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**In The United States District Court  
For The District Of New Jersey  
Camden Vicinage**

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.

Hon. Robert B. Kugler  
District Court Judge

Hon. Ann Marie Donio  
Magistrate

**Civil Action No: 04-1512  
(RBK)**

**Plaintiff's Findings of Fact  
and Conclusions of Law**

**TRIAL DATE: August 27,  
2007**

## FINDINGS OF FACT

### The Parties and Overview of the Fraud

1. Plaintiff Commodity Futures Trading Commission (“Commission” or “CFTC”) is an independent federal regulatory agency that is charged with responsibility for administering and enforcing the provisions of the Commodity Exchange Act, as amended (the “Act”), 7 U.S.C. §§ 1 *et seq.* (2002), and the Regulations promulgated thereunder, 17 C.F.R. §§ 1 *et seq.* (2007).
2. Defendant Equity Financial Group, LLC, (“Equity”) is a New Jersey limited liability company formed on September 1, 1998, with an address of 3 Aster Court, Medford, New Jersey 08055.
3. Defendant Vincent J. Firth (“Firth”) resides in Medford, New Jersey and is the President and sole shareholder of Equity.
4. Defendant Robert W. Shimer (“Shimer”) resides in Leesport, Pennsylvania and was at all relevant times legal counsel for Shasta and Equity.
5. Shasta was a commodity pool. But for 1% of initial deposits, Shasta’s funds fed to the Tech Traders’ “super fund” master pool.
6. Equity was the commodity pool operator (“CPO”) for Shasta.
7. New Century Trading LLC (“New Century”), is a Nevis, West Indies limited liability company whose manager was Allied International Management, Ltd.

8. Edgar Holding Group, Inc. (“Edgar”), was a Delaware corporation formed in December 2000 of which Firth was president and Shimer was the chief financial officer. Edgar collected at least \$180,000 in funds from four outside investors to invest with Coyt E. Murray.

9. Tech Traders, Inc. (“TTI”) was a Delaware corporation located in Gastonia, North Carolina.

10. Tech Traders, Ltd. (“TTL”) was a foreign corporation organized under the laws of the Bahamas. It was a sister company to Tech Traders, Inc. and was party to a “Service Agreement” dated June 1, 2001, providing that Tech Traders, Ltd. would place investment funds with Tech Traders, Inc. for trading.

11. TTI and TTL generally shared common ownership, office space and employees. Most investor funds were held in bank or future commission merchant (“FCM”) accounts carried in the name of TTI. As there was no meaningful distinction between them, they are hereafter referred to generally as “Tech Traders.”

12. Magnum Investments, Ltd. (“Magnum”) was incorporated as a South Carolina corporation in 1991, but is not in good standing. Magnum was party to a “Service Agreement” dated June 1, 2001, purportedly providing that Magnum would place investment funds with Tech Traders, Inc. for trading.

13. Magnum Capital Investments, Ltd. (“MCI”) was a foreign corporation organized under the laws of the Bahamas. It is a sister company to Magnum Investments, Ltd. and was party to a “Service Agreement” dated June 1, 1999, purportedly providing that MCI would send investment funds for placement with Magnum for trading.

14. Coyt Murray (“Murray”) was the president and chief executive officer of Tech Traders and was Tech Traders’ primary contact person in dealing with potential participants. Murray also controlled Magnum and MCI. Murray and Tech Traders operated out of an office in Gastonia, North Carolina. Murray represented to Firth and Shimer that Tech Traders used a “portfolio” system for successful trading of selected exchange-traded financial futures contracts, including the NASDAQ 100 and S&P 500. He told Firth and Shimer that the success of the portfolio system derived from the fact that it utilized many different, allegedly non-correlated, separate systems traded concurrently on different time frames using proprietary algorithms, which not only helped filter out market noise for the purpose of more correctly determining the real direction of market trends, but also would balance and smooth the performance of the system.

15. Firth and Shimer acted as salespeople for Shasta. They were associated persons (“APs”) of Equity.

16. Neither Firth nor Shimer were registered as APs for Equity.

17. Equity is not registered with the CFTC in any capacity.

18. From June 2001 through April 1, 2004, defendants, Firth and Shimer, acting individually and through Equity, solicited \$15,113,498.11 in outside investors’ funds through Shasta and \$295,143.81 in outside investor funds through New Century for trading by Tech Traders in commodity futures contracts. Equity, acting through Firth and Shimer, and Firth and Shimer individually, touted the “astonishing” performance of the Shasta commodity pool, claiming that the pool had earned trading profits of approximately 100% per annum since inception.

19. Defendants Tech Traders and Murray solicited and accepted net deposits of \$13,883,381.20 from Shimer's escrow account and \$295,143.81 directly from New Century to trade commodity futures contracts. In total, Tech Traders received a total of \$43,132,522.01 from Shasta and other investors. At the time Tech Traders' assets were frozen by the Court, Tech Traders, Inc. had returned a total of \$11,984,471 of principal to investors, paid \$617,942.19 in fictitious profits to investors, and from 2001 to April 1, 2004, lost \$7,605,407 million trading commodity futures contracts and other financial instruments in the accounts that held Shasta, and other third-party funds. Tech Traders also transferred over \$2.4 million to Equity and to bank accounts controlled by Robert Shimer or Vincent Firth. In order to make its investors whole, the receivership estate of Tech Traders, Inc. would need approximately \$15.1 million. (The Commission's information about the final losses to the investors of Tech Traders and Shasta are contingent upon the final report of the Receiver. Any figures used here are subject to final costs of the Receiver, accruing interest and recoveries to the various estates.)

20. Murray often stated to Shimer and Firth that other individuals and/or entities had loaned money to his companies or had placed funds with his various companies for trading solely in the name of Murray's various companies. Firth and Shimer knew that Tech Traders and Murray pooled these funds with Shasta's funds.

21. Firth was the sole signatory on Equity's bank account and made decisions on disbursements out of that account. Firth also issued the monthly account statements to Shasta and New Century investors. He reviewed, approved and distributed Shasta's Private Placement Memorandum. Firth is a controlling person of Equity.

22. Firth was registered in the securities industry as a registered representative of several broker-dealers between 1981 and 1990. The Shasta PPM states that Firth holds an NASD Series 7 license, creating the impression that the license is current.

23. Firth had no experience with commodity pool accounting, no training in pool statement preparation and no experience with back office operations of a commodity pool. The Shasta PPM does not disclose this lack of experience.

24. Firth and his wife have filed for bankruptcy under Chapter 13 of the Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* (2003). The Shasta PPM failed to disclose that information.

25. Shimer did not perform any research to find out if Firth had ever filed for bankruptcy.

26. Shimer was legal counsel for Shasta and Equity. He is an attorney and has been a member of the Massachusetts Bar since 1973.

27. From June to December 1986, Shimer was registered as an AP of Churchill Commodities, a former CPO) that had been registered with the Commission. From December 1988 to April 1989, he was registered as an AP of Capital Management Partners, a former introducing broker. He took and passed the Series 3 examination required for APs in the futures industry in 1986.

#### **The Defendants' Past Business Dealings**

28. Firth and Shimer met in 1998 or 1999, during an (ultimately) failed investment deal known as Badische Trust("Badische."). Firth had introduced several parties to Badische to secure financing. Badische absconded with the parties' commitment fees. At

least two parties that Firth introduced to Badische brought legal action against Firth and secured judgments or other relief against Firth. The Shasta PPM does not disclose this failed investment deal. Firth's previous failed investments would have been important to a Shasta investor's decision to invest.

29. In January 1999, Shimer was involved in the formation of a Nevada corporation called Kaivalya Holding Group, Inc. ("Kaivalya"). Shimer was an officer, director and shareholder in Kaivalya. In 1999, through Kaivalya, Shimer and others collected money from investors for three different investments, all of which ultimately failed.

30. In the first investment Shimer and others collected \$669,000 from investors. Shimer collected \$272,000 of that amount through an attorney escrow account. Investors received only 50-54% of their principal back. The investors were later partially repaid principal from funds derived from Tech Traders.

31. Shimer and others collected \$325,000 from investors for the second Kaivalya investment, none of which was recovered. The investors were later partially repaid principal from funds derived from Tech Traders.

32. The third Kaivalya investment was made through intermediaries Jerry LaTulippe ("LaTulippe") and Tom Leonard ("Leonard"). LaTulippe told Shimer that he had an exclusive relationship with a trader who was obtaining phenomenal results trading the markets. That trader was Coyt Murray. Shimer visited a trading platform owned by someone named Hubert Pinder in the Bahamas in October 1999. There he met Coyt Murray and Murray told Shimer that he had licensed his trading system to Pinder. After this meeting in the Bahamas, Shimer collected over \$1,300,000 from investors to invest in Murray's

trading system and wired the money to an account in the name of Good Works, which he was told was a company controlled by LaTulippe.

33. This third investment through Kaivalya also failed. Some of these investors were also later repaid part or all of their Kaivalya investments from payments Tech Traders gave to Shimer.

34. Shimer received pressure from investors who had not been repaid from the three failed investment deals. Some investors threatened to sue him and/or his associates or go to governmental authorities to complain about their loss.

#### **The Formation of Shasta**

35. In the fall of 2000, Shimer tracked down Murray to find a solution to the money Kaivalya owed investors. Murray told him he was just beginning to trade and that he had been back-testing his trading system for a year, although he had told Shimer in 1999 he licensed it to Pinder the year before. Although Shimer had been told by LaTulippe and Leonard that Murray was successfully trading the system in 1999 through Pinder, Shimer did not ask Murray a lot of questions about his relationship with Pinder. Murray told Shimer that he had never received the money from LaTulippe that was supposed to be invested in his trading system. Nonetheless, Murray agreed to help Shimer repay the Kaivalya investors. Shimer did not disclose the failed Kaivalya investment history to potential Shasta investors or to Elaine Teague. The Shasta PPM did not disclose these facts either. This failed investment history would have been important to an investor's decision to invest in Shasta.



36. Murray told Shimer that he had returned money to Pinder after being advised by his attorneys to do so because Pinder was misusing investor funds. Murray also told Shimer that he returned money given to him for trading to Pinder after suffering a loss.

37. The solution that Shimer and Murray agreed on to solve Shimer's Kaivalya debt was for Murray to share his "profits" with Shimer. The two struck a deal by which Murray would share profits otherwise allocated to him with a Nevis trust called Shadetree. This trust had no bank account. All payments made by Murray pursuant to this agreement were made to domestic bank accounts that Shimer controlled. Both Firth and Shimer had internal Shadetree "accounts."

38. This secret split of the profits would be used to compensate Shimer and repay the Kaivalya investors, but it was also used to pay a mortgage for Firth and for Shimer to give \$82,000 to a former Kaivalya associate and principal of Universe, David Perkins.

39. Universe Capital Appreciation, LLC was the largest investor in Shasta. Universe accepted investment amounts that were less than the minimum investment of \$100,000 that was required by Shasta's PPM.

40. Shimer met Firth through LaTulippe in the fall of 1999 when Shimer was introduced to Firth as LaTulippe's lawyer. Firth was told that Shimer was representing LaTulippe in seeking to invest funds in some real estate projects.

41. Shimer drafted Shasta's PPM, Operating Agreement, Subscription Agreement, the Agreement for Independent Verification of Shasta Capital Profits and Losses and Investor Questionnaire. He was also responsible for all of Shasta's filings with the Securities and Exchange Commission and for all required notice filings in every state. Shimer also tried to

review every document Firth sent out for Equity. In addition to preparing legal documents for Equity, Shimer also approved all subscription documents submitted to Shasta, accepted participant funds and deposited them into his attorney escrow account for further transmittal to Tech Traders and other entities and was Equity's primary contact person for dealing with Murray. Shimer was a control person of Equity.

42. After an initial 1% or 2% preferential rate of return to Shasta investors, Tech Traders was entitled to 15% of the "profits" from trading for trading and operational expenses and 50% of any remaining "profits", under the terms of the Shasta Private Placement Memorandum.

43. On August 3, 2001, an agreement was executed between Tech Traders Ltd. and Shadetree. This agreement was drafted by Shimer. The agreement provided that Tech Traders would allocate 5% of the 15% of "profits" for trading and operational expenses provided for in the Shasta PPM to Shadetree and ½ of the 50% of any remaining "profits" allocated to Tech Traders under the Shasta PPM to Shadetree. This agreement and the \$1.3 million paid under it, were not disclosed in the Shasta PPM and was not otherwise disclosed to Shasta investors, potential investors or to Teague.

44. All payments Tech Traders made to Shadetree were actually wired to an account in the name of Kaivalya that was under the control of Shimer. Payments of \$1,314,930 were wired to these accounts under the control of Shimer.

45. Firth knew that Kaivalya investors were owed a lot of money and about the secret profit split to Shadetree that was not disclosed in the Shasta PPM.

46. Between at least June 2001 and April 1, 2004, Equity, acting through Shimer and Firth, and Shimer and Firth individually, solicited and received \$15,113,498.11 in outside investor funds for trading by Tech Traders in commodity futures contracts. Shimer and Firth also solicited \$295, 143.81 from two New Century investors for participation interests in Tech Traders.

47. Equity solicited interest in Shasta by various means, including individual solicitations by Shimer and Firth, distribution of the PPM drafted by Shimer, and reviewed and approved by Firth, operation of a website, <http://www.shastacapitalassociates.com> (the "Shasta website"), and provision of information to third parties that tout hedge funds to investors on various web sites, including <http://www.hedgeco.net>, <http://www.barclaygrp.com> , and <http://www.hedgefundresearch.com>. The Shasta website reflected the identical trading performance of Tech Traders as reported beginning June 2001 through February 2004, by Tech Traders' accountant, Vernon Abernethy. As of March 2004, the web site reported purported returns totaling over 130% for the period March 2003 to February 2004.

48. Each investor or potential investor in Shasta received one of three different versions of the Shasta PPM: a) Plaintiff's Exhibit 1093, sent to all investors or prospective investors between June 30, 2001 and February 18, 2003; b) Plaintiff's Exhibit 1070, sent to all investors or prospective investors between February 18, 2003 and September 2, 2003 and c) Plaintiff's Exhibit 461, sent to all investors or prospective investors from September 2, 2003 until April 1, 2004.

49. HedgeCo's website touted Shasta as a top performing hedge fund and featured Shasta as the hedge fund of the week during the week of March 14, 2004. According to the

hedgeco.net site, Shasta was up over 8% net of all fees for January and February 2004 and had also achieved net returns of 107.54% in 2002 and 92.02% in 2003. Equity, through Firth and Shimer, supplied all of this performance information to Hedgeco and other third parties knowing that Hedgeco and other third parties would publish it.

50. Shimer received from Murray written technical information and a description of Tech's trading system. Shimer incorporated that information received from Murray, and made minor editorial changes in the information on Shasta's web site that described Tech's trading system. All information that did not specifically refer to Tech's trading system, how it worked, the philosophy behind it and how it was developed was written by Shimer, and published with the technical help of James George.

51. On February 17, 2004, Dennis Meyer emailed Firth alleging copyright and piracy violations for the math pages on Shasta's website. Shimer wrote Murray about these communications. He was concerned because he had obtained the information on the website from Murray in 2001 and Murray had told him that the information was proprietary and represented a unique trading system he and his son had developed. When Shimer confronted Murray after the contact by Meyer, Murray told him that he had licensed Meyer's system and that he was not using the system anymore. The information that Meyer had complained about was still on the Shasta website on February 23, 2004.

52. The Investment Agreement between Shasta and Tech Traders provided that Shasta's funds would be intermingled with the funds of Tech Trader's other investors. -. Shimer understood that Shasta's funds would be commingled with the funds of Tech Trader's other investors. The Investment Agreement also provided that all investors' funds

would be treated equally in the superfund. Firth read, approved and signed this Agreement. Shimer drafted this Agreement.

53. With limited exceptions, Equity, acting through Firth and Shimer, and Firth and Shimer individually did not identify to actual or prospective Shasta investors the identity of Tech Traders.

54. Equity used the mail and interstate telephone lines to communicate with investors.

55. Shasta had no separate bank account, but operated solely through Shimer's attorney escrow account. Shimer opened that account, was the sole signatory on it and controlled all funds deposited to it by Shasta investors and wired out to Tech Traders.

56. The Shasta PPM entitled Equity to a management fee of 5% of profits generated by the Tech Traders' trading system. In addition to taking out payments pursuant to this 5% management fee, Shimer and Firth took out other payments pursuant to the undisclosed Shadetree agreement with Tech Traders. Shimer and Firth also took out \$335,000 more from Equity than the 5% management fee allowed.

57. Murray used the term "credits", rather than profits, on the account statements he issued to investors. He described the term to Shimer as a posting to the account of conditional profit. He also told Shimer that a "credit" was not a profit because of tax implications, which did not make sense to Shimer. Nonetheless, Shimer did not press Murray on whether the term "credits" meant profits.

58. On January 10, 2001, Coyt A. "Lex" Murray, sent Shimer an email describing Tech Trader's trading system. Lex was Coyt E. Murray son and worked with him. He stated

that the system had made 52.7% in 19 days which was 26,291 annual percentage rate.

Shimer stated that 26,291% was ridiculous.

59. On February 16, 2001, Shimer sent Murray a letter about a prospective investor David Kaplan, who was the developer of a condominium Shimer and his wife owned. Shimer told Murray in the letter that he had told Kaplan that he had a client that was trading the futures market with real success, that Murray and his trading company were his legal clients and that he had been following Murray's trading progress for a year. He told Murray that he had told Kaplan that he would receive 3% return on his investment each month, that 15% would be subtracted for trading and operational expenses and remaining profit would be split 50/50. He asked Murray not to tell Kaplan about the failed Kaivalya deal with LaTulippe and Leonard ("the Tom and Jerry fiasco") or the further profit splitting arrangement with Firth and Shimer.

60. On March 1, 2001, Shimer wrote another letter to Murray about their meeting with Kaplan. The letter mentioned that Murray was uncomfortable with Kaplan's questions. Kaplan had asked Murray how much money he had in trade, how much profit Murray had made and what future commission merchants ("FCMs") he traded through. Shimer noted in his letter to Murray that Kaplan's question was legitimate and was simple due diligence on his part. Shimer noted an inherent conflict between Murray's need to maintain his financial privacy and an investor's need to receive information.

61. Murray was concerned about keeping his own finances private. Murray's desire for financial privacy extended to a concern that the amount he or his companies had in trade was no one else's business. Murray expressed this concern on his part for financial privacy to both Shimer and to Firth and to anyone else who would ask him how much of his

own funds Murray had in trade. Murray continued to express this concern for financial privacy to Shimer whenever Shimer was present and the issue of how much money Murray had in trade was raised by some other party. Murray also expressed this same concern to Shimer whenever it came up in conversations Murray had with Shimer.

62. Kaplan was willing to let Murray trade his money pursuant to a power of attorney in an account in Kaplan's name. He wanted to keep control of his money.

63. Other investors had expressed an interest in letting Murray or Tech Traders trade their funds in accounts held in the investors' names. However, Murray told Shimer that he was concerned that the investor could reverse engineer his system if the investor saw trading account statements.

64. David Kaplan never became a New Century or Shasta investor.

65. After Shimer's meeting with Kaplan and Murray, Shimer noted that there was an inherent conflict between Murray's need to maintain his financial privacy and an investor's need to do simple due diligence about the soundness of the investment. He told Murray that potential investors would want some assurance that Murray had demonstrated in real time with real dollars an ability to perform consistently and successfully in the futures market. It was then that he first mentioned the idea of obtaining independent verification of Tech Traders returns to Murray.

66. The Shasta PPM was designed to meet Murray's desire for privacy while providing comfort to investors that the trading results were legitimate. It provides that all invested funds will be traded in the name of the trader but does not disclose the name of the

trader. It also provides for independent verification of the trader's trading results through two undisclosed CPAs.

67. Shimer knew that Tech Traders had investors other than Shasta as early as May 2001. He also knew that Tech Traders could be jeopardized by large withdrawals by those investors.

68. New Century was formed by an attorney by the name of Liburd on the Island of Nevis, West Indies in April of 2001 at the direction of Shimer. Shimer suggested the formation of this entity to permit accredited foreign investors to invest in Tech Traders. New Century had two investors, International Investment Alliance and Metalchem. Later Shimer formed Shasta as a Delaware Limited Liability Company.

69. The Shasta PPM represented to potential investors that Equity, as Manager of Shasta, conducted due diligence on Tech Trader's results and trading system..

70. The PPM assured investors that Equity had adequate information about Tech Traders' system and real time trading, although Firth, Equity's President and sole shareholder never saw any documentation of Tech Traders' trading results. He mainly relied on Shimer's statements to him that Shimer had placed personal money through Edgar Holding Company with Tech Traders and received good results.

71. Shimer claimed to rely on the trading results obtained by Edgar Holding Company and information Murray provided to Firth and Shimer on his Synergy Stock Index Trading program in deciding to solicit investors for Tech Traders' trading program. This reliance was not reasonable because a) Shimer did not receive consistent and reliable information from Tech Traders on Edgar's trading results and b) the information Murray provided to Shimer and Firth on his trading system was purely hypothetical.



72. After initial meetings with Murray in 2000, several meetings during 2001 and intermittent meetings during early to mid 2002, Firth had little direct contact with Murray. Murray apparently preferred to deal with Shimer.

#### **The CPA Verification Process**

73. It was Shimer's idea to obtain an independent certified public accountant ("CPA") to verify Tech Trader's trading results.

74. Equity employed Elaine Teague from the accounting firm of Puttman & Teague for the limited purpose of receiving without further verification on her part a rate of return number verified in writing by a CPA local to Tech's trading operation designated by Tech Traders and Murray and approved by Shasta. She was also retained by Equity to be available to members or prospective members of Shasta to receive their phone call(s) and to confirm that she knew the identity of the local CPA that provided her with a verified rate of return number for trading by Tech each month. She was also retained to confirm to Equity outside "hedge fund" performance numbers by contacting the management of those funds or, in the alternative, reviewing the web sites of those funds. She was also employed to issue end of year K-1's to all of Shasta's members and prepare Shasta's partnership return.

75. Teague was not an independent accountant. Shimer chose Teague, who was a dear friend for 20 years for several reasons. Shimer knew that a larger, more well known accounting firm may not want to take this engagement particularly in light of the fact that 2001 was a "post Enron" environment. From his past association with Elaine Shimer knew that Elaine was honest. Shimer also knew that many CPAs are not willing to receive calls from someone they have never met and then confirm on the telephone ROR information that had been received from another CPA.

76. Neither Teague nor Shimer had any experience calculating rates of return for commodity pools. Teague told Shimer she did not have such experience.

77. An important function of the CPA chosen to be Shasta's CPA was to receive calls from Shasta's members or prospective members from time to time and to confirm, if asked, the ROR numbers being reported by Shasta to its members.

78. Firth had few dealings with Teague. Most of Teague's interactions on the engagement were through Shimer.

79. Originally, Teague was going to perform the independent verification of Tech Trader's trading results. However, Teague wanted original brokerage statements sent to her. She also wanted to review Tech Trader's bank statements, so that she could verify how much money came into and went out of Shasta, determine how much was traded and verify profits and losses. Murray did not want original statements to be sent anywhere; he wanted statements to be reviewed in his office. Therefore, it was decided that a third party would perform the independent verification.

80. Originally, Murray had planned to hire Robert Collis, a CPA with Collis and Associates, to perform the independent verification of Tech Traders' trading performance. Collis' accounting firm had performed audits of companies owned by Coyt Murray in the 70's and 80's and Collis had recently prepared Coyt Murray's personal tax returns. Collis declined the engagement, however, because of concerns that the business Tech Traders was in might need to be registered under the securities law, Collis and Associates did not have the expertise to verify performance returns for an investment and the CPA firm's insurer would require an extra premium to cover the engagement.

81. Shimer had two phone conversations with Collis in which he attempted to persuade Collis to take the engagement, despite Collis' concerns that his firm did not have the necessary expertise. He told Collis that the work involved only performing a simple calculation, that the work did not fall under SEC jurisdiction and that Tech Traders could pay any additional insurance premium for doing the work. Collis still declined the engagement.

82. After Collis told Murray that he declined the proposed engagement, Murray then decided to hire J. Vernon Abernethy ("Abernethy"), a local CPA, to review and verify Tech Traders' trading results, and supply a monthly trading performance rate of return figure to third parties.

83. It was decided that Abernethy would perform the verification of Tech Traders' trading results through a set of Agreed Upon Procedures ("AUP"). These procedures were described in a letter that Abernethy sent each month to Murray ("AUP letter"). Each letter gave a monthly, and sometimes quarterly, return number. This AUP letter was then forwarded each month by Murray or Abernethy to Teague. Teague took Abernethy's performance number, inserted it into her own letter to Equity ("Verification Letter") and then forwarded her letter with the performance number obtained from Abernethy on to Firth.

84. Firth played no role at all in the development of the procedures for verifying Tech Traders' rate of return. Firth relied on Shimer to develop a process to assure that Shasta's investors received accurate information about the performance of their Tech Traders' investment. This reliance was not reasonable.

85. Shimer's reliance on Teague and Abernethy to assure that Shasta's investors received accurate information about the performance of their Tech Traders' investment was not reasonable.

86. Teague performed no independent review of the rate of return numbers provided to her by Abernethy. Nonetheless, Shimer and Firth made her available to answer investor questions. She was allowed to confirm the performance number each month, but she was not allowed to give investors the name of either Tech Traders or Abernethy.

87. Abernethy produced AUP letters or reports covering Tech Traders' trading performance from June 2001 through February 2004.

88. Shimer created the formula for determining profits in the Tech Trader accounts. It was a simple method that Shimer said any sixth grader could do. He defined it in the Investment Agreement entered into between Shasta and Tech Traders. Abernethy relied on this formula in verifying Tech Traders' monthly performance.

89. The formula Shimer set out in the Shasta/Tech Traders Investment Agreement for determining a rate of return is flawed. It is too simplistic because it relies only on FCM trading statements to calculate the rate of return, does not describe which accounts should be included in the calculation, which should not be included and why and does not describe how additions and withdrawals during the reporting period are to be

treated. Therefore, application of his formula can, and did, lead to skewed performance results.

90. Abernethy told Shimer that his formula could lead to skewed results, depending on what transactions were included or excluded from the calculation. Shimer told him just to follow the formula set out in the Shasta/Tech Traders Investment Agreement.

91. The formula set out in the Shasta/Tech Traders Investment Agreement does not provide enough information to conduct a proper analysis of a rate of return. The Agreement does not describe how additions and withdrawals are to be adjusted or disclose which accounts will be excluded from the analysis or why they should be excluded.

92. Abernethy, claiming to use the formula for determining profit that was written into the contract between Shasta and Tech Traders by Shimer, did not properly account for all additions and withdrawals into the Tech Traders superfund, thus skewing those results and producing a positive rate of return number when there was actually a negative rate of return.

93. In order to properly calculate a rate of return for a commodity pool, a person must have a general knowledge of the futures industry, an understanding of the nature of the fees the commodity pool incurs, an understanding of the agreement between the commodity pool and its participants and all documentation detailing the transactions that occurred during the given time for which the rate of return is to be calculated. If the pool accepts additions and withdrawals other than at the end or the beginning of a reporting period, the pool should account for these additions and withdrawals by using one of the four alternative methods approved by the CFTC for computation of a rate of return.

94. Teague sent Shimer emails in which she explained that there were four different CFTC approved methods of calculating rates of return in connection with hedge funds that she was following for Shasta. She told Shimer that she did not have any information on how the performance calculation was done for Tech Traders. These hedge funds all had registered commodity pool operators and all used more complicated methods for determining rates of return than the method established by Shimer. Shimer found Teague's emails describing the various approved methods confusing. He knew that the approved methods were more complicated than what Abernethy was doing to calculate a rate of return.

95. Teague asked Abernethy what method he was using to calculate the rate of return for Tech Traders. Abernethy did not answer her question. However, Shimer told her that the method being used was not a CFTC approved method, but a simpler method that he had set up.

96. In order to perform a rate of return calculation using any approved method, a person would have to have available 1) cash receipts and disbursements journal, general ledger, participants' subsidiary ledger, bank and trading account statements and other documents relevant to income and expenses.

97. Abernethy never had full access to Tech Traders' records. He received only whatever documents Murray gave him.

98. Neither Firth, Shimer nor Teague knew what Abernethy was reviewing to arrive at a rate of return. Shimer knew that Teague did not know what Murray was giving Abernethy to review to determine a rate of return number and he never asked Murray either.

99. However, Shimer knew that Abernethy did not have full access to the records necessary to compute an accurate rate of return. In November, 2001, Shimer revised a draft Verification Letter from Puttman & Teague to Equity to include explicit language that stated that Abernethy was granted full access to the in-house trading records of Tech Traders and was given the opportunity to review original brokerage statements. Shimer sent this draft letter to Abernethy at Abernethy's request. Abernethy crossed out the language in the draft Verification Letter that stated he was granted full access to records and original brokerage statements. He replaced it with language which stated that Shasta Capital Associates has received and accepted as reasonable and reliable for the purpose for which it is to be used the agreed-upon procedures established between Abernethy and Tech Traders. Shimer did not tell Teague that Abernethy had made those changes to her letter. He also did not object to Abernethy's changes but accepted them all word-for-word.

100. The AUP letters Abernethy produced showed gains for every month or quarter reported on from June 2001 through February 2004. Abernethy reported double-digit gains for at least 23 of the 33 months during this period. The worst performance reported was a purported gain of 4.11% for the month of June 2001, and the next worst performance reported was a purported gain of 9.02% for the month of January 2004.

101. Firth did nothing to investigate Abernethy's background and did not know what, if anything, Shimer or Teague had done to investigate Abernethy's background. He was also uncomfortable with Abernethy and wanted Murray to replace him. But he never discussed replacing Abernethy with Murray.

102. Shimer did nothing to investigate Abernethy's background other than review his resume.

103. Teague had no input into the decision to employ Abernethy.

104. Although the PPM stated that Teague would perform due diligence on the qualifications and reliability of Abernethy, neither Shimer nor Firth did anything to assure that Teague investigated Abernethy's background.

105. Although the PPM assures independent verification by a CPA and provides procedures whereby review and verification will take place, Firth never understood how the process worked. Instead, he relied on Shimer's representation that the process was sound. Firth acknowledged that the CPA verification process was put in place to provide comfort to investors that the trading results were authentic.

106. Shimer first met Abernethy in July 2001. Teague never met him. Shimer had many face-to-face meetings with Abernethy during the engagement and also spoke to him on the telephone frequently. Teague never met Abernethy and spoke to him by phone on only four occasions.

107. When Teague did call Abernethy to ask him a question about whether investments were marked to market at the end of the day or the end of the month, he told her that her questions were inappropriate and that she should ask Murray or her client. He expressed irritation that Shimer had made so many requests on him.

108. Although the Shasta PPM stated that the CPA who verified the trading system's performance was independent, Firth and Shimer knew that Abernethy was not independent. Shimer knew from the time he first met Abernethy in July 2001 that Abernethy was having financial difficulties. Shimer then learned that Abernethy was getting divorced and splitting up his CPA practice which he had shared with his wife. He was in the process of moving out of his office and starting a practice out of his home when Shimer met him.



Abernethy's financial problems continued into 2002 and Shimer knew those problems caused Abernethy a great deal of concern and worry. Murray suggested that Equity allow Abernethy to solicit investors for it to make extra money. Firth and Shimer asked Abernethy to introduce them to people who might invest in Shasta. Abernethy did refer and solicit potential investors to Shimer and Firth and brought one into the Shasta pool – Jerry Pettus. Shimer believed that Abernethy hoped that referral fees from referring the Shasta investment would lift Abernethy out of his financial difficulties.

109. Murray told Shimer in approximately August 2002 that Abernethy was going to work with Howell Woltz to make extra money by doing finance or accounting work to help Jerry Pettus set up some sort of company in the Bahamas to import music CD's into the US. Abernethy was also going to solicit captive insurance business for Woltz and Sterling.

110. The verification process was slow to get started in 2001. Though Abernethy was hired in July 2001, his first AUP letter verifying returns was not issued until October 2001. Abernethy tried repeatedly to get into the Tech Traders' office to start the verification process but kept being put off by Coyt. This was frustrating to Shimer because he considered it a simple process.

111. Shimer was Teague's main point of contact on her engagement by Shasta. He was also her point of contact in dealing with Murray and Abernethy to develop agreed-upon procedures to verify the Tech Trader trading results. Shimer was central in dealing with any delays, miscommunications or issues in establishing the agreed upon procedures and verification process.

112. At the beginning of her engagement, Teague had expected to receive a report of trading performance created by Coyt Murray along with Abernethy's agreed upon

procedures letter verifying the returns. However, Shimer called her and told her that she would not receive the report because Murray had told him it contained information about funds other than Shasta's to which Murray did not want her to have access.

113. Sometime in early 2002, Shimer took over the drafting of Tech Traders' monthly reports (account statements) to Shasta that were supposed to originate with Tech Traders. Firth knew that Shimer was preparing Tech Trader's reports to Shasta.

114. Teague relied on Tech Trader's report on Shasta as a third party confirmation of Shasta's balances with Tech Traders. Teague told Shimer that Shasta's beginning and ending balance information should come from Tech Traders, not Shasta and not Puttman & Teague. She did not know that Shimer was preparing these Shasta's account statements.

115. At some point, Shimer and Murray agreed that they would assume that Shasta's fund began trading 8 days after Shimer sent them to Tech Traders. At the end of the month, Shimer would ask Murray how many trading days there had been in the month then compute the rate of return on the funds based on the assumption that Tech Traders began trading them 8 days after Shimer sent the funds to it.

116. One of the subscription documents that each Shasta investor received and signed was an Agreement for Independent Verification of Shasta Capital Associates Profits and Losses (Agreement for Independent Verification.""). Shimer drafted this agreement. Although the agreement described what Shasta's accounting firm was supposed to do for Shasta investors, Teague never saw the agreement.

117. Shimer wanted Abernethy to verify that Tech Traders had on deposit with its brokerage firms sufficient funds to cover the amount Shasta and a small foreign fund, New

Century, had on deposit with Tech Traders and spoke to Abernethy about performing this additional verification. He told Teague that he did not need verification of Tech Traders' actual balance, although he was aware that Tech Traders had other investors besides Shasta and New Century. Teague never spoke to Abernethy about this minimum account verification.

118. Shimer drafted a letter to Abernethy from Teague and a reply from Abernethy to Teague which would verify that the amount of funds Tech Traders held in brokerage accounts exceeded Shasta's and New Century's deposits with Tech Traders. He sent the proposed verification letters to Abernethy. Shimer told Teague that Abernethy had told Shimer that he would not verify anything with regard to a foreign company like New Century but would only verify that Tech Traders had enough on deposit to cover Shasta's deposits. Shimer told Teague that was fine as New Century investors would probably not call and ask her about Tech Traders' balances. Teague talked to Shimer about why Abernethy could not confirm New Century's balances too and Shimer told her he did not understand why Abernethy would not but Shimer was willing to go ahead with a minimum account verification that included only Shasta.

119. Teague had ongoing concerns that Tech Traders did not provide monthly verification that it had a minimum amount of money in its trading account to cover all investors' deposits to the super fund. This was necessary to ensure that Tech Traders could pay all accounts in full should the fund close abruptly. In lieu of the verification, Tech Traders would only provide monthly verification that it had enough money on hand to cover Shasta's deposit. Teague found this verification useless and of no consequence because Tech Traders' ability to cover only Shasta's deposits was meaningless when there were other

investors in the super fund. Teague expressed her concerns about the minimum account verification to Shimer. Shimer indicated that he did not understand Tech Traders' hesitation to verify the total amount of funds under management, but he accommodated Murray and Tech Traders on this issue despite Teague's protestations and the concerns of some investors.

120. Abernethy did not want to verify that Tech Traders had enough on deposit to cover Shasta's deposits to it and told Shimer that repeatedly. Shimer had to press Abernethy and Murray to get Abernethy to provide the balance verification, even though Shimer thought it would be a simple task. After Shimer suggested to Murray that Teague could replace Abernethy and provide the requested balance verification Murray told Shimer that Abernethy would do it.

121. Abernethy did not use Shimer's draft letters for this minimum account verification. Eventually, he agreed only to add a sentence to his AUP letters quarterly, rather than monthly, that stated that the amount in Tech Trader's brokerage accounts exceeded a particular amount. This statement did not verify that the amount Tech Traders held in its brokerage accounts at least equaled or exceeded the amount Shasta had on deposit with Tech Traders. On three occasions, he verified a minimum balance that was lower than the amount Shasta's statements reflected it had on deposit with Tech Traders.

#### **Absence of an Audit of Tech Traders**

122. Murray and Tech Traders repeatedly refused an audit. Shimer attributed Murray's hesitation about an audit to his eccentricities and stated that Murray resisted an audit out of concern that it would reveal his trading methods. Firth also did not think it likely that an auditor would try to figure out Murray's trading methods. Teague also clearly articulated to Shimer that an audit would not reveal any proprietary information. Despite

what Teague told him, Shimer never doubted Murray's reasons for refusing an audit, and gave Murray "some accommodation because the numbers were so good."

### **Notice of Equity's Registration Requirements**

123. Firth and Shimer knew or should have known that Equity should have been registered as a CPO or filed an exemption from registration.

124. The issue of whether Shasta had to register as a CPO with the CFTC first came up in the fall of 2001 when Shimer had Firth send a copy of the Shasta PPM to an attorney friend, Andre Alonzo, who had contacts with sophisticated corporate investors. Alonzo sent the PPM to a client named Chuck who worked for Chase Manhattan Bank. Chuck asked if Shasta was required to register with the CFTC. Shimer then researched CFTC regulations and put together a memorandum that concluded that Shasta did not have to register as a CPO. [Exhibits 411, 412.] Shimer forwarded the memorandum to Alonzo who forwarded it to Chuck who forwarded it to Chase's legal department. Shimer then received a verbal response through Alonzo that Shasta did not have to register. After receiving this third-hand verbal feedback, Shimer did nothing more until 2003 to determine Shasta's or Equity's registration requirements.

125. Shimer was aware in 2001 from his review of section 4.13 of CFTC regulations that even if an exemption was available under Section 4.13 the CPO had to file a notice of exemption with the NFA or the CFTC.

126. Shimer did not do anything else to assure that Shasta or Equity was in compliance with registration requirements until the fall of 2003, when a prospective investor, Mark Munson, called the CFTC with investor Nicholas Stevenson to inquire about Shasta's

registration requirements. Munson and Stevenson were told that Shasta was required to register and called Shimer and Firth to tell them that. After receiving this phone call from Munson and Stevenson, Shimer hired Arnold & Porter to review Shasta's registration requirements.

127. Shasta hired Arnold & Porter in October 2003. Arnold & Porter attorneys Geoffrey Aronow ("Aronow") and Susan Lee ("Lee") worked on the engagement. Aronow was Director of Enforcement of the CFTC from 1995 to 1999 and Lee served as Chief of Staff of the CFTC from 1996 to 1999. Most of Lee's contact on the engagement was with Shimer.

128. Arnold & Porter told Shimer at the beginning of the engagement that Shasta was a commodity pool and that they believed Tech Traders was a commodity pool. Arnold & Porter also told Shimer at the beginning of the engagement that Tech Traders could not trade Shasta's funds in its own name or commingle its funds with Shasta's. The firm told Shimer that that was one of the aspects of the relationship between Shasta and Tech Trader's that would have to be changed.

129. Arnold & Porter reviewed Shimer's legal analysis, which Shimer updated in 2003, which concluded that Shasta was not a commodity pool because it was not directly trading commodity futures contracts and told him that the firm disagreed with that analysis. The firm told him that he was not taking into account the Commissions regulations that state that a fund-of-funds like Shasta is itself a commodity pool. The firm also told him his analysis that Shasta or Equity did not receive compensation because it was only paid if there were profits was incorrect.

130. Arnold & Porter told Shimer that Equity might qualify for an exemption from registration as a fund-of-funds if Tech Traders was in regulatory compliance. However, the firm needed to know more about Tech Trader's structure to complete its analysis. Shimer understood that Equity would have to file for an exemption if it qualified for one.

131. Arnold & Porter told Shimer and Firth that because Shasta's registration requirements hinged on Tech Trader's registration requirements, it was advisable to go to the CFTC with Tech Traders to cure regulatory deficiencies.

132. Arnold & Porter advised Shimer that Tech Traders should retain its own counsel experienced in commodities law to determine its requirements to register under the Commodity Exchange Act.

133. Arnold & Porter told Shimer that Shasta should meet with the CFTC with Tech Trader's counsel as soon as possible to attempt to cure any regulatory deficiencies. Although Arnold & Porter expressed a sense of urgency in contacting the CFTC, Shimer reported to Arnold & Porter that Tech Traders did not share that sense of urgency. Lee sent Shimer two emails in December 2003, on the 2<sup>nd</sup> and the 11<sup>th</sup>, in which she emphasized the urgency in meeting with the CFTC to deal with regulatory issues. Firth received both of these emails. In the email on December 2, Lee told Shimer that her firm was growing increasingly concerned about Tech Trader's failure to come forward on registration issues and its motives for ignoring Shimer's suggestions to seek counsel on the matter. Lee also told Shimer that Arnold & Porter was concerned that Shasta was exposed to charges that it was operating an unregistered and illegal commodity pool.

134. On December 11, 2003, Lee spoke to Shimer again about her firm's concerns and the urgency of coming forward to the CFTC. Shimer had met face-to-face with Coyt

Murray the day before. He reported to Lee that Murray continued to assert that Tech Traders did not have to register and that he was concerned that any registration would require him to disclose his specific trades and trading strategies to investors. Lee told Shimer that Arnold & Porter was concerned that Murray did not have a correct understanding of Tech Trader's legal obligations, including an obligation to register once it accepted other investor's funds. Lee also told Shimer that CPO registration would not require Tech Traders to disclose specific trades or trading strategy.

135. Lee also told Shimer that Arnold & Porter was concerned that as of December, Tech Traders had had two months to obtain counsel and had not yet done so. Shimer told Lee in response that Shasta had had to exercise patience with Tech Traders and let it proceed at its own pace. Lee repeated Arnold & Porter's concern expressed in the December 2, 2003 email, that Shasta could be exposed to charges that it was an illegal commodity pool and that it aided and abetted Tech Trader's operation of an illegal commodity pool, which could expose it to substantial penalties and a trading ban. These concerns were repeated yet again in a memorandum Arnold & Porter sent to Shimer and Firth on December 18, 2003.

136. Shimer repeated Lee's concerns to Murray in a letter on December 12, 2003. He told Murray that he had been thinking about how to avoid a CFTC enforcement action. He reiterated Arnold & Porter's concerns that Shasta was taking an unnecessary risk in failing to contact the CFTC first and that Lee had told him that one of the possible enforcement actions could be that Shasta would be forced to withdraw all its funds from trade with Tech Traders.



137. Lee also told Shimer that Shasta could not just register on its own if Tech Traders was not in regulatory compliance. She told Shimer and Firth that Shasta would likely have to sever its relationship with Tech Traders if it met with the CFTC without Tech Traders.

138. Aronow told Shimer and Firth that Murray was apparently unable to articulate why Tech Traders did not need to register under the Commodity Exchange Act and that Tech Traders needed to get legal representation to determine its position so that Arnold & Porter could represent Shasta's interests. He also expressed the urgency in doing so that Lee had expressed to Shimer.

139. Shimer often told Lee that Coyt Murray was a secretive man that had to be treated with kid gloves. Shimer could work with him but had to exercise patience because Murray had made it clear that Shasta would not be allowed to trade through Tech Traders if Shasta did not like the way Tech Traders traded. Shimer told Lee that Shasta wanted to continue to trade through Tech Traders because it was a very good opportunity for them.

**Notice of the CFTC Investigation**

140. On January 13, 2004, Shimer sent Lee a letter attaching a facsimile he had received from a Shasta investor. The Shasta investor, Dr. Alfred Lopez, had sent Shimer a letter from the CFTC which indicated that the CFTC was conducting an investigation.

141. Neither Firth nor Shimer disclosed to prospective investors that the CFTC was investigating Shasta. This fact would have been important to investors.

### **Restitution and Disgorgement**

142. Shasta pool participants are owed, estimated restitution of \$5,078,603.26.

(This amount is subject to change pending the Receiver's final report and final distribution).

143. Defendant Equity made illegal gains of \$612,500 during the relevant time period.

144. Defendant Shimer made illegal gains of \$1,452,117 during the relevant time.

145. Defendant Firth made illegal gains of e \$450,313 during the relevant time period.

### **CONCLUSIONS OF LAW**

1. Shimer and Firth had fiduciary relationships to Shasta's investors.

2. Equity, Shimer and Firth cheated or defrauded or attempted to cheat or defraud and willfully deceived or attempted to deceive pool participants or prospective pool participants by misrepresenting and failing to disclose material information about their expertise, qualifications, background and compensation, and their experiences in dealing with Coyt Murray and Tech Traders, recklessly misrepresenting the performance of the Shasta commodity pool and the role of the independent CPA Abernethy and affirming CPA Teague, and accepting disbursements to which they were not entitled, all in violation of Section 4b(a)(2)(i)-(iii) of the Act. Defendant Equity, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), is liable for the violations of Firth and Shimer because the actions and omissions of Firth and Shimer were done within the scope of their employment with Equity. Firth and Shimer are liable for the violations of Equity as controlling persons, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), since they, directly or indirectly,

controlled Equity and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting Equity's violation of Section 4b(a)(2)(i)-(iii) of the Act.

3. Equity, Firth, and Shimer knowingly or recklessly employed or were employing a device, scheme, or artifice to defraud any client or participant or prospective client or participant by misrepresenting and failing to disclose material information about their expertise, qualifications, background and compensation, and their experiences in dealing with Coyt Murray and Tech Traders, recklessly misrepresenting the performance of the Shasta commodity pool and the role of the independent CPA Abernethy and affirming CPA Teague, and accepting disbursements to which they were not entitled, all in violation of Section 4o(1)(A) of the Act, 7 U.S.C. § 6o(1)(A). Defendant Equity, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), is liable for the violations of Firth and Shimer because the actions and omissions of Firth and Shimer described in this count were done within the scope of their employment with Equity. Firth and Shimer are liable for the violation of Section 4o(1)(A) of Equity as controlling persons, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), since they, directly or indirectly, controlled Equity and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting Equity's violation of Section 4o(1) (A) of the Act.

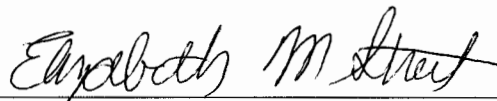
4. Shimer knowingly accepted Shasta participants' funds in an escrow account entitled Robert W. Shimer escrow, attorney escrow account, Shasta Capital Associates, LLC, on behalf of Equity, an unregistered CPO, when he knew that Shasta was a commodity pool and that therefore its manager, Equity was a CPO. Consequently, Shimer committed or willfully aided, abetted, counseled, commanded, induced or procured the commission of, Equity's violation of Section 4m(1) of the Act, or acted in concert with Equity in such

violation, or willfully caused an act to be done or omitted which if directly performed or omitted by him or another would be a violation of Section 4m(1) of the Act, and is liable for the violation of Section 4m(1) of the Act by Equity as a principal pursuant to Section 13(a) of the Act, 7 U.S.C. § 13c(a).

5. Firth and Shimer are liable for Equity's violation of Section 4m(1) as controlling persons, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), since they, directly or indirectly, controlled Equity knowing that it was an unregistered CPO and therefore did not act in good faith or knowingly induced, directly or indirectly, the acts constituting Equity's violation of Section 4m(1).

Date: August 20, 2007

Respectfully submitted,



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