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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 APPEALS OF ROBERT W. SHIMER AND
VINCENT J. FIRTH FROM ORDER OF SEPTEMBER 1, 2006 COMPELLING
PRODUCTION OF TAX RETURNS**

Stephen T. Bobo (the “Receiver”), the Equity Receiver for various defendants, including Robert W. Shimer (“Shimer”) and Vincent J. Firth (“Firth”), submits this response in opposition to the appeals filed by Firth and Shimer of the Order compelling them to produce certain tax returns entered by Magistrate Judge Donio on September 1, 2006.

Firth’s and Shimer’s appeals are essentially identical. Both rely on a single argument – that Shasta Capital Associates, LLC was not a commodity pool and, therefore, they should

neither be Defendants in this case nor subject to a receivership. This is the same argument that this Court has already rejected once by its order of October 4, 2005, denying Firth's and Shimer's motions to dismiss and motions for summary judgment. Firth and Shimer relied on this same argument in current support of their summary judgment motions. Those motions have been fully briefed and await a ruling by the Court.

The Receiver believes that the briefs filed by Plaintiff CFTC in support of its summary judgment motion and its opposition to Firth and Shimer's motions fully present the legal and factual explanation of why Shasta was a commodity pool. The Receiver adopts the CFTC's arguments on this point and incorporates them herein by reference.

Firth and Shimer waived this argument for purposes of the Receiver's motion to compel by failing to raise it before Magistrate Donio. Instead, Firth and Shimer objected to the years for which the tax returns were sought, contested whether the Receiver's request was appropriate under the terms of the Consent Preliminary Injunction, and complained about having to disclose confidential information in their tax returns. They raise not one of those points in their appeals. Having failed to contend that the Receiver's document request was unenforceable because Shasta was not a commodity pool before Magistrate Donio below, Firth and Shimer may not now do so for the first time in this appeal.

In addition, Firth's and Shimer's appeals challenge the Receiver's authority under the terms of an order of preliminary injunction to which they each expressly agreed. The Consent Order of Preliminary Injunction dated June 24, 2004, continued the receivership with respect to Firth and Shimer. They cannot now challenge the effectiveness of that same order through a back-door attack.

For the reasons set forth above, the Receiver respectfully requests that the Court deny the appeals of Firth and Shimer and affirm Magistrate Donio's Order of September 1, 2006 compelling Firth and Shimer to produce certain tax returns.

Dated: October 5, 2006

Respectfully submitted,

STEPHEN T. BOBO
Equity Receiver

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