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

COMMODITY FUTURES TRADING)
COMMISSION,)
)
Plaintiff,)
) No.: 04-cv-1512 (RBK)

vs.)

EQUITY FINANCIAL GROUP, LLC,)
TECH TRADERS, INC., TECH)
TRADERS, LTD., MAGNUM CAPITAL)
INVESTMENTS, LTD., MAGNUM)
INVESTMENTS, LTD., VINCENT J.)
FIRTH, ROBERT W. SHIMER, COYT E.)
MURRAY, and J. VERNON) Hearing Date: May 18, 2007
ABERNETHY,)
)
Defendants.)

**MEMORANDUM IN SUPPORT OF MOTION OF EQUITY RECEIVER
REGARDING TREATMENT OF THE STERLING CLAIMS AND
THE CLAIMS OF STERLING INVESTORS**

This memorandum is submitted in support of the motion of Stephen T. Bobo (the “Receiver”), the Equity Receiver of certain of the Defendants, recommending a means of treating the disputed Sterling claims as well as the claims submitted by individual Sterling investors and other related relief.

I. OVERVIEW

The major remaining receivership issue is the treatment of the seven pending claims filed by the Sterling Entities. In this memorandum, the Receiver first explains the status of those claims and the additional problems that have come to light regarding them. The Receiver then discusses alternatives available for treating the claims and shows why aggregating them into a single claim for purposes of distribution is the most sensible alternative (referred to hereafter as the “Aggregate Sterling Claim”). The next consideration discussed is the manner of calculating the amount to be distributed on account of that aggregated claim.

This memorandum then addresses how to distribute the relatively large amount of money available on account of the Aggregate Sterling Claim. The Receiver has already conducted a claim process for individual Sterling investors and recommends that the funds to be distributed on account of the Aggregate Sterling Claim be divided ratably among the individual Sterling investors and paid directly to them. The method of determining those distributions amounts is then discussed. Finally, the Receiver details the individual Sterling investor claims received and explains his recommendations why each such claim should be allowed or disallowed.

II. THE PROBLEMS PRESENTED BY THE STERLING CLAIMS

1. The Court entered an order on September 26, 2005 setting forth a method for making a distribution of Tech Traders’ funds to investors. Since then, nearly all claim objections have been resolved. The largest remaining receivership issue is how to treat the Sterling claims, which are subject to objection by the Receiver and the Commodity Futures Trading Commission (“CFTC”). The Sterling claims were submitted by a group of related companies: Sterling ACS Ltd., Sterling Alliance Ltd., Sterling Bank Ltd., Sterling Casualty & Insurance Ltd., Sterling

Investment Management Ltd., Sterling Trust (Anguilla) Ltd., and Strategic Investment Portfolio LLC (collectively, the “Sterling Entities”).

A. Background of the Sterling Claims

2. In response to the initial investor claim process commenced in August 2004 with the approval from the Court, the Sterling Entities submitted a total of seven claim forms (the “Sterling Claims”). (*See* Aff. of Stephen T. Bobo in Supp. of Mot. of Equity Receiver to Allow Claims of Certain Sterling Investors (the “Receiver’s Affidavit”) at ¶ 7.) These claims are summarized as follows:

Claimant Name	Amount of Funds Invested (per claim form)	Previous Withdrawals (per claim form)
Sterling ACS Ltd. subaccount – Strategic (Bahamas) Portfolio	\$1,480,000	\$909,318.40
Sterling Alliance Ltd.	250,000	597,500
Sterling Bank Ltd.	9,350,000	0
Sterling Casualty & Insurance Ltd.	190,000	0
Sterling Investment Management Ltd.	6,828,339	340,000
Sterling Trust (Anguilla) Ltd.	250,000	100,000
Strategic Investment Portfolio LLC	278,678	0

(*See id.*)

3. As this case has continued, further developments have caused the Receiver to review the Sterling Claims more closely. The Receiver has accumulated more information regarding the Sterling Claims and the Sterling Entities and has thus become aware of a broader range of issues surrounding the Sterling Claims. (*See id.* at ¶ 8.) These issues include factual inconsistencies between the claims, transfers of fictitious profits between accounts with Tech Traders shown on the claims, the failure of the Sterling Entities to respond fully to informal

requests and subpoenas for their books and records, one Sterling entity's receipt of funds from Tech Traders without having invested any actual funds with Tech Traders, uncertainty as to the identity of many of the beneficial owners of the funds invested and the apparent defunct status of most of the Sterling Entities. (*See id.*)

4. These problems include certain disparities between what the Sterling Entities contend they invested with and received from Tech Traders and what Tech Traders actually received from and paid to them. (*See id.*) In the aggregate, the Sterling Claims suggest that the Sterling Entities invested as much as \$18.5 million with Tech Traders, when the actual amount that Tech Traders received from them was less than \$16 million. (*See id.*) The claims also contend that the Sterling Entities withdrew about \$1.95 million from Tech Traders, when the actual amount was over \$2.1 million. (*See id.*) In addition to providing insufficient documentation to reconcile the Sterling Claims, the principals of the Sterling Entities, Howell and Vernice Woltz, took a computer disc reportedly containing considerable information relating to the Sterling Claims and the Sterling Entities and failed to obey a Court order directing them to turn over the information to the CFTC.

5. As part of the claim process, both the CFTC and the Receiver originally objected to a number of problems with the Sterling Claims, including most of those recited above. Thereafter, the Sterling Entities provided certain additional information through their counsel which helped to address some of the issues raised by the Sterling Claims. For example, the Sterling Entities ultimately provided the Receiver with the identities of certain persons whom they represented to be the ultimate beneficial owners of most of the trusts and other accounts that had placed funds with the Sterling Entities. However, their production of additional information was incomplete. All of the names were not provided, insufficient underlying documentation was

furnished, and neither the respective amounts invested nor each person's proportional share of the Sterling Claims was identified. In addition, some of the more serious problems with the claims did not become apparent until more information was obtained and analyzed. As a result, the original objections to the Sterling Claims have not been fully resolved and the additional objections are more serious.

6. In April 2006, Howell and Vernice Woltz were arrested in connection with a multi-count indictment issued in the U.S. District Court for the Western District of North Carolina. (*See id.* at ¶ 10.) Until recently, both have been held in custody without bail, and both have recently entered into plea agreements. (*See id.*) Copies of those plea agreements are attached to the Receiver's Affidavit as Exhibits A and B. Vernice Woltz has reportedly been released recently from custody but Howell Woltz remains in custody pending his sentencing hearing. (*See Receiver's Aff.* at ¶ 10.) Since the Woltzes' incarceration, there is no indication that the Sterling Entities have remained functional. (*See id.*)

7. As was the case with Tier 2 Universe Capital Appreciation, LLC, whose principal was incarcerated at the time the interim distribution was made, the Receiver is obliged to identify the best way to preserve the rights of the Sterling Tier 2 investors to their fair share of any distribution on the Sterling Claims while moving the receivership generally towards a final distribution and closure.

B. Details of the Sterling Claims Issues

8. The Receiver initially approached the Sterling Claims issues by attempting to corroborate the transactions shown on those seven claim forms. The Tech Traders' bank records confirm many of the transactions, but in numerous other cases the transactions were made

through one or more intermediaries and confirmation has been difficult or impossible. The Sterling Entities have provided only selected documentary support for their claim forms. The CFTC subpoenaed records from the Sterling Entities' bank accounts that were located in the United States, but many of the accounts were at offshore financial institutions. The CFTC was not able to obtain those offshore account records.

9. To understand the ultimate sources of much of the Sterling Entities' funds invested with Tech Traders, the Receiver has relied in part upon the tracing analysis regarding the Sterling Claims done by Joy McCormack, a Senior Futures Trading Investigator with the CFTC. That tracing analysis is summarized in the Declaration of Joy McCormack ("McCormack Declaration"), which is attached as Exhibit C to the Receiver's Affidavit.

10. After reviewing the Sterling Claims, the additional documents obtained in support of them, and the CFTC's tracing work, the Receiver has reached the following determinations regarding the Sterling Claims based on the information available.

a. Sterling Trust (Anguilla) Ltd. -- The claim form indicates that this account was funded by a transfer in the amount of \$250,000 from Sterling Alliance's account at Tech Traders. (*See* Receiver's Aff. at ¶ 14a.) However, the transfer from Sterling Alliance was fictitious because at the time it was made, Sterling Alliance had less than \$250,000 in its account. (*See id.*) The Sterling Trust (Anguilla) Ltd. claim form lists the beneficial owners of this account as being all Sterling insiders, yet Sterling Trust (Anguilla) Ltd.'s claim form and statements indicate that it also handled the funds of a number of outside investors. (*See id.*) In addition to not depositing any real funds of its own into this account, and the establishment of the account through the transfer of

partially fictitious funds, Sterling Trust (Anguilla) Ltd. received a withdrawal of \$100,000 from Tech Traders in December 2003 that included \$50,000 of fictitious profits. (*See id.*) This claim should not be separately allowed.

b. Sterling Casualty & Insurance Ltd. -- This claim form indicates that Sterling Casualty & Insurance, Ltd. invested \$190,000 with Tech Traders, but insufficient information has been supplied regarding the source of the funds that this entity claims to have invested with Tech Traders. (*See id.* at ¶ 14b.) The claim form indicates that the beneficial owners of Sterling Casualty & Insurance were all Sterling insiders; however, it is not possible to determine the source of a significant amount of the funds. (*See id.*) A proof of claim has been submitted on behalf of two insiders whose funds were invested as capital in Sterling Casualty & Insurance and thereafter transferred to Tech Traders. (*See id.*) In addition, Defendant Jack Vernon Abernethy is identified as one of the sources of the Sterling Casualty & Insurance funds and it would be inequitable to allow him to indirectly benefit from a distribution to Sterling Casualty & Insurance, given his \$5 million liability to holders of allowed claims against Tech Traders as contained in the Consent Order of Permanent Injunction and Other Ancillary Relief entered against him by this Court on July 7, 2006. (*See id.*) As set forth below, the Receiver recommends that the claim representing the amounts invested by two insider investors be allowed subject to certain conditions and that the claim of Sterling Casualty & Insurance not be separately allowed because of the issues with it.

c. Sterling Bank Ltd. -- In addition to being a conduit for \$10,250,000 of funds invested with Tech Traders by CMP Fund and DRL Twenty Plus Fund, Sterling Bank Ltd. claims that it invested \$300,000 with Tech Traders. (*See id.* at ¶ 14c.) Most of

this amount supposedly came from a transfer of \$172,500 from the Sterling Alliance account at Tech Traders in September 2003, but this transfer was fictitious. By September 2003, that Sterling Alliance account had already transferred out more funds than had ever been deposited into it. (*See id.*) Therefore, the Receiver cannot agree to allow the \$172,500 portion of the claim of Sterling Bank, Ltd. Sterling Bank Ltd. has provided support for the remaining \$127,500 of its claim. (*See id.*) Sterling Bank Ltd., now known as Entrust Bank, is being administered by its officially appointed administrator in St. Lucia, Wendell Skeete. (*See id.*) The Receiver believes that the \$127,500 portion of the Sterling Bank claim should be recognized and the distribution on that claim paid to Mr. Skeete as its administrator, but in the manner recommended below.

d. Sterling Alliance, Ltd. -- Sterling Alliance Ltd. is an entity owned by Howell and Vernice Woltz. (*See id.* at ¶ 14d.) Its claim form indicates that it deposited \$250,000 with Tech Traders through three transfers from Sterling ACS. (*See id.*) However, the claim form also indicates that Sterling Alliance transferred a total of \$597,500 from its Tech Traders' account to the accounts of other Sterling Entities, more than twice the amount it had placed with Tech Traders. (*See id.*) These transfers included wire transfers totaling \$165,000 from the Sterling Alliance account at Tech Traders to the accounts of other Sterling Entities after all the real funds invested in the Sterling Alliance account had already been withdrawn. (*See id.*) Therefore, serious problems exist with the claim of Sterling Alliance and the transfers made from its account far in excess of the deposits received. The Receiver believes it would be inequitable to treat this claim separately from the other Sterling Claims.

e. Sterling ACS Ltd. – Strategic (Bahamas) Portfolio -- This claim contends that Sterling ACS, apparently on behalf of its Strategic (Bahamas) Portfolio, deposited a total of \$1,480,000 with Tech Traders and received withdrawals totaling \$909,318 from Tech Traders. (*See id.* at ¶ 14e.) Many of the deposits received by Tech Traders appear to have come from a Bahamian brokerage firm known as Alliance Investment Management Ltd. (“Alliance”). However, the Alliance records that Sterling provided are merely copies of memoranda individually typed on what appears to be Alliance stationery. Their reliability is questionable and not subject to corroboration. The Sterling Entities have not provided further support for these transactions, and Alliance has refused the Receiver’s written request for documents showing the source of the funds. Therefore, there is uncertainty regarding the transactions reflected on the Sterling ACS claim form and it should not be separately allowed. Even if this claim were so allowed, it would likely not receive a distribution since it acknowledges already having received back over 60% of its funds from Tech Traders.

f. Sterling Investment Management Ltd. -- The listing of transactions on this claim suggests that Sterling Investment Management Ltd. deposited \$6,828,339 with Tech Traders and received payments of \$340,000 from Tech Traders which it then transferred to other Sterling Entities.¹ (*See id.* at ¶ 14f.) However, the claim includes funds that were invested for the benefit of other Sterling Entities and transfers of possibly fictitious funds from the accounts of other Sterling Entities. Most of the overstatement in the Sterling Claims is attributable to how the claimed deposits into this account are shown. Some of the transactions cannot be corroborated from the records available, and Sterling Investment Management Ltd. has refused to provide the necessary records to

¹ Included in this \$6,828,339 figure is the \$1,200,000 invested by DRL Twenty Plus Fund.

resolve the identities of all of the beneficial owners. This results in considerable uncertainty regarding the transactions reflected on the claim form of Sterling Investment Management Ltd., and the claim should not be separately allowed.

g. Strategic Investment Portfolio LLC -- On the surface, this should be one of the most straightforward of the Sterling Claims. The claim form discloses the identities of a limited number of investors in this entity, all of those investors have been able to provide documentary support for their transactions with Sterling, and those transactions can in turn be traced to Tech Traders. (*See id.* at ¶ 14g.) However, Defendant Jack Vernon Abernethy testified that in addition to the “on-shore” Strategic Investment Portfolio account, Sterling also had a related “off-shore” account. (*See id.*) The Strategic Investment Portfolio investors originally made known to the Receiver had apparently all dealt with the on-shore account, and their investments went to Tech Traders through a domestic bank account maintained for Strategic Investment Portfolio. (*See id.*) However, other Sterling investors have furnished copies of statements from Sterling showing that their funds had also been invested in the Strategic Investment Portfolio. (*See id.*) It is not clear where these funds were invested and whether they were part of the “offshore” Strategic Investment Portfolio. It is not known where the offshore Strategic Investment Portfolio was located or whether it had a separate bank account. No documents have been provided showing that the offshore Strategic Investment Portfolio account, to the extent that it exists, actually invested any funds in that name with Tech Traders. (*See id.*) It may have been related to the Strategic (Bahamas) Portfolio account that is the subject of the Sterling ACS claim. The Sterling investor claim process has not provided enough information to definitively establish whether or not there are unknown

Strategic Investment Portfolio investors who invested with Tech Traders, perhaps through another Sterling entity. In sum, the facts underlying this claim are anything but straightforward, and it should not be separately allowed.

11. As itemized above, there are a range of concerns and inconsistencies, as well outright problems, with the Sterling Claims. The most glaring problem is the discrepancy between the total amounts listed on the Sterling Claims and the total funds that Tech Traders received from the Sterling Entities. Although most of the discrepancy appears to arise from how the Sterling Investment Management claim describes deposits and transfers into its account, the Sterling Entities have not supplied information from which the many other discrepancies can be fully reconciled. These problems are exacerbated by the apparent lack of current functionality on the part of the Sterling Entities, with the partial exception of Sterling Bank Ltd.

C. Possible Alternative Treatments of the Sterling Claims

12. In light of these difficulties, the Receiver has considered the following five alternative approaches to dealing with the Sterling Claims:

- a. Resolve the discrepancies among the Sterling Claims to the extent possible, then make a separate distribution to each of the Sterling Entities on account of its respective claim. The individual Tier 2 Sterling investors would then need to deal directly with the Sterling Entities to obtain their respective shares of the distribution.
- b. Disallow the Sterling Claims entirely because of the inconsistencies and irregularities in them.
- c. Allow an aggregated Sterling claim in the total amount invested with Tech Traders, determine the distribution amount for such aggregated claim, and then place

those funds in an escrow account until either later determination by a court of competent jurisdiction or agreement among the interested parties (including the Sterling investors) regarding the division of the funds.

d. Allow an aggregated Sterling claim in the total amount invested with Tech Traders, determine the distribution amount for such aggregated claim, and then file a federal interpleader action, under either 28 U.S.C. § 1335 or Federal Rule of Civil Procedure 22, and deposit the aggregate distribution amount with the Court. All of the Sterling Entities and Tier 2 Sterling investors would be named as interpleader defendants, requiring them to assert and prove up their respective interests in the funds.

e. Allow an aggregated Sterling claim in the total amount invested with Tech Traders and distribute that amount ratably directly to those persons who invested funds with Tech Traders through the Sterling Entities.

13. None of the first four alternatives is recommendable. Although the Receiver set out to accomplish alternative a, he has concluded that it is not feasible based on the information available. The time and resources required to attempt to obtain and analyze all necessary information would unfairly prejudice all other investors. Completely resolving the claim amount discrepancies and the other issues with the claims of the Sterling Entities is unlikely at best, unless a considerably greater amount of underlying information can be provided and reviewed. Even if more information becomes available, there is no certainty that the problems can be solved, and the process would likely require far greater time and cost.

14. The Receiver also has concerns about sending the entire distribution amount to the Sterling Entities and then trusting them to allocate and pay out those funds in a fair and timely manner. There is no assurance that the records of the Sterling Entities are any better than

what they have already provided. The principals of Sterling, Howell and Vernice Woltz, have recently entered guilty pleas on felony charges. Some of those charges relate to conduct in connection with this case. The Woltzes' future status is uncertain. As was the case with Universe Capital Appreciation, LLC in similar circumstances arising from the incarceration of its principal, it seems appropriate to deal directly with individual investors in distributing receivership funds.

15. Alternative b, denial of the Sterling Claims altogether, is too harsh a result, particularly since the bulk of the Sterling Claims represent the funds of outside investors who had no part in the Sterling Entities' activities. Denial of the Sterling Claims would result in those Sterling investors receiving no distribution.

16. Alternatives c and d, which involve either escrowing the distribution amount for an aggregated Sterling claim or using those funds to commence an interpleader, merely shift the claim problems to another proceeding and perhaps to another court lacking the background and experience that this Court has developed regarding the unusual circumstances of this case. Similarly, the Receiver has gained particular knowledge of the Sterling Claims and their factual background. Efficient resolution of the issues requires that this knowledge be put to use by completing the process in this proceeding. Although commencing an interpleader action could offer certain theoretical advantages, it would require individual investors to become involved as parties in an additional legal proceeding and likely require them to hire counsel. The unnecessary expense and delay of such a proceeding can be avoided by resolving the Sterling investor claim issues in this case as proposed below.

III. AGGREGATION OF THE STERLING CLAIMS

17. The Receiver proposes that alternative e be adopted, in order to both move forward to a resolution of this proceeding and fairly treat individuals who invested funds through one or more of the Sterling Entities relative to other investors. The various Sterling Claims should be consolidated into a single Tier 1 claim, the Aggregate Sterling Claim, for purposes of distribution.

A. Calculating the Distribution on the Aggregate Sterling Claim

18. The allowable amount of the Aggregate Sterling Claim would be determined by the total amount of funds that Tech Traders' records show came from the Sterling Entities. Similarly, the prior amounts received by the Aggregate Sterling Claim would be the total of all payments that Tech Traders made to the Sterling Entities. The Receiver's accountants determined that Tech Traders received a total of \$15,944,011 from the Sterling Entities and that Tech Traders returned a total of \$2,135,198.40 to the Sterling Entities. (*See* Receiver's Aff. at ¶ 21.)

19. The distribution amount for the Aggregate Sterling Claim would be calculated in the same manner as non-Sterling Tier 1 claims. The allowed amount of the Aggregate Sterling Claim, \$15,944,011, would be multiplied by the applicable distribution percentage as approved by the Court. For example, if the total distribution percentage for all Tier 1 investors ends up being 50%, then the Aggregate Sterling Claim would be entitled to receive 50% of \$15,944,011, or \$7,972,005.50, less prior payments received. Therefore, the hypothetical \$7,972,005.50 distribution amount would be reduced by the total of the prior withdrawals received from Tech Traders, which is \$2,135,198.40. The difference between the two figures would be the amount

to be distributed on account of the Aggregate Sterling Claim, which in this example would be \$5,836,807.10 before certain adjustments.

B. Adjustments to the Distribution Amount

20. The amount to be distributed on account of the Aggregate Sterling Claim should be reduced by the amount of professional fees incurred by the receivership estate beginning in the Fourth Quarter of 2006 devoted to collecting and analyzing information relating to the Sterling Claims and the claims of the Sterling investors. This work was largely caused by the incomplete Sterling Claims, the Sterling Entities' refusal to supply appropriate supporting information, the need to conduct a separate claims process with the Tier 2 Sterling investors, and the extensive review process necessary for this motion. For the Fourth Quarter of 2006, the fees being sought for this work total \$25,751.50. (*See id.* at ¶ 23.) There is no equitable reason why other Tech Traders' investors should bear these expenses.

21. The total amount to be distributed on account of the Aggregate Sterling Claim should also be reduced by the \$55,000 in legal fees that the receivership estate incurred in April and May 2004, (*see id.* at ¶ 24), in defending against the proprietors and baseless attempts of the Sterling Entities to lift the freeze on the receivership funds to the detriment of all other investors. The Court has approved similar allocation of expenses to Universe Capital Appreciation, LLC in connection with the distribution to its investors.²

22. The Receiver proposes that the funds to be distributed on account of the Aggregate Sterling Claim should be allocated among those Sterling investors whose funds were invested with the Sterling Entities and transferred to Tech Traders for participation in its

² The prior provisional distributions already made to Sterling Tier 2 investors CMP Fund and DRL Twenty Plus Fund pursuant to order of Court will be credited against the distribution amount.

commodity pool. In all but one case, the Receiver proposes that those distributions would be made directly to the beneficial owners who originally invested the funds with the Sterling Entities. The sole exception concerns the claim filed on behalf of Sterling Bank Ltd., now known as Entrust Bank. According to a certified document provided to the Receiver, the government of St. Lucia has appointed Wendell Skeete, a local accountant, as administrator for Entrust Bank. For this claim, the Receiver proposes distributing directly to CMP Fund and the DRL Twenty Plus Fund and making a distribution on the allowed \$127,500 claim to Mr. Skeete in his capacity as Entrust Bank's Administrator.

C. Rationale For The Aggregate Sterling Claim

23. Among the advantages of this proposed treatment of the Sterling Claims are that it allows an overall final distribution to be made within a reasonable time period and limits the distribution to those investors that have demonstrated that they actually invested funds with one or more Sterling Entities which in turn sent the funds to Tech Traders.

24. Consolidating all the Sterling Claims in this manner avoids spending additional time and estate resources attempting to straighten out the various Sterling Claim inconsistencies and irregularities. It sidesteps any problem with discrepancies in the amounts of the Sterling Claims and instead begins with the known amount of funds that Tech Traders actually received from the Sterling Entities. Making distributions directly to the Sterling investors also avoids sending distributions to Sterling Entities that do not appear to be functional and ensures more timely receipt by the individual investors.

25. The Court has "broad powers and wide discretion" to decide appropriate relief in an equity receivership, including whether to adopt the Receiver's approach to dealing with the

Sterling Claims and the claims of the individual Sterling investors. *See SEC v. Elliott*, 953 F.2d 1560, 1569-70 (11th Cir. 1992), *rev'd in part*, 998 F.2d 922 (11th Cir. 1993); *cf. SEC v. Black*, 163 F.3d 188, 198-99 (3d Cir. 1998) (recognizing that court has considerable discretion in equity receivership proceedings). Indeed, courts in similar circumstances have properly exercised their discretion when determining whether a distribution plan, which proposes the return of receivership assets to investors, is equitable and fair to those investors. *See United States v. Durham*, 86 F.3d 70, 72 (5th Cir. 1996); *Elliott*, 953 F.2d at 1569. In cases where the investors are victims of fraud (like this one), the distribution plan should treat similarly situated investors alike in order to preserve equity and fairness. *See Durham*, 86 F.3d at 72; *Elliot*, 953 F.2d at 1569. The Receiver's proposed approach attempts to do just that – treat the individual Sterling investors in a similar manner to ensure equity and fairness.

IV. THE CLAIMS OF INDIVIDUAL STERLING INVESTORS

A. The Claim Process

26. Because of the problems with the various Sterling Claims, the Receiver requested all individual Sterling investors identified as having an interest in the funds invested by the Sterling Entities to submit claim forms. The Receiver also requested those claimants to supply copies of supporting documents. The Receiver caused such requests to be sent to a total of 53 persons believed to have an interest in the Sterling Claims. Most of these were sent out in October 2006. The Receiver used the addresses furnished by counsel for the Sterling Entities. Responses trickled in over the next four months. Where the responses were incomplete, the Receiver's counsel replied and pointed out the deficiencies that needed to be addressed. This often involved multiple communications with the investor.

27. In instances where the notice was returned as undeliverable, the Receiver's counsel located alternative addresses for the notice recipients. In all but one instance, the Receiver was able to locate alternative addresses. In addition, the Receiver requested Sterling's counsel to supply additional contact information for undeliverable notices, although no such information was provided in response. The Receiver also sent letters to certain entities identified in the McCormack tracing analysis as conduits for funds sent to Tech Traders. Several of these were Bahamian financial institutions. The Receiver requested the recipients to submit claims if they so desired, and asked the financial institutions to forward the letter and claim form to their respective customers so that they could submit claims if they so desired. No responses were received. Approximately 32 Sterling investors failed to submit claims even though they apparently received the notices.

28. The Receiver believes all responses have been received from those Sterling investors who are going to respond. These responses total 17 claim forms, of which 14 are sufficiently supported by documentation and 3 are not sufficiently supported (collectively, the "Sterling Investor Claims"). These claim forms are summarized on two schedules: (1) Proposed Allowed Sterling Investor Claims, and (2) Proposed Disallowed Sterling Investor Claims, which are attached to the Receiver's Affidavit as Exhibits D and E.

B. Results of the Claim Process

29. The Proposed Allowed Sterling Investor Claims schedule shows each of the Sterling Investor Claims that is recommended as allowable, in full or in part, as well as the recommended amount of such claim and the recommended allowed amount of prior withdrawals from Tech Traders received. These claims would share pro rata in the amount of the distribution

to be made on account of the Aggregate Sterling Claim, after taking into account prior payments received from Tech Traders.

30. The Proposed Disallowed Sterling Investor Claims schedule shows the details of the Sterling Investor Claims received that cannot be recommended for allowance either in full or in part. The bases for the claim deficiencies are also summarized on this schedule.

31. The Receiver circulated draft versions of these schedules to counsel for the CFTC and counsel for the Sterling Entities for discussion purposes. After a detailed discussion of the circumstances of each claim, counsel for the CFTC has indicated that she has no disagreement with the final version of these recommendations. Counsel for the Sterling Entities did not respond to the Receiver.

C. The Limits To The Availability of Supporting Information

32. The Receiver's recommendations are based on the information that is available, even though that information is less than conclusive in certain instances. An example of this arises where attempting to trace Sterling investors' funds to Tech Traders based upon the McCormack tracing analysis. Although investors have been required to provide sufficient documentary support for their investment of funds with the Sterling Entities, they typically do not have access to any records showing the subsequent flow of funds among the Sterling Entities and thereafter to Tech Traders. The Sterling Entities have not provided records showing the ultimate sources of the funds they transferred to Tech Traders. Where such transfers were made from a Sterling Entities' account at a U.S. bank, the CFTC has generally been able to trace the funds at least part of the way back to the ultimate source. Where such transfers came from a

Sterling account at an offshore bank, neither the CFTC nor the Receiver have been provided access to the bank records needed to trace the funds.

33. In the absence of definite tracing, the Receiver has recommended the allowance of certain Sterling Investor Claims based on (i) the proximity in time between the transaction shown on the Sterling statements and the receipt of the funds by Tech Traders; (ii) the likelihood (if not the certainty) that the funds represented were included in corresponding Sterling Entities' transfers to Tech Traders; (iii) the inability to trace the particular transfer to Tech Traders to any other Sterling Investor Claim; and (iv) the absence of any other information to the contrary.

D. The Alliance Memoranda Issue

34. However, portions of several Sterling investor claims would be recommended for allowance except for certain documents produced by Sterling. These documents are copies of what purport to be memoranda from Alliance confirming outgoing wire transfers and indicating that they originated from an Alliance customer account in the name of "Aquarius Holdings, Ltd." or sometimes "Aquarius Holdings International, Ltd." The Receiver understands that Alliance is a brokerage firm based in the Bahamas. The memoranda are unusual in that they appear to have been individually typed on Alliance stationery and signed by an Alliance representative rather than generated from a computer-based accounting system. The authenticity and reliability of these memoranda is uncertain, and the Receiver has neither been able to obtain any records directly from Alliance nor otherwise corroborate the memoranda. The Alliance memoranda also appear questionable because no claim was submitted to the Receiver on account of Aquarius Holding, Ltd. even though the Receiver sent a claim notice to the individual identified by Sterling's counsel as the beneficial owner of Aquarius Holdings, Ltd.

35. If the Alliance memoranda were accepted at face value, then this would cause three Sterling investors to have their allowed claims reduced by a total of \$135,000. (*See* Receiver's Aff. at ¶ 37.) Of these three, one investor couple would have their claim disallowed entirely. (*See id.*) On the other hand, if the three claims were allowed in full, then the total allowed Sterling Investor Claims would increase by \$135,000 from \$12,321,143.98 to \$12,456,143.98. (*See id.*)

36. The effect of this would be to increase the allowed Sterling claims by nearly 1% percent, thus marginally diluting the amount distributed on each claim. (*See id.* at ¶ 38.) Assuming by way of example that if the distribution on Sterling Investor Claims is ultimately 50%, then the impact of fully allowing these three claims would be to reduce the amount received by all other allowed Sterling Investor Claims by approximately 0.5%. (*See id.*)

37. There is an element of arbitrariness beyond the control of the three Sterling investors as to whether the funds they invested with Sterling can be traced to Tech Traders. If these claims are disallowed, it is only because the existence of the Alliance memoranda indicating that the source of the \$135,000 was Aquarius Holdings, Ltd. (or Aquarius Holdings International, Ltd. according to one of those memoranda). However, Aquarius failed to submit a claim and the reliability and authenticity of the Alliance memoranda is unknown as explained above.

38. In the circumstances, the Receiver suggests that the most equitable result would be a partial allowance of the three claims. Instead of either total allowance or total disallowance of these claims, the Receiver proposes that the portions of the claims overlapping with the Alliance memoranda be allowed in one-half of their full amount. In this way, these claims are

not totally excluded from a distribution but the amount of the reduction to the distributions to be received by the other allowed Sterling Investor Claims is only one-half of what it would be if these three claims were allowed in full. The Receiver's recommendation is designed to avoid either extreme based on the uncertain weight to be given to the Alliance memoranda. (Assuming by way of example that if the distribution on Sterling Investor Claims will be 50%, then the impact of partially allowing these three claims would be to reduce the amount received by all other allowed Sterling Investor Claims by approximately 0.25%.) The claims affected by this approach are identified below.

E. Calculating The Amounts Distributable For Sterling Investor Claims

39. Even using this liberalized approach outlined above, the total of the Sterling Investor Claims recommended for allowance is about \$1.4 million less than the total amount of funds that Tech Traders received from the Sterling Entities net of withdrawals. (*See id.* at ¶ 41.) Where the totality of the information available supports the allowance of a Sterling Investor Claim, the Receiver has recommended such allowance while recognizing that the information available is less than definitive in many instances. This results in an admittedly imperfect process. However, it seems to be the best one available in the circumstances of this receivership and the problems obtaining additional information relating to the Sterling Entities.

40. By way of example, as discussed in paragraphs 18-19 above, Tech Traders received a total of \$15,944,011 from the Sterling Entities, and the Sterling Entities received withdrawals totaling \$2,135,198.40 in return. (*See id.* at ¶ 21.) Assuming the ultimate distribution on Tier 1 Claims (including the Aggregate Sterling Claim) will be 50%, the distribution amount on the Aggregate Sterling Claim would be \$15,944,011 multiplied by 50%, which is \$7,972,005.50. This hypothetical distribution amount of \$7,972,005.50 would then be

reduced by the prior withdrawals received totaling \$2,135,198.40. The difference between these two figures is \$5,836,807.10 before certain proposed adjustments. These adjustments include attorneys' fees relating to the Sterling issues which total \$80,751.50 through the end of 2006 and similar fees incurred thereafter. The total distribution amount of \$5,836,807.10 would then be reduced by the proposed adjustments totaling \$80,751.50 through the end of 2006 for a net distribution amount of \$5,756,055.60 (less Sterling-related fees incurred during 2007). This net distribution amount represents the total funds that would be available to distribute to the Sterling Investor Claims.

41. To then calculate what each Sterling investor is entitled to receive, the following three-step approach would be used (with Sterling investor CMP Fund used as an example based on the hypothetical figures above):

- a. Total Allowed Claim of CMP Fund (\$9,050,000)
 - ÷
 - Total Amount of Allowed Sterling Investor Claims (\$12,388,643.98)
 - =
 - Percentage of CMP's Interest in Total Allowed Sterling Investor Claims (73%)

- b. Percentage of CMP's Interest in Total Allowed Sterling Investor Claims (73%)
 - x
 - Aggregate Sterling Claim Hypothetical Distribution Amount (\$5,756,055.60)
 - =
 - Hypothetical Gross Distribution Amount to CMP Fund (\$4,201,920.59)

- c. Hypothetical Gross Distribution Amount to CMP Fund (\$4,201,920.59)
-
Prior Repayments received by CMP Fund (\$2,542,248.78)
=
Hypothetical Net Distribution Amount to CMP Fund (\$1,659,671.81)

This same three-step approach would be applied to all Sterling investors whose claims have been allowed in full or in part. Of course since the above figures are hypothetical, the actual distribution figures will be different and the reduction for Sterling-related attorneys' fees incurred by the Receiver will likely be greater.

V. DETAILS OF THE STERLING INVESTOR CLAIMS

A. Claims Fully Allowable

42. The Receiver has no objection to the following claims included on the Proposed Allowed Sterling Investor Claims schedule and recommends that they be allowed in full: John Caire, CMP Fund, DRL Twenty Plus Fund, Michael and Angela Hubbard, Susan Raef and Mary Raef. Because not all of the facts surrounding some of the claims are clear, a short discussion of each claim is appropriate.

- a. John Caire: This claim asserts that John Caire invested a total of \$851,875 with Sterling that was thereafter transferred to Tech Traders. (*See* Receiver's Aff. at ¶ 42a; McCormack Decl. at ¶ 9a.) Mr. Caire has documented his investments of funds with the Sterling Entities and the McCormack tracing analysis demonstrates that Sterling transferred these funds to Tech Traders between September 2003 and February 2004 (Transactions #27 and #44 as identified in the McCormack tracing analysis). (*See*

Receiver's Aff. at ¶ 42a; McCormack Decl. at ¶ 9a.) This is one of the better supported claims, and the Receiver recommends that it be allowed in the full amount of \$851,875.

b. CMP Fund: This claim was previously reviewed and recommended for allowance in the amount of \$9,050,000. (*See* Receiver's Aff. at ¶ 42b; McCormack Decl. at ¶ 9b.) By order entered on January 9, 2006, the Court approved a provisional distribution to CMP Fund in the amount of \$2,542,248.78, and there is no reason to alter that outcome.

c. DRL Twenty Plus Fund: Like CMP Fund, this claim was recommended for allowance in the amount of \$1,200,000. (*See* Receiver's Aff. at ¶ 42c; McCormack Decl. at ¶ 9c.) The order of January 9, 2006 approved a provisional distribution to DRL Twenty Plus in the amount of \$337,093.76, and there is no reason to alter that outcome.

d. Michael and Angela Hubbard: The claim of the Hubbards clearly documents their investment of \$160,000 with Strategic Investment Portfolio. Their funds can be positively traced into Tech Traders on February 27, 2004 (Transaction #47 as identified in the McCormack tracing analysis). (*See* Receiver's Aff. at ¶ 42d; McCormack Decl. at ¶ 9d.) Therefore, the Receiver recommends the claim of the Hubbards be allowed in the amount of \$160,000.

e. Susan Raef: This claim was submitted in the amount of \$36,720.83. (*See* Receiver's Aff. at ¶ 42e; McCormack Decl. at ¶ 9e.) The investment in that amount with Sterling is supported by the records and Sterling's bank records indicate that Susan Raef's funds were included in three transfers to Tech Traders (Transactions #51, #52 and #53 as identified in the McCormack tracing analysis). (*See* Receiver's Aff. at ¶ 42e;

McCormack Decl. at ¶ 9e.) Therefore, the Receiver recommends allowance of this claim in the amount of \$36,720.83.

f. Mary Raef: Mary Raef submitted her claim in the amount of \$38,870.15 and it is also well supported. The available Sterling records reflect the receipt of these funds and the transfer of them to Tech Traders (Transactions #51, #52 and #53 as identified in the McCormack tracing analysis). (See Receiver's Aff. at ¶ 42f; McCormack Decl. at ¶ 9f.) Therefore, the Receiver recommends allowance of Mary Raef's claim in the amount of \$38,870.15.

B. Claims Partially Objectionable

43. Based on my review, the following Sterling Investor claims are partially objectionable and should be allowed in part: Walter Kells and Brigitte Pilgrim, Bob Lansing, Entrust Bank, Ltd., Terry Sanderson, Luci Johnson, Samuel Currin – Sterling Casualty & Insurance Ltd., Elmer Martin, and Patti and Gary Reiter. A short discussion of the facts surrounding these claims follows:

a. Walter Kells and Brigitte Pilgrim: This claim was submitted in the amount of \$70,000. (See Receiver's Aff. at ¶ 43a; McCormack Decl. at ¶ 9g.) Mr. Kells and Ms. Pilgrim have documented their investment of \$70,000 to Sterling. Of that amount, \$20,000 can be definitely traced to Tech Traders (Transaction #42 as identified in the McCormack tracing analysis). (See Receiver's Aff. at ¶ 43a; McCormack Decl. at ¶ 9g.) The remaining \$50,000 appears to be contained in Transaction #36, by which Sterling through Alliance Investment Management, Ltd. transferred \$50,000 to Tech Traders on December 29, 2003. (See Receiver's Aff. at ¶ 43a.) Sterling produced a memorandum from Alliance which suggests that the source of the \$50,000 was Aquarius,

although the transfer was close in time with the movement of \$50,000 invested by Mr. Kells and Ms. Pilgrim. (*See id.*) Because of the uncertainty over the Alliance memoranda as discussed above, the Receiver recommends partial allowance of the claim with respect to the \$50,000. Therefore, the Receiver recommends that the claim be fully allowed with respect to the \$20,000 transfer and only allowed for one-half of the \$50,000 transfer, for a total of \$45,000.

b. Bob Lansing: This claim was submitted in the amount of \$606,500 but the records show that only \$500,000 of that amount may have reached Tech Traders. Mr. Lansing invested that \$500,000 with Sterling in December 2002, and this amount may have been part of the Sterling transfer to Tech Traders in the amount of \$555,970 on January 2, 2003 (Transaction #11 as identified in the McCormack tracing analysis). This transaction cannot be traced to any other investor. Mr. Lansing invested another \$101,500 with Sterling Securities in August 2001 (long before Tech Traders received funds from Sterling), and Sterling's statements show that this amount was invested in other types of investments until January 21, 2004 when \$75,000 of it was transferred to Strategic Investment Portfolio. Although Strategic Investment Portfolio made a number of transfers of funds to Tech Traders, there is no such transfer to Tech Traders on or after January 21, 2004 which could contain some or all of Mr. Lansing's \$75,000. All funds received by Tech Traders after that date are traceable to sources other than either Mr. Lansing in particular or Strategic Investment Portfolio in general. Mr. Lansing also offers no evidence that the remaining \$5,000 portion of his investment was placed with Tech Traders. Therefore, there is no evidence that Mr. Lansing's \$106,500 could have reached Tech Traders, and his claim should be allowed only in the amount of \$500,000.

c. Entrust Bank, Ltd. (formerly known as Sterling Bank Ltd.): This claim was submitted in the amount of \$300,000 but there is documentary support for only \$127,500 of this amount having been invested with Tech Traders (Transactions #29, #30 as identified in the McCormack tracing analysis). (*See* Receiver's Aff. at ¶ 43c; McCormack Decl. at ¶ 9i.) The claimant provided no support for the remaining claimed amount of \$172,500, and the McCormack tracing summary reflects no transaction with Tech Traders that corresponds to this amount. (*See* Receiver's Aff. at ¶ 43c; McCormack Decl. at ¶ 9i.) Therefore, the Receiver recommends that Entrust Bank's claim be allowed in the amount of \$127,500 and the distribution be sent to Mr. Skeete as its administrator.

d. Terry Sanderson: This claim was submitted in the amount of \$95,324.57 based on the investment that Mr. Sanderson made with Sterling on September 30, 2002. (*See* Receiver's Aff. at ¶ 43d; McCormack Decl. at ¶ 9j.) However, the Sterling records reflect that only \$90,000 of that amount was transferred into Strategic Investment Portfolio. (*See* Receiver's Aff. at ¶ 43d; McCormack Decl. at ¶ 9j.) Although his funds are not definitely traceable to Tech Traders, Sanderson is the only identifiable claimant whose funds could have been included within the \$200,000 transferred from a Sterling account to Tech Traders on October 7, 2002 (Transaction #7 as identified in the McCormack tracing analysis). Therefore, the Receiver recommends that the Sanderson claim be allowed in the amount of \$90,000.

e. Luci Johnson: This claim was filed in the amount of \$127,717.66, and claim acknowledges that she received withdrawals totaling \$8,292. (*See* Receiver's Aff. at ¶ 43e; McCormack Decl. at ¶ 9k.) Ms. Johnson's documents and the Sterling transactions with Tech Traders show that \$23,678 of her funds were definitely sent to

Tech Traders (Transactions #34 and #45 as identified in the McCormack tracing analysis) and that another \$100,000 (Transaction #14 as identified in the McCormack tracing analysis) appears to have been transferred to Tech Traders, but the lack of Sterling records do not permit this to be conclusively established. (*See* Receiver's Aff. at ¶ 43e; McCormack Decl. at ¶ 9k.) In addition, \$6,219 of the withdrawals she received can be traced to Tech Traders (Transactions #18B, #23B, #32B as identified in the McCormack tracing analysis). (*See* Receiver's Aff. at ¶ 43e; McCormack Decl. at ¶ 9k.) The Receiver recommends that Ms. Johnson's claim be allowed in the reduced amount of \$123,678, with prior withdrawals in the amount of \$6,219.

f. Samuel Currin – Sterling Casualty & Insurance: Mr. Currin also submitted a claim involving funds that he and Thomas Goolsby invested as capital in Sterling Casualty & Insurance, which was then invested in Tech Traders. (*See* Receiver's Aff. at ¶ 43f; McCormack Decl. at ¶ 9l.) The claim alleges that this amount totals \$67,500. Despite Mr. Currin's failure to provide documentary support for his alleged investment in Sterling Casualty & Insurance, most of it is identifiable in the tracing analysis done by Joy McCormack. In late December 2003 and early February 2004, Mr. Currin and his partner Thomas Goolsby directly and through Currin's law firm deposited at least \$62,500, which went to Sterling Casualty & Insurance and was then transferred to Strategic Investment Portfolio. (*See* Receiver's Aff. at ¶ 43f; McCormack Decl. at ¶ 9l.) Their \$62,500 can be shown as part of larger amounts that were finally transferred to Tech Traders. (*See* Receiver's Aff. at ¶ 43f; McCormack Decl. at ¶ 9l.) These are shown as Transactions #43 and #45 in Ms. McCormack's tracing analysis. (*See* Receiver's Aff. at ¶ 43f; McCormack Decl. at ¶ 9l.) Therefore, this claim should be allowed in the

amount of \$62,500, but with a special condition. It is clear that this claim is essentially a derivative claim filed on behalf of Sterling Casualty & Insurance since it is premised on investments of equity capital in that company. Amounts distributed on such a claim should be used to repay any creditor claims before going to repay capital investments. A distribution should be paid on this claim only after Mr. Currin and Mr. Goolsby have filed affidavits with the Court within 30 days attesting as to the financial condition of Sterling Casualty & Insurance to the best of their knowledge and in particular identifying any creditors of that company and the respective amounts owed to each creditor. The affidavit should also contain an undertaking that they will hold the full amount of the distribution for a period of at least one year and use it during that period only to satisfy any outstanding Sterling Casualty & Insurance creditor claims and that after the one year period, the remaining balance will be distributed ratably between Messrs. Currin and Goolsby on account of their equity interests.

g. Elmer Martin: Mr. Martin's claim asserts that he invested a total of as much as \$2.3 million directly and indirectly with the Sterling Entities over a several year period. (*See* Receiver's Aff. at ¶ 43g; McCormack Decl. at ¶ 9m.) The Sterling statement he produced shows that \$225,000 of his funds had been placed in Strategic Investment Portfolio sometime before January 1, 2004. The statement indicates that there was a "Previous Balance" of \$234,320, which appears to reflect earnings for a period of about 6 to 7 weeks on the \$225,000, based on the amount of monthly earnings shown on other investors' statements for Strategic Investment Portfolio for a similar time period. (*See* Receiver's Aff. at ¶ 43g.) Although there are no transfers to Tech Traders from Strategic Investment Portfolio or any other Sterling entity that can be positively traced to

Mr. Martin, several transfers to Tech Traders in the Fall of 2003 cannot be traced to any other investor. (*See id.*) Two of these, identified in the McCormack tracing analysis as Transaction #31 on October 22, 2003 in which \$30,000 was transferred to Tech Traders and Transaction #33 on November 4, 2003 in which \$60,000 was transferred to Tech Traders, appear proximate in time to when Mr. Martin's funds appear likely to have been transferred to Strategic Investment Portfolio. (*See id.*) However, the \$30,000 transfer is also the subject of an Alliance memorandum suggesting that the source of these funds was Aquarius Holdings, Ltd. Because of the uncertainty over the Alliance memoranda, as discussed above, the Receiver recommends partial claim allowance with respect to the \$30,000 amount and full claim allowance with respect to the \$60,000 amount. There are no later unattributed transfers to Tech Traders until Transaction #35 on December 24, 2003, which is at least one month too late to be consistent with the prior balance amount shown on Mr. Martin's Sterling statement. There was also a transfer of \$600,000 from Sterling Trust (Anguilla) to Tech Traders on September 5, 2003 (Transaction #26 as identified in the McCormack tracing analysis) that can only be traced as far as Ansbacher Bahamas, Ltd., another Bahamian financial institution. (*See id.*) However, this transaction occurred over two months too early to provide any likelihood that it contained Mr. Martin's funds. Therefore, the Receiver recommends that Mr. Martin's claim be allowed in the reduced amount of \$75,000, which represents all of Transaction #33 as identified in the McCormack tracing analysis and one-half of Transaction #31.

h. Patti and Gary Reiter: The Reiters assert that they invested \$130,037 with Sterling ACS Ltd., of which \$55,000 was invested on January 6, 2004 and \$75,037 was invested on March 8, 2004. (*See Receiver's Aff. at ¶ 43h; McCormack Decl. at ¶ 9n.*)

Their claim form also indicates that they were told by Sterling that the latter amount was not actually invested. (*See* Receiver's Aff. at ¶ 43h; McCormack Decl. at ¶ 9n.) This is confirmed by the McCormack tracing analysis, which shows that there were no Sterling transfers to Tech Traders on or after March 8, 2004 which could have included the Reiters' \$75,037. (*See* Receiver's Aff. at ¶ 43h; McCormack Decl. at ¶ 9n.) However, the Reiters' earlier investment of \$55,000 could well have been included in the transfer of \$225,000 from a Sterling account to Tech Traders on January 15, 2004 (Transaction #38 as identified in the McCormack tracing analysis). (*See* Receiver's Aff. at ¶ 43h; McCormack Decl. at ¶ 9n.) However, this transaction is the subject of an Alliance memorandum suggesting that the source of these funds was Aquarius Holdings, Ltd. Because of the uncertainty over the Alliance memoranda, as discussed above, the Receiver recommends allowance of only one-half of the \$55,000 amount. Therefore, the Receiver recommends that the Reiters' claim be allowed in the reduced amount of \$27,500.

C. Claims Not Allowable

44. Insufficient information was provided to show that the following claims listed on the Proposed Disallowed Sterling Investor Claims schedule invested any funds with one or more Sterling Entities that reached Tech Traders, and therefore I recommend disallowance of the claims in full: Samuel Currin – Oxford Corporation, Mark Malinowski, and Greg Borsoi. A short discussion of each of the claims follows:

a. Samuel Currin – Oxford Corporation: Samuel Currin filed a claim regarding his investment through Oxford Corporation in the amount of \$26,595. (*See* Receiver's Aff. at ¶ 44a; McCormack Decl. at ¶ 9o.) According to the Sterling statement

he furnished, \$6,595 of that amount was invested with Strategic Investment Portfolio. (See Receiver's Aff. at ¶ 44a; McCormack Decl. at ¶ 9o.) Mr. Currin never provided any documentary basis, such as a cancelled check or wire transfer advice, in support of his contention that he transferred funds to Sterling, despite the repeated requests of the Receiver that he do so. The available Sterling documents do not reflect receipt of any such deposits from Mr. Currin or Oxford Corporation. (See Receiver's Aff. at ¶ 44a; McCormack Decl. at ¶ 9o.) Therefore, the Receiver is unable to recommend that Mr. Currin's claim involving Oxford Corporation be allowed in any amount.

b. Mark Malinowski: Mr. Malinowski submitted a claim for funds invested with Sterling ACS, Ltd. in the amount of \$55,463, and his claim also indicates that he received prior withdrawals totaling \$30,000. (See Receiver's Aff. at ¶ 44b; McCormack Decl. at ¶ 9p.) Although Mr. Malinowski presented a Sterling statement showing that \$20,000 of his funds was invested in Strategic Investment Portfolio, he provided no documents, such as cancelled checks and or wire transfer advices, demonstrating that he actually sent funds to Sterling. The available Sterling bank records do not reflect receipt of funds from Mr. Malinowski. (See Receiver's Aff. at ¶ 44b; McCormack Decl. at ¶ 9p.) Therefore, the Receiver recommends that his claim be disallowed.

c. Greg Borsoi: This claim asserts that approximately \$279,000 was transferred from an offshore insurance company to Sterling in February 2003 on behalf of Mr. Borsoi. (See Receiver's Aff. at ¶ 45c; McCormack Decl. at ¶ 9q.) A statement from Sterling shows that \$130,000 of this amount was transferred to Strategic Investment Portfolio on March 13, 2003, effective as of March 21, 2003. (See Receiver's Aff. at ¶ 45c; McCormack Decl. at ¶ 9q.) There is no evidence that the \$130,000 was ever

transferred to Tech Traders, and there are no sizable transfers of funds from Sterling to Tech Traders until July 7, 2003, nearly four months later (Transaction #22 as identified in the McCormack tracing analysis). (*See* Receiver's Aff. at ¶ 45c; McCormack Decl. at ¶ 9q.) This transaction seems too far removed in time to likely represent Mr. Borsoi's funds. Therefore, the Receiver recommends that Mr. Borsoi's claim be disallowed.

45. The Receiver has provided a detailed notice of the Motion of Equity Receiver Regarding Treatment of the Sterling Claims and the Claims of Sterling Investors (and all relevant supporting documents) to all of the above-mentioned investors, along with the other persons who were sent claim forms and requests for information in or around October 2006. A copy of the notice is attached to the Receiver's Affidavit as Exhibit F.

46. The Receiver requests that the Court enter an Order: (i) approving the treatment of the Sterling Claims described above; (ii) allowing the Aggregate Sterling Claim as set forth above; (iii) approving the reductions recommended above to the amount to be distributed on account of the Aggregate Sterling claim; (iv) approving how the net amount distributable on account of the Aggregate Sterling Claim will be distributed directly to Sterling investors holding allowed claims; (v) allowing the Sterling Investor Claims in the amounts set forth on the Proposed Allowed Sterling Investor Claims schedule attached as Exhibit D to the Receiver's Affidavit; (vi) disallowing the Sterling Investor Claims set forth on the Proposed Disallowed Sterling Investor Claims schedule attached as Exhibit E to the Receiver's Affidavit; and (vii) granting such other and further relief as is appropriate in the circumstances.

Respectfully submitted,

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