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Attorneys for Defendant Equity Financial Group LLC,

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

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COMMODITY FUTURES TRADING	:	
COMMISSION,	:	
	:	Civil Action No. 04-1512 (RBK)
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.	:	
-----X	:	

**PROPOSED FINDINGS OF FACT
AND
CONCLUSIONS OF LAW
SUBMITTED BY EQUITY FINANCIAL GROUP LLC**

Equity Financial Group LLC, by its attorneys Menaker & Herrmann LLP and Witman Stadtmauer, P.A., pursuant to the Court's July 19, 2007 Notice of Trial, submits the following Proposed Findings of Fact and Conclusions of Law.

PROPOSED FINDINGS OF FACT

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.* (2006).

2. Defendant Vincent J. Firth ("Firth") resides in Medford, New Jersey and was the President and sole member of Equity.

3. Defendant Robert W. Shimer ("Shimer") resides in Leesport, Pennsylvania and was at all relevant times legal counsel for Shasta and Equity.

4. Defendant Equity Financial Group, LLC, ("Equity") is a New Jersey single member limited liability company formed on September 1, 1998, with an address of 3 Aster Court, Medford, New Jersey 08055. Equity was the manager of Shasta Capital Associates, ("Shasta") a Delaware limited liability company.

5. New Century Trading LLC ("New Century"), is a Nevis, West Indies limited liability company whose manager was Allied International Management, Ltd.

6. 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.

7. Tech Traders, Inc. ("TTI") was a Delaware corporation located in Gastonia, North Carolina.

8. Tech Traders, Ltd. ("TTL") was a foreign corporation organized under the laws of the Bahamas. It was a sister company to TTI and was party to a "Service Agreement" dated

June 1, 2001, providing that TTL would place investment funds with TTI for trading.

9. TTI and TTL generally shared common ownership, office space and employees. Most investor funds were held in bank or futures 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."

10. 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 TTI for trading.

11. 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.

12. 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.

13. 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.

14. 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 \$43,132,522.01 from Shasta and other investors. At the time Tech Traders' assets were frozen by the Court, TTI 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 TTI would need approximately \$15.1 million.

15. 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.

16. 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.

17. Firth was registered in the securities industry as a registered representative

of several broker-dealers between 1981 and 1990.

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

The Defendants' Past Business Dealings

19. In 1999, Shimer was involved in the formation of a Nevada corporation called Kaivalya Holding Group, Inc. ("Kaivalya"). Kaivalya received partial repayments of principal from funds derived from Tech Traders.

The Formation of Shasta

20. 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.

21. Shimer drafted Shasta's 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.

22. 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.

23. On August 3, 2001, an agreement was executed between TTL and Shadetree, a company with which Shimer was affiliated. 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.

24. Firth knew that Kaivalya owed a lot of money to its individual lenders. Firth also knew about the profit sharing agreement between Tech Traders and Shadetree. The Shasta PPM never disclosed the fact that Tech Traders had agreed to share with Shadetree part of the profits specifically allocated to Tech Traders by Tech Traders' Investment Agreement with Shasta. Equity, through Shimer and Firth, 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 websites, including <http://www.hedgeco.net> (operated by HedgeCo), <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, certified public accountant ("CPA") J. Vernon Abernethy ("Abernethy"). As of March 2004, the web site reported purported returns totaling over 130% for the period March 2003 to February 2004.

25. 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.

26. Shimer received from Murray written technical information and a description of Tech Traders' 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 Traders' trading system. All information that did not specifically refer to Tech Traders' 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.

27. The Investment Agreement between Shasta and Tech Traders provided that Shasta's funds would be intermingled with the funds of Tech Traders' other investors. Shimer understood that Shasta's funds would be commingled with the funds of Tech Traders' other investors. The Investment Agreement also provided that all investors' funds would be treated equally in the superfund.

28. 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.

29. 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.

30. Murray used the term "credits", rather than profits, on the account statements issued to investors. He described the term to Shimer as a posting to the account of conditional profit.

31. 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.

32. 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 an investor could reverse engineer his system if the investor saw trading account statements.

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

34. New Century was formed by an attorney by the name of Liburd on the Island of Nevis, West Indies in April of 2001. 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.

35. After initial meetings with Murray, 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

36. It was Shimer's idea to obtain an independent CPA to verify Tech Traders' trading results.

37. Equity employed Teague from the accounting firm of Puttman & Teague for the