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U.S. DISTRICT COURT

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

COMMODITY FUTURES TRADING :
COMMISSION, :
:

Hon. Robert B. Kugler

Plaintiff,

vs.

Civil Action No. 04-cv-1512 (RBK)

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

Notice of Motion To Compel
Commodity Futures Trading
Commission to Produce

Defendants.

-----X

TO: Elizabeth Streit, Esq.
Commodity Futures Trading Commission
525 West Monroe St., Suite 1100
Chicago, Illinois 60661

AUSA Paul Blaine, Esq.
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401 Market Street, 4th Floor
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Jack Vernon Abernethy
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Gastonia, NC 28052

Vincent J. Firth
3 Aster Court
Medford, New Jersey 08055

PLEASE TAKE NOTICE that on Friday, February 3, 2006 at 10:00 A.M., or as soon thereafter as movant may be heard, the undersigned *pro se* defendant, Robert W. Shimer will move before the Hon. Robert B. Kugler, U.S.D.J., sitting at the U.S. District Courthouse at 4th and Cooper Streets, Camden, New Jersey, for an Order compelling the Plaintiff Commodity Futures Trading Commission to produce at the Offices of Paul Blaine, Assistant United States Attorney, Camden Federal Building 401 Market Street, 4th Floor, Camden, New Jersey 08101 on or before February 28, 2006 all documents previously requested by Defendant Robert W. Shimer in his Request For Production of Documents dated November 15, 2005.

PLEASE TAKE FURTHER NOTICE that in support of this Motion, Defendant Robert W. Shimer will rely on the enclosed Brief.

PLEASE TAKE FURTHER NOTICE that oral argument is hereby respectfully requested in the event this Motion is opposed.

A proposed form of order is submitted for the Court's convenience.



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COMMISSION, :

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Plaintiff,

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ORDER COMPELLING PLAINTIFF
COMMODITY FUTURES TRADING
COMMISSION TO PRODUCE
DOCUMENTS

Defendants.

This matter having been brought before the Court by Robert W. Shimer, Esq acting pro se; and the Court having considered the application and any opposition thereto; and for good cause shown:

IT IS this ___ day of February, 2006, hereby

ORDERED that the Plaintiff Commodity Futures Trading Commission identify and produce at the offices of Assistant District Attorney Paul Blaine all documents in its possession that are responsive to Defendant Shimer first 13 Requests and Requests 14, 15 and 16 found in Shimer's Request to Produce dated November 15, 2005.

IT IS FURTHER ORDERED that within ___ days Plaintiff shall comply with this order and produce the requested documents for the inspection and copying of Defendant Robert W. Shimer.

SO ORDERED _____ February, 2006

UNITED STATES DISTRICT JUDGE

ROBERT W. SHIMER, ESQ., *Pro Se*
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COMMODITY FUTURES TRADING :
COMMISSION, :

Hon. Robert B. Kugler

Plaintiff,

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COYT E. MURRAY, & J. VERNON ABERNETHY

Hearing Date: February 3, 2006

Defendants.

**BRIEF IN SUPPORT OF DEFENDANT ROBERT W. SHIMER'S MOTION TO
COMPEL PLAINTIFF COMMODITY FUTURES TRADING COMMISSION TO
PRODUCER DOCUMENTS**

Robert W. Shimer ("Shimer"), a pro se defendant in this matter moves this Court to compel the Plaintiff Commodity Futures Trading Commission to produce certain documents previously requested by Shimer in his Request for Production addressed top Plaintiff dated November 15, 2005.

Plaintiff's Original complaint was filed in the matter presently before the Court on April 1, 2005. Plaintiff then filed a First Amended Complaint on June 24, 2005. However, the fact that the Original Complaint was subsequently amended does not eliminate the reality that the statutory restraining order entered against Defendant Shimer by the Court was clearly based upon that Original Complaint. The Original Complaint filed by Plaintiff against Defendant Shimer , his client Vincent J. Firth ("Firth") and Shimer's client Equity Financial Group, LLC ("Equity") provided the ground work and basis for the entire action by Plaintiff that continues

today. Though that Original Complaint may have been amended, basic principles of fairness and due process would require that Plaintiff make available to a named defendant pursuant to timely pre-trial discovery the facts and documents that were relied upon and considered by Plaintiff in naming that defendant in the first place. Those considerations of fairness and due process are even more important and significant when the Plaintiff is an agency of the federal government and the defendant is a private citizen with limited resources.

Plaintiff has refused to identify and provide specific documentation in response to the first thirteen (13) Requests to Produce served upon Plaintiff by Shimer in mid November as well as Request number 16. Plaintiff has refused to provide any reasonable answer to those specific Requests for Plaintiff to identify and produce documents. Those first 13 Requests and Request 16 of Shimer seek critical information that go to the very heart of the allegations made against all of the Equity Defendants. Requests 13 a and b are particularly important because Section 6b of that Act which is the anti fraud section of the Commodity Exchange Act requires the alleged fraud to have occurred "in connection with any order to make or the making of, any contract of sale of any commodity for future deliver made to be made..." for some "other person". Who specifically are the other persons that Defendant Shimer is alleged to have been defrauded pursuant to the specific language found in and required by Section 6b of the Commodity Exchange Act? Shimer's Request 13 is simple and concise. It deserves an answer and the Court should require Plaintiff to answer both parts of Request 13. It is not unreasonable to ask that Plaintiff provide the name of the alleged person or persons that were defrauded as required by the specific language of Section 6b.

With respect to all 13 of Shimer's first Requests to produce Plaintiff, in effect, seeks to shelter from legitimate discovery all relevant and critical information that should be made available to Defendant Shimer in preparation of his defense. Plaintiff, in short, seeks to discourage and thwart legitimate discovery by simply hiding behind the fact that the Original Complaint was eventually amended.

The fact that Plaintiff may have decided to include additional allegations with respect to Defendant Shimer in its First Amended Complaint and to add new defendants (that were completely excluded from its Original Complaint due arguably to sheer negligence and incompetence with respect to Plaintiff's initial investigation) should not allow Plaintiff to use its

own incompetence (and therefore the necessity of an Amended Complaint) to hide from proper discovery facts and allegations made to the Court in its Original Complaint. The Original Complaint clearly provided the Court with a legal basis and reason to take the extraordinary step of issuing a statutory restraining order against all of the Equity Defendants in early April of 2004. That Original Complaint also provided the authority for allowing the Temporary Equity Receiver to literally send armed US marshals to the home of Defendant Firth! Plaintiff should be required to identify and produce to Defendant Shimer any and all documents referred to in his first 13 requests and in his request 16. A copy of Plaintiff's Responses to Defendant Shimer's Request to Produce is attached to this Brief as Exhibit A.

It is true that the Court has, pursuant to its order date October 4, 2005, held Shasta to be a commodity pool. However basic principles of fairness and due process should allow Defendant Shimer to inquire and to obtain from Plaintiff such documents and information that was specifically relied upon by Plaintiff in arriving at its original conclusion that Shasta is a commodity pool as stated in its Original Complaint and then reiterated in its First Amended Complaint. This is especially true as the issue of whether or not an entity can be characterized as a commodity pool without ever opening an FCM account in its name at any brokerage firm is evidently an issue of first impression for the federal courts. Specifically Shimer's requests 14 and 15 are legitimate discovery requests. If the entity Shasta Capital Associates, LLC is, indeed a commodity pool, it should not be difficult for Plaintiff to honestly and forthrightly identify and produce the documents request by Shimer in both Requests #14 and 15.

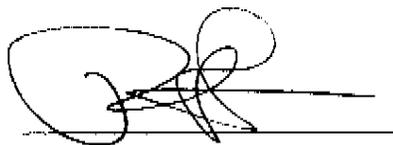
Defendant Shimer has no intention of asking the Court to reconsider its holding that Shasta is a commodity pool. However, in preparing for trial, it seems that regardless of the court's previous order, because this issue is apparently one of first impression, the issue of whether or not the entity Shasta Capital Associates, LLC was, indeed, a commodity pool at the time the Original Complaint and First Amended Complaint were filed may be the subject of an appeal, if necessary to the Third Circuit. It is critical that Defendant Shimer have the opportunity to establish a trial record that reflects exactly what documents and facts were relied upon by Plaintiff in concluding that his client Shasta was, indeed, a commodity pool.

For that reason, before a trial on the merits, it seems that basic principles of fairness and due process would allow Defendant to discover exactly what documents or facts Plaintiff will seek to place into the trial record that were relied upon by Plaintiff before filing its Original Complaint alleging a violation of the Commodity Exchange Act by any of the Equity Defendants. Clearly the allegations found in the Plaintiff's Original Complaint did not materialize out of thin air. There must have been some documentation relied upon by Plaintiff when Plaintiff initially came to the conclusion that Shasta was a commodity pool. Defendant Shimer wishes to review that documentation prior to trial. Hence Plaintiff should be required to identify and provide to Defendant Shimer the documents request in Shimer's Requests #14 and 15.

Moreover, Defendant Shimer obtained the advice of member of the local bar who was not acting as legal counsel to Shimer by was simply providing him with help and advice with respect to the proper form to comply with the filing requirements of the Court's local rules. Mr Shimer specifically asked if his request that Plaintiff produce the documents requested in Camden at the offices of the Assistant District Attorney Paul Blaine was reasonable and proper. Mr Shimer was informed that the location for production of the documents Shimer requested was appropriate.

In light of Defendant Shimer's limited financial resources, Shimer respectfully requests that the Court require and order Plaintiff to produce the Requested documentation at the offices of Paul Blaine in Camden as required by Shimer's Request for Production provided to Plaintiff. To require Mr. Shimer to fly or drive to Chicago to obtain the information he requests is both unreasonable and imposes an undue financial and time burden on Defendant Shimer.

Dated: December 30, 2005

A handwritten signature in black ink, appearing to be 'R. Shimer', written over a horizontal line.

Robert W. Shimer, Esq, Pro se

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on December 30, 2005 he caused copies of his Notice of Motion to Compel Plaintiff Commodity Futures Trading Commission To Produce the Documents Previously Requested by Defendant to be served upon the following parties at the address indicated below by First Class mail.

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*On behalf Coyt E. Murray, Tech Traders, Inc. Ltd.,
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