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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**

Hearing Date: 10/20/06

**RESPONSE OF EQUITY RECEIVER TO MOTIONS OF ROBERT  
W. SHIMER AND VINCENT J. FIRTH FOR STAY PENDING APPEAL**

The identical motions by Robert W. Shimer (“Shimer”) and Vincent J. Firth (“Firth”) seeking a stay pending appeal of this Court’s Order of September 1, 2006 (the “September 1, 2006 Order”) are so lacking in merit as to be frivolous. Stephen T. Bobo (the “Receiver”), the Equity Receiver for Shimer and Firth, requests that the motions be promptly denied.

Movants seek to stay the September 1, 2006 Order requiring them to turn over copies of certain income tax returns while they appeal it to Judge Kugler. Shimer and Firth base their

motions on the contention that because Shasta was not a commodity pool there is no legal basis to impose a receivership over them, and, therefore, they should not be compelled to produce their tax returns to the Receiver. They have already unsuccessfully raised the issue of whether Shasta was a commodity pool in their earlier motions to dismiss and for summary judgment. Judge Kugler denied those motions by Order dated October 4, 2005. A copy of that Order is attached hereto as Exhibit A. They also have raised the same argument again in their renewed motions for summary judgment, which are now pending before Judge Kugler.

Shimer and Firth do not even attempt to address the requirements that a party seeking a stay pending appeal must establish. Those standards are:

- whether the appellant has made a strong showing that he is likely to succeed on the merits;
- whether the applicant will be irreparably harmed absent a stay and, conversely, whether issuance of the stay will substantially injure the other parties interested in the proceeding; and
- where the public interest lies, to the extent that it is affected.

Republic of the Philippines v. Westinghouse Elec. Corp., 949 F.2d 653, 658 (3d Cir. 1991) (citing Hilton v. Braunskill, 481 U.S. 770, 776 (1987)).

**I. No Likelihood of Success on The Merits**

Firth and Shimer present no showing that they are likely to prevail on appeal. The record suggests that they cannot demonstrate any likelihood of success. Their appeal amounts to a collateral attack on the June 24, 2004 Consent Order of Preliminary Injunction and Other Ancillary Relief Against Equity Financial Group, LLC, Vincent Firth, and Robert W. Shimer to

which they expressly agreed. It is a mystery how they can assert in good faith that the Receiver is not authorized to carry out his functions under the terms of such a consent order.

Moreover, Judge Kugler's October 4, 2005 Order has already rejected their argument that Shasta was not a commodity pool, and this ruling is the law of the case. In addition, they failed to raise this argument in response to the Receiver's original motion and, therefore, have waived it for purposes of their appeal. They fail to raise any other arguments on appeal, including any of the objections that were overruled in the September 1, 2006 Order. Because they have waived their only appellate argument and it is barred by the law of the case, their chances of success on the merits of their appeal appear virtually nonexistent.

## **II. The Balance of Harm Favors the Receiver**

Nor have Shimer and Firth made any showing why they would be irreparably harmed if no stay is issued and that the receivership estate would suffer no harm from such a stay. The Receiver has offered to treat the tax returns as confidential. Following issuance of the September 1, 2006 Order, the Receiver drafted a confidentiality agreement and sent it to Firth and Shimer. A copy of that proposed agreement is attached hereto as Exhibit B. Neither Firth nor Shimer ever responded to the Receiver regarding the proposed agreement. In light of the proposed confidentiality protections, any potential harm to them from not granting the stay would be minimal at most.

Without first reviewing the tax returns, it is difficult to gauge the harm to the receivership estate and the investors from granting the stay. Given the extent of Shimer's and Firth's resistance to production, it is fair to infer that that there would be significant harm to the receivership estate. In any event, Firth and Shimer have failed to meet their burden regarding balance of the harm.

**III. Granting a Stay is Contrary to The Public Interest**

The public interest is affected because allowing Shimer and Firth to avoid the requirements of the consent preliminary injunction while pursuing a meritless appeal would detract from the confidence of the public generally, and of the Shasta investors specifically, in the ability of this court to effectively enforce its own orders in the face of baseless opposition.

For all of these reasons, the Receiver strongly opposes the stay motions of Shimer and Firth as without merit and requests that they be denied.

DATED: October 5, 2006

Respectfully submitted,

STEPHEN T. BOBO  
Equity Receiver

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

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# EXHIBIT A

(Docket Nos. 159, 160, 167, 189, 230, 231)

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY  
CAMDEN VICINAGE**

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COMMODITY FUTURES TRADING	:	
COMMISSION,	:	
	:	Civil No. 04-1512 (RBK)
Plaintiff,	:	
v.	:	
	:	<b>ORDER</b>
EQUITY FINANCIAL GROUP,	:	
et al.,	:	
	:	
Defendants.	:	

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THIS MATTER having come before the Court on Defendants' Robert W. Shimer, Vincent J. Firth, and Equity Financial Group, LLC ("Defendants"), Motion to Dismiss pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), Defendants' Motion for Summary Judgment, and Defendant Shimer's motion to allow a previously filed overlong brief to stand; and the Court having considered the moving papers, and the opposition thereto; and for the reasons expressed in the Opinion issued this date;

IT IS hereby **ORDERED** that Defendant Shimer's motion to allow a previously filed overlong brief to stand [189] is **GRANTED**;

IT IS further **ORDERED** that Defendants' remaining motions [159, 160, 167, 230, 231] are **DENIED**.

Dated: 10-4-05

s/ Robert B. Kugler  
ROBERT B. KUGLER  
United States District Judge

# EXHIBIT B



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September 7, 2006

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

Vincent J. Firth  
Equity Financial Group LLC  
Three Aster Court  
Medford, New Jersey 08055

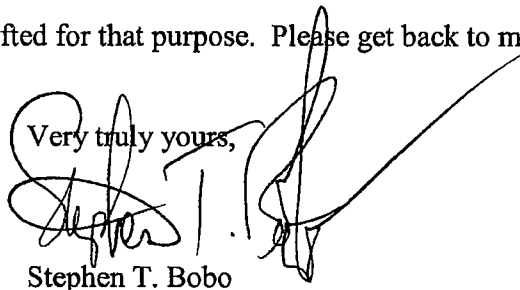
**Re: CFTC v. Equity Financial Group et al.**  
No. 04 CV 1512

Dear Messrs. Shimer and Firth:

Pursuant to the Court's September 1, 2006 order, we are to attempt to work out the terms of a confidentiality agreement regarding your tax returns.

I enclose a proposed agreement drafted for that purpose. Please get back to me with any comments or changes.

Very truly yours,



Stephen T. Bobo

STB:jc  
Encl.

cc: Raven Moore

**CONFIDENTIALITY AGREEMENT**

This Agreement is entered into as of the \_\_\_\_ day of September, 2006.

**WHEREAS**, Stephen T. Bobo (the "Receiver"), in his capacity of Equity Receiver for Vincent J. Firth ("Firth") and Robert W. Shimer ("Shimer") in the case of CFTC v. Equity Financial Group, LLC, No. 04 CV 1512, pending in the U.S. District Court for the District of New Jersey (the "Court"), requested production of certain income tax returns from Firth and Shimer.

**WHEREAS**, Firth and Shimer objected to the Receiver's requests, and the Receiver brought motions to compel. On September 1, 2006, the Court entered an order granting the Receiver's motions with respect to Shimer's tax returns for 1999 through 2003 and Firth's tax returns for 2004 and 2005 (collectively, the "Tax Returns").

**WHEREAS**, the Receiver has offered to treat the Tax Returns as confidential and Firth and Shimer desire to protect the confidentiality of their Tax Returns.

It is hereby agreed that the following provisions will govern the Receiver's handling of the Tax Returns.

1. The Firth and Shimer Tax Returns shall be used by the Receiver and his professionals only in connection with this case, shall be labeled as "Subject to a Confidentiality Agreement" and shall not be disclosed to any person or persons except as provided in subsequent paragraphs of this Agreement or as may be directed by subsequent orders of the Court.

2. The Receiver and his professionals who shall have access to the documents hereunder shall take reasonable precautions to prevent any disclosure of the information contained therein in any manner inconsistent with this Agreement.

3. If the Receiver intends to use the Tax Returns at a deposition, as an exhibit to a pleading to be filed with the Court, or as an exhibit for an evidentiary hearing before the Court, the Tax Returns shall be designated as "Subject to a Confidentiality Agreement" and, if filed with the Court, the Receiver shall seek leave to file them under seal.

4. Notwithstanding any other provision of this Agreement, nothing herein shall restrict the Receiver's obligation pursuant to orders of the Court to share such information with the Commodity Futures Trading Commission.

5. Notwithstanding any other provision of this Agreement, nothing herein shall restrict the Receiver's obligations to produce any of the Tax Returns in response to a valid subpoena issued in any judicial or administrative proceeding; provided however, that should the Receiver receive such subpoena and determine that he is required produce the Tax Returns, or a portion of them, in response to the subpoena, the Receiver will give the party that produced the Tax Returns written notice of this determination ten (10) days prior to production of the Tax Returns. It will be the responsibility of the party that produced the Tax Returns to seek to quash said subpoena.

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Stephen T. Bobo  
Equity Receiver

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Vincent J. Firth

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Robert W. Shimer