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**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.: 04CV 1512

Honorable Robert B. Kugler

**EQUITY RECEIVER’S MEMORANDUM IN SUPPORT OF MOTION TO DISALLOW
 CERTAIN UNIVERSE INVESTOR CLAIMS**

Stephen T. Bobo, the Equity Receiver of Defendants Equity Financial Group, LLC, Tech Traders, Inc., Robert W. Shimer and others (the “Receiver”), moves to disallow the claims of eight Tier 3 investors who transferred funds to Universe Capital Appreciation, LLC (“Universe”), a Tier 2 investor with Shasta Capital Associates, LLC (“Shasta”).¹ The Receiver

¹ Although the Disputed Claims Interim Distribution Schedule I filed on February 22, 2006 included the claims of twelve Universe investors, four of these investors have resolved all deficiencies relating to their claims. The Receiver therefore proposes that the claims of Brad and Diana Baetz, Cary Maclin, Mitchell Rabin, and the Sherman Family Trust be moved to the Revised Agreed Interim Distribution Schedule, attached as Exhibit A to the Receiver’s affidavit. The Revised Disputed Claims Interim Reserve

moves to disallow these claims – in whole or in part – on one of three grounds: (1) failure to submit a claim with supporting documentation; (2) receipt of Tech Traders’ funds as repayment of earlier investments with Kaivalya Holding Group, Inc. (“Kaivalya”); and (3) aggregation of claims for distribution purposes.

A. Failure to Submit a Claim

Joan Nixon has not filed a claim for her investment with Universe and, on December 12, 2005, during a telephone interview with CFTC Investigator Joy McCormack, has informed the CFTC that she did not want to file a claim (see J. McCormack Declaration, attached as Exhibit 1). Without a declaration under oath confirming her investments with, and withdrawals from Universe, the Receiver recommends that the Court bar Ms. Nixon from participating in the claim process at any time.

B. Investors Who Received Tech Traders’ Funds As a Result of Previous Investments With Kaivalya

From July 2002 through March 2004, Mr. Shimer caused over \$1.3 million of funds originating from Tech Traders’ investors to be transferred to Kaivalya even though Kaivalya gave no consideration for these funds. The Tech Traders’ investors whose funds were transferred to Kaivalya knew nothing about, and had no relationship with, Kaivalya. Mr. Shimer then transferred these funds to a number of Universe investors as repayment of their earlier investments with Kaivalya. Seven of the forty-four individuals and entities that invested with Universe received these funds. Their claims therefore should be allowed *only after* taking into account their receipt of such funds.

Consistent with the Receiver’s proposed method of distribution in his motion for authority to make an interim distribution to investors (filed with the Court on January 7, 2005)

Schedule, attached as Exhibit B to the Receiver’s affidavit, now includes only these remaining eight investor claims.

and ultimately approved by the Court (on October 27, 2005), these Universe investors may retain the previous withdrawals they received, including Tech Traders' funds from Kaivalya, but the previous withdrawals should be credited against the investors' respective pro rata shares calculated based on total funds invested. The following formula illustrates how each claim would be treated: (actual dollars invested x pro-rata multiplier) - previous withdrawals, including Tech Traders funds received from Kaivalya = distribution amount. For example, for Amanda Graves, the formula would be (\$100,000 invested x 28.5 percent) - \$25,000 in Tech Traders funds received from Kaivalya = \$3,500. If and when the Receiver distributes additional funds to Universe investors, Ms. Graves will be eligible for another pro-rata distribution.

C. Vico's Claim Should Be Aggregated for Distribution Purposes

Consistent with his proposed method of distribution in his motion for authority to make an interim distribution to investors (filed with the Court on January 7, 2005) and ultimately approved by the Court (on October 27, 2005), the Receiver recommends that the claim submitted by Vico, Inc. be aggregated with the investments and withdrawals of Pinnacle and Trinidad for distribution purposes. As demonstrated by the information obtained by the CFTC, these three entities share common management and control (see J. McCormack Declaration, attached as Exhibit 1). The Receiver therefore proposes that Vico's claim be aggregated with the investments and withdrawals of Pinnacle and Trinidad for distribution purposes.

The Receiver also objects to Vico's claim for another reason. Vico has failed to identify the ultimate beneficiaries of any potential distribution to Vico.

D. Summary

The following table summarizes the Receiver's proposed treatment of these eight

Universe investor claims:

Claimant	Total Funds Invested	28.5% of Total Funds Invested	Previous Withdrawals	28.5% of Total Funds Invested Less Previous Withdrawals	Tech Traders' Funds Received from Kaivalya	Receiver's Proposed Treatment (28.5% of Total Funds Invested Less Previous Withdrawals, Including Tech Traders' Funds Received from Kaivalya)
Cooper, Robert	\$50,000	\$14,250	\$24,000	\$0	\$35,000	\$0
Graves, Amanda	\$100,000	\$28,500	\$0	\$28,500	\$25,000	\$3,500
Gubler, Cory	\$175,000	\$49,875	\$175,000	\$0	\$15,000	\$0
Nixon, Joan	\$8,000	\$2,280	\$6,000	\$0	\$0	\$0
Schmalz, Harry	\$140,000	\$39,900	\$0	\$39,900	\$20,000	\$19,900
Shimer, George Trust	\$35,000	\$9,975	\$54,834	\$0	\$22,000	\$0
Trinidad/Vico/Pinnacle	\$199,200	\$56,772	\$108,100	\$0	\$50,000	\$0
Wedel, Harland and Donna	\$65,800	\$18,753	\$8,000	\$10,753	\$30,000	\$0
TOTALS:				\$79,153		\$23,400

As this table illustrates and consistent with the Court's April 17, 2006 Order, the Receiver holds \$79,153 in reserve for these eight claims. If the Court adopts the Receiver's proposed treatment of these claims, then a total of \$23,400 of that amount will be distributed to two of the investors who are still eligible for distributions. In order for Tech Traders to recover the value of its previous payments to these Kaivalya investors, the Receiver proposes that the

remaining \$55,753 (\$79,153 less \$23,400) be transferred from the Shasta reserve account for disputed claims to the Tech Traders' general account.²

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

DATED: May 9, 2006

Respectfully submitted,

STEPHEN T. BOBO
Equity Receiver

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² The Receiver proposes distributing the remaining \$20,795 held in reserve to the four investors addressed in footnote 1 because they have cured all deficiencies relating to their claims.