowly" defined by the CFTC over 25 years ago?

s. Plaintiff never attempted to answer in the CFTC's Response dated April 20, 2006 the above pertinent and highly relevant question.

10) The Equity Receiver's responsibilities in the current matter are not in any way impeded or impaired by the grant of a stay until the Court renders a decision with respect to the potentially dispositive motion filed previously by Firth dated April 7, 2006.

For all of the reasons stated above, Defendant Firth requests a stay with respect to the Court's order dated September 1, 2006 compelling production of his tax returns to the Temporary Equity Receiver until such time as a decision is rendered by the Court with respect to Defendant Firth's Motion For Summary Judgment dated April 7, 2006.

Dated: September 14, 2006

Respectfully submitted,

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