

Matthew H. Adler (MA-4720)
Jeffrey A. Carr (JC-1103)
PEPPER HAMILTON LLP
(A Pennsylvania Limited Liability Partnership)
300 Alexander Park
Princeton, NJ 08543-5276
(609) 452-0808

*Attorneys for Equity Receiver, Stephen
T. Bobo*

**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

**REPLY BRIEF IN SUPPORT OF EQUITY RECEIVER’S
MOTION TO COMPEL ROBERT SHIMER TO PRODUCE TAX RETURNS**

For his reply to Mr. Shimer’s response to his motion to compel, Stephen T. Bobo, as Equity Receiver (the “**Receiver**”) for Mr. Shimer, states:

While he protests too much, Mr. Shimer’s statements and omissions do not undermine the Receiver’s legitimate reasons for requesting his 1999-2003 income tax returns, but rather highlight them. Following are examples:

- **Is Mr. Shimer insolvent or worth over \$1 million?** Mr. Shimer fails to respond to the Receiver's concern that Mr. Shimer's wildly conflicting statements to date regarding his net worth are irreconcilable. Without more factual information, his claim of "apparent insolvency" (see Response, at 12), for example, cannot be reconciled with his claim to being an accredited investor with a net worth exceeding \$1 million and his ability to afford to continue to own, or maintain an interest in, four residences and a sailboat – apparently without generating rental income – at the expense of over \$12,000 per month (see Att. 6 to the Receiver's affidavit, attached as Ex. A to his Motion to Compel), and to take a one month-long trip. See Response, at 13. Unless his assets are stashed away in a shoebox somewhere (which still should have been disclosed), his tax returns should, for example, disclose banks and other financial institutions that paid him interest and dividend income. Likewise, his returns should reflect mortgage payments and real estate taxes.
- **The timing of the Receiver's request for Mr. Shimer's tax returns is irrelevant.** Although he acknowledges understanding the Receiver's duty to "discern" his financial condition (see Response, at 3), Mr. Shimer apparently fails to understand the ongoing and evolving nature of that duty. The Receiver's request for Mr. Shimer's 1999-2003 tax returns was *not* an afterthought but merely another step in the process. It was not until the Receiver compared the statement of assets and liabilities Mr. Shimer provided on October 7, 2005 with the investor questionnaire he submitted as trustee for his deceased father's trust – which the Receiver's counsel was not aware of until *after* October 7th – that the inconsistencies became apparent and raised new questions. On October 18, 2005, immediately upon review of Mr. Shimer's 2004 tax return – which Mr. Shimer made available for the first time on October 18th – and hearing Mr. Shimer's vague and confusing deposition testimony beginning October 18th, the Receiver's counsel recognized that she did not have a "very full and clear picture of Mr. Shimer's current financial condition" (see Response, at 5) and requested Mr. Shimer's earlier returns. Mr. Shimer agreed to produce them but apparently changed his mind even while acknowledging the Receiver's need for at least his 2003 return. See Att. 8 to the Receiver's affidavit, attached as Ex. A to his

Motion to Compel, at 2 (“I can understand why you might want to review my tax return for 2003.”)

- **The Receiver is sensitive to Mr. Shimer’s privacy concerns.** While making much of his concern about the confidentiality of his tax returns and chiding the Receiver for attaching his statement of assets and liabilities to the Motion to Compel, Mr. Shimer himself does not *himself* hesitate to disclose detailed facts and figures about his income over the past several years, albeit in a self-serving selective manner. See Response, at 6-8. But his offer to produce certain returns *in camera* for the specific purpose of corroborating figures he has selectively provided the Court rings hollow. The Receiver is not looking for corroboration of *Mr. Shimer’s* figures or his characterization of those figures. He is looking for raw facts that will provide a sufficiently detailed understanding of Mr. Shimer’s financial condition, including any potential federal tax liability, to enable him to fulfill his receivership duties. The Receiver, moreover, is sensitive to Mr. Shimer’s privacy concerns and has agreed – with the CFTC’s cooperation – to treat the returns with appropriate confidentiality. See Receiver’s affidavit, attached as Ex. A to his Motion to Compel, ¶ 15.
- **Mr. Shimer’s 1999 and 2000 tax returns are relevant.** Mr. Shimer also apparently fails to understand that the Receiver’s duties are neither circumscribed by the substance *nor* the time period of the CFTC’s allegations. See Response, at 9-10. While it is true that the CFTC has not charged Mr. Shimer with any wrongdoing in 1999 and 2000 and he therefore insists that the Receiver need not track the flow of funds between him and Kaivalya during those years, his own statements highlight the relevance of tracking those funds because he and Kaivalya investors later received large sums of money from *Tech Traders’* victims. Mr. Shimer acknowledges that he received payments from Kaivalya starting in 1999 – funds *he* and his colleagues solicited from investors for failed investments *he* and his colleagues recommended. He acknowledges that, in order to pay himself what he characterizes as legal fees and repay investors in these failed investments, he later transferred to Kaivalya funds originating from investors in, and victims of, the Tech Traders Ponzi scheme. See

Response, at 9.¹ He also acknowledges that he *did* pay himself, his wife and Kaivalya investors – some of whom have filed claims against this receivership estate – out of these funds and that the Receiver must “determine if any claim should be partially or fully offset” by these payments. See id. Although he appears not to understand this, the Receiver likewise must determine how to address the funds *he and his wife* received. According to the bank records obtained by the CFTC, he and his wife received over \$227,000 from Kaivalya in 1999 and 2000. The fact that he claims to “not recall ever receiving payments from Kaivalya even *approaching* the[se] amounts” (see Response at 10) underscores the Receiver’s good-faith basis for seeking access to his tax records for those years in order to understand the nature and amounts of the discrepancies and to question him about them at his deposition.

- **Mr. Shimer’s spin on the facts underscore the Receiver’s need for his returns.**

The figures Mr. Shimer *does* cite, moreover, do not square with those ascertained by the CFTC from bank records obtained to date, and Mr. Shimer’s characterizations of those figures do not always square with the documentary evidence. He insists, for example, that the fact that he made a loan to Edgar is “obvious.” See Response, at 6. It is, in fact, far from obvious. In contrast to the documentation he has provided evidencing loans to Edgar made by Dr. Jeffrey Marrongelle, for example, Mr. Shimer has provided no documentation for his own “loan.” Mr. Shimer and his wife further claim that they received \$151,750 in 2001 in “repayment” of the loan (see id. and Att. 2 to the Receiver’s affidavit, attached as Ex. A to his Motion to Compel) but the bank records obtained by the CFTC show that they received \$180,350 from Edgar in 2001 (see J. McCormack Declaration, attached as Ex. B to Motion to Compel, ¶ 7a), netting approximately \$30,000 in reportable income. And, the Shimers took this profit before they began repaying Dr. Marrongelle on his loan in late 2002. And then they only did so *in part* and, even under the most conservative approach, with funds that, at least in part, originated from investors in, and victims of, the Tech Traders Ponzi scheme.² As with his withdrawals of funds from Kaivalya, the Receiver must determine whether to seek recovery of the funds Mr. Shimer and his

¹ Mr. Shimer admitted at his deposition that Kaivalya gave Tech Traders no consideration for these funds.

² As he admitted at his deposition, Edgar too gave Tech Traders no consideration for these funds.

wife – who has filed a claim against the receivership estate – drew from Edgar. The fact remains that the CFTC has determined that Mr. and Mrs. Shimer transferred almost \$800,000 of Tech Traders investor funds to a joint account, which they used to pay *joint* expenses,³ and the Receiver needs more information about these transfers in order to determine how best to treat them. The Receiver also has concerns about whether Mr. Shimer reported and paid taxes on any such income.

CONCLUSION

For the foregoing reasons, the Court should grant the Receiver's motion to compel and require Mr. Shimer to reimburse the receivership estate for the expenses incurred in making the motion under Fed. R. Civ. Pro. 37(a)(4)(A).

DATED: January 9, 2006

Respectfully submitted,
STEPHEN T. BOBO
Equity Receiver

By: s/ Jeffrey A. Carr
One of his attorneys

Bina Sanghavi
Raven Moore
Sachnoff & Weaver, Ltd.
30 South Wacker Drive, Suite 2900
Chicago, IL 60606
(312) 207-1000

Matthew H. Adler
Jeffrey A. Carr
Pepper Hamilton LLP
300 Alexander Park
CN 5276
Princeton, NJ 08543-5276
Tel: (609) 452-0808
Fax: (609) 452-1147

³ See J. McCormack Declaration, attached as Ex. B to the Motion to Compel, ¶¶ 4-8.