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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)**

Non - Jury
**JOINT FINAL PRETRIAL
ORDER**

APPEARANCES: Elizabeth M. Strcit
Lead Trial Attorney

Jennifer S. Diamond
Trial Attorney

for Plaintiff Commodity Futures Trading Commission

Robert W. Shimer
Defendant *pro se*

Vincent J. Firth
Defendant *pro se*

Samuel F. Abernethy
Menaker & Herrmann LLP

for Defendant Equity Financial Group LLC

PART I. JURISDICTION and BRIEF SUMMARY OF THE CASE:

A. Jurisdiction

The basis for the Court's jurisdiction is Section 6c of the Commodity Exchange Act ("Act"), 7 U.S.C. § 13a-1 (2002), which authorizes the Commission to seek injunctive relief against any person whenever it shall appear to the Commission that such person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation or order thereunder. The Act prohibits fraud in connection with the commodity futures markets and establishes a comprehensive system for regulating the purchase and sale of commodity futures.

Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2002), in that Defendants are found in, inhabit, or transact business in this district, and the acts and practices in violation of the Act have occurred, are occurring, or are about to occur within this district, among other places.

B. Statement of the Case

(i) Summary of Plaintiff's Claims:

Equity Financial Group LLC ("Equity") was the commodity pool operator for Shasta Capital Associates ("Shasta"), a commodity pool that was a feeder fund to a so-called "super fund" or master commodity pool run by Coyt E. Murray ("Murray"), principal of Tech Traders, Inc. ("TTI"), and Tech Traders, Ltd. ("TTL"), (a common enterprise along with Magnum Investments, Ltd. ("Magnum") and Magnum Capital Investments, Ltd ("MCI") and which are collectively referred to as "Tech Traders" hereinafter). Vincent J. Firth ("Firth") was the President, sole shareholder and a controlling person and associated person ("AP") of Equity and Robert W. Shimer ("Shimer") was legal counsel to Equity and Shasta and was also a controlling person and associated person ("AP") of Equity. Shimer and Firth also ran New Century Trading LLC ("New Century") a small foreign fund. Murray and Tech Traders falsely represented to Equity, Shimer, Firth and other investors in its super fund that Tech Traders enjoyed extraordinary success trading in selected financial futures contracts using a confidential, proprietary "portfolio" trading system. In reality, Tech Traders lost, misappropriated and dissipated millions of dollars, leaving a shortfall currently in excess of \$15 million.¹

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 from 65 Shasta investors for participation interests in Shasta and transmitted most of those 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. Equity, through Firth and

¹The 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.

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. These results were represented to be "verified" by J. Vernon Abernethy ("Abernethy") an allegedly independent certified public accountant ("CPA"). Shimer controlled the development of the independent CPA verification process. From the beginning, he designed a faulty process. He also ignored indications throughout the time period relevant to this case that the verification was suspect. Nonetheless, Equity, Firth and Shimer represented to actual and prospective participants that all the commodity futures trading underlying these results was reviewed and verified by Abernethy, in order to provide participants with "reasonable assurance" that the performance information reported by Shasta was accurate. Further, Equity, Firth and Shimer hired another CPA, Elaine Teague ("Teague"), to purportedly receive the results from Abernethy, affirm the results to inquiring participants and potential participants, and vouch for the legitimacy of the investment and the persons involved. However, Teague, the second CPA, did not perform an independent review of the information Abernethy supplied to her. Firth and Shimer knew Teague did not perform an independent review, and therefore, Equity, Firth and Shimer had no reasonable basis upon which to believe that the performance information supplied to actual and prospective participants had been verified.

Equity solicited interest in Shasta by various means, including individual solicitations by Shimer and Firth, distribution of a private placement memorandum (PPM"), operation of a website, <http://www.shastacapitalassociates.com/>, 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/>. In addition to touting the inaccurate performance figures for Tech Trader's trading system, the PPM, the website and

various solicitation materials the defendants distributed to participants and potential participants contained other material misrepresentations and omitted material facts.

(ii) Summary of Defendants' Claims and Defenses

(a) Defendant Equity's Summary of the Claims and Defenses

The complaint herein asserts that the defendants engaged in fraud in violation of sections 4b(1)(A) and 4(b)(1) of the Commodity Exchange Act, 7 USC § 1 et seq. ("Act" or "CEA"), and operated an unregistered commodity pool in violation of section 4m(1) of the Act. Defendant Equity asserts in defense that instead of perpetrating a fraud Equity was a victim of a trading scam operated by defendant Murray and Tech Traders and its affiliates. Equity's belief in the legitimacy of the operations of Tech Traders was derived from the understanding of its President Firth and was reasonable and understandable. Moreover, Equity, through its President Firth, reasonably believed that the verification procedures put in place were capable of accurately confirming the accuracy of the trading figures generated by Tech Traders.

Equity relies on the arguments of defendants Firth and Shimer that Shasta was not a commodity pool and therefore not required to register as a pool since a trading account in its name was never opened.

(b) Defendants Firth and Shimer's Summary of the Claims and Defenses

Equity Financial Group, LLC ("Equity") was a New Jersey limited liability company managed solely by Firth. Equity was the manager of the Delaware limited liability company Shasta Capital Associates, LLC. ("Shasta") but never acted as the commodity pool operator of Shasta. Defendants Shimer and Firth continue to dispute any and all characterizations by Plaintiff that the entity Equity ever acted as a "commodity pool operator". The district court in this case has twice denied Shimer and Firth's separate motions for summary judgment with respect to all

counts of Plaintiff's amended complaint and has ruled that the entity Shasta is a commodity pool and, therefore, that the entity Equity acted as a commodity pool operator. Shimer and Firth have appealed to the Third Circuit Court of Appeals the district court's previous denial of their respective motions for summary judgment with respect to all counts of the Plaintiff's amended complaint and have appealed the district court's decision that the entity Equity acted as a commodity pool operator. That appeal to the Third Circuit Court is currently pending.

The entity Shasta received funds from its members into a sub account of Shimer's attorney escrow account at Citibank, NY. Shimer then forwarded the appropriate amount of each member's funds to the apparent commodity pool defendant entity Tech Traders, Inc. ("Tech") a Delaware corporation managed by the Defendant Coyt E. Murray who was a principal of Tech. The entity Shasta never opened a commodity trading account and none of the defendants ever represented to anyone that they had any experience or expertise in the trading of commodity futures contracts. Nor did any of the defendants ever represent to anyone that they intended to open a commodity trading account in their own name or in the name of any business entity they either controlled or were associated with in order to trade commodity futures contracts for on behalf of either themselves or for or on behalf of anyone else.

Firth, as sole shareholder and President of Equity had final say on all matters of any consequence. Shimer never acted as a controlling person of Equity. Shimer acted solely as legal counsel for the entity Equity and the entity Shasta. New Century Trading, LLC ("New Century") was a Nevis, West Indies limited liability company managed by a Bahamas corporation managed by Tessa Howell who held the office of President and Director of New Century's manager Allied International Management, Ltd. ("Allied"). Firth played no management role at all in New Century. Shimer as legal counsel for New Century did act as attorney in fact for New Century to

further the interests of his legal client but only pursuant to specific written authorization from New Century's manager Tessa Howell.

Murray and Tech falsely represented to Equity, Shimer and Firth and other investors similar situated to the entity Shasta who forwarded funds directly to Tech under the false impression created by Tech and Murray that Tech enjoyed extraordinary success trading in selected financial futures contracts using a confidential, proprietary "portfolio" trading system. In reality Tech lost, misappropriated and dissipated millions of dollars, leaving a shortfall currently in excess of \$15 million.

Between June 2001 and April 1, 2004 in reliance upon the misrepresentations of both Murray and Tech aided and abetted by the arguably willful but clearly negligent acts of Vernon Abernethy ("Abernethy") (a CPA local to Tech trading operations hired by Tech to independently verify Tech's trading performance) Equity, Shimer and Firth solicited and received into a Shasta bank account that existed solely as a sub account of Shimer's attorney escrow account at Citibank approximately \$15,113,498.11 from approximately 65 Shasta members. Acting in his capacity as legal counsel for Shasta, Shimer transmitted funds received into Shasta's Citibank account by bank wire to a bank account in the name of Tech at Bank of America in North Carolina. Tech's bank account was controlled by Murray. All funds transmitted by Shimer were sent to Tech in accordance with the requirements of Shasta's Private Placement Memorandum (PPM) and per the terms of an Investment Agreement executed by the authorized representative of both Tech and Shasta.

In reliance upon Tech and Murray's misrepresentations and Abernethy's negligent verification of Tech's trading performance Shimer and Firth also solicited approximately \$295,143.81 from two foreign corporate members of New Century. All funds of New Century

were transmitted for the benefit of New Century's corporate members to Tech by separate legal counsel in the Bahamas strictly in accordance with the requirements of New Century's PPM.

Relying solely upon the misrepresentations of Murray and by reason of their reasonable belief that Abernethy was performing an independent and reliable rate of return verification of Tech's monthly trading performance Equity Shimer and Firth in good faith described Tech's trading performance to prospective members of Shasta and New Century exactly as it was represented to them by Murray and Tech and as verified in writing by CPA Abernethy and transmitted monthly by Abernethy to Shasta's CPA.

Shimer and Firth played no role at all in developing the Agreed Upon Procedures (AUPs) that Abernethy specifically referred to each month in the verification letter addressed to Murray that was forwarded by Abernethy to Shasta's CPA Elaine Teague ("Teague") a partner in the Portland, Oregon CPA firm of Puttman & Teague. Shimer specifically requested in writing on more than one occasion that Teague work out with Abernethy what Shimer specifically described in a mid July fax to Teague as the "verification protocol". Shimer's written correspondence on more than one occasion clearly indicated to Teague Shimer's intention that Teague be responsible for determining the propriety of whatever monthly verification she would receive each month from Abernethy for the benefit of her client Shasta.

Shimer conveyed in writing to Teague a suggested method or approach for accurately computing a simple collective rate of return for all accounts being traded *in the name of* Tech by Murray. Shimer consistently suggested to all parties a review of the original brokerage statements received each month by Tech from the several different brokerage companies where Tech maintained its trading accounts. Shimer's description of the method for computing the collective simple rate of return was conveyed in a two page attachment to a fax sent to Teague in

late June, 2001. At the time of this particular fax, Abernethy was not yet designated as the local CPA that would conduct the actual trading verification each month. Shimer's suggested method for computing a rate of return if applied properly by Abernethy would not have resulted in a significantly different rate of return (ROR) number than the computation suggested by Plaintiff's expert witness Koprowski. If 1) Teague had insisted upon seeing in writing a clear verification protocol that appropriately and specifically incorporated Shimer's suggestions offered by Shimer to her prior to the development of the AUPs and, 2) if Abernethy had followed a straightforward simple formula as suggested by Shimer for accurately generating a ROR number for the collective trading accounts of Tech by actually reviewing Tech's *original brokerage statements* the rate of return number provided by Abernethy to Teague for the benefit of her client Shasta would have been accurate. Abernethy specifically represented to Teague in a telephone conversation(s) in July of 2001 that he would, indeed, refer to Tech's original brokerage statements as a part of his verification of Tech's monthly trading performance and further assured her that he had access to and would review all other documents necessary to compute a rate of return for Tech.

It was never Teague's responsibility to perform an independent review of the rate of return information Abernethy provided to her monthly. Teague's sole responsibility upon receipt of Tech's monthly rate of return number verified by Abernethy was to convey that rate of return number to her client Shasta. Teague was also responsible for verifying to any member or prospective member of Shasta who telephoned her that there was, indeed, independent CPA known to her who provided her with the same rate of return she had conveyed to her client Shasta for the benefit of its members.

All of Shasta's members were required to sign a separate document entitled "Agreement for Independent Verification of Shasta Capital Profits and Losses" that was a mandatory part of the subscription package they were provided. That separate Agreement was in fact executed by every member of Shasta. That Agreement specifically set forth Teague's responsibilities. Nowhere in that document was any representation made to any member or prospective member of Shasta that Teague had undertaken to perform an independent review of the rate of return number provided to her by the local verifying CPA (Abernethy). All of Shasta's members invested in Shasta with full notice of Teague's limited but important role in the ROR verification process for the actual trading entity Tech.

Teague also received from Shasta's members a separate letter specifically addressed to Teague that stated that the member understood the limited role that Teague played in the verification of Tech's monthly performance numbers. That letter was consistent in content because Shimer, as legal counsel for Shasta and Equity, provided the text of the requested letter to Teague to each new member of Shasta.

Teague believed throughout the engagement that Abernethy was accurately performing a monthly rate of return verification for the trading entity Tech Traders. She relied upon his verbal assurances to her in July of 2001 and continued to rely upon the fact that each month a rate of return number was provided to her on Abernethy's letterhead. The procedure for completing a rate of return verification for Tech's trading was not complicated. The necessary information for making several simple separate computations was readily available on the face of the monthly statements received by Tech from its brokerage firms. The actual mathematics required are merely addition, subtraction and division—basic math skills taught in public school and generally learned by the sixth grade.. The ROR envisioned by Shimer from the very beginning of

Teague's engagement with Shimer's clients was clearly sufficient for the purpose intended: to assure the members of both Shasta and New Century that they were receiving through Shasta's CPA an accurate representation of Tech's monthly trading performance.

Equity, Firth, Shimer and Teague had a reasonable basis to assume that the monthly rate of return (ROR) performance being reported to Teague by Abernethy each month, conveyed monthly in writing by Teague to Equity for the benefit of Shasta and conveyed by Equity to Shasta's members had been accurately computed. Abernethy's resume clearly reflected a level of professional competence that led Equity, Firth, Shimer and Teague to reasonably believe the Abernethy was able to perform the independent monthly rate of return trading verification requested of him by Tech. Teague received Abernethy's resume from Shimer and never gave Equity, Shimer or Firth any indication that she was concerned about Abernethy's CPA credentials or his ability to perform the trading verification being requested of him by Murray. Teague indicated in discovery that Abernethy's resume gave her no cause for alarm about Abernethy's ability or willingness to perform an ROR computation for Tech. Abernethy's verbal representations during telephone conversations with Teague in July, 2001 confirmed that impression to her.

Moreover Abernethy's resume indicated a familiarity with brokerage statements because it reflected the fact that he had passed both his Series 6 and Series 63 exams and that he had acted as a Series 6 and 63 Registered Representative of The Leaders Group, Inc. a Broker Dealer located in Littleton, Colorado. Teague received verbal assurances in July from Abernethy during telephone conversations she had with Abernethy that he was willing and able to perform Tech's monthly rate of return verification and that he would indeed be reviewing original brokerage statements and all necessary documents as a part of his verification of Tech's monthly rate of

return. Teague had no reason to believe that Abernethy would lie about his willingness and ability to perform that verification. Teague was justified in her conclusion that Abernethy's ROR numbers were accurate because Teague knew how to accurately compute a simple rate of return number herself. She had discussed the necessity for appropriately adjusting for any additions or withdrawals made to a brokerage account during the month with Shimer and had also conveyed her concern and that of her firm specifically to Abernethy in an e-mail in July of 2001. Teague was a partner in a small CPA firm. She had passed the CPA exam in her state and was a licensed CPA.

Abernethy assured Teague in telephone conversations he had with Teague that Abernethy was comfortable with the ROR verification he was going to perform for Tech. This fact and the fact that Abernethy was also a licensed CPA clearly indicated to Teague that 1) Abernethy knew how to compute a rate of return for his client Tech; and 2) that Abernethy was comfortable in providing a rate of return computation for his client Tech and which he did later consistently purport to compute for Tech and which he consistently conveyed to Teague from November, 2001 until March, 2004. Shimer and Firth were justified in concluding that the lack of any negative feedback from Teague as Shasta's CPA about either Abernethy's qualifications or the agreed upon procedures (AUPs) themselves indicated to Shimer and Firth that the ROR numbers received by Teague each month on behalf of her client Shasta were accurate.

Representations about the possibility of rates of returns far higher than the monthly rates of return reported by Abernethy are consistently made to the public. Certain groups consistently place ads on television (similar to ads included as a Defendant Exhibit) to sell information to the public on how to learn to trade the stock market and earn rates of return far higher than the monthly rates of return verified by Abernethy. Many of the people named and identified in these

television commercials are identified as students of these companies who learned how to successfully trade the stock market by taking the training courses offered by the company airing the television commercial.

Shimer had previously seen commercials similar to those included in Defendant's exhibit and was aware of the possibility that people without prior training in the stock market could learn with sufficient serious and time relatively sophisticated methods of trading that might create far higher RORs than the RORs being verified for Tech by Abernethy. Shimer had a reasonable basis to sincerely believe that it was possible that an individual investor managing relatively small amounts of money could be far more nimble in making trading decisions throughout the day than large mutual fund companies that manage billions of dollars and that are required by their prospectuses to maintain in their investment portfolios stocks various large cap companies that might be listed in various market sectors.

That reasonable belief on the part of Shimer was confirmed often because Shimer and his wife consistently received in the mail beginning in the mid 1990's fax and written solicitations similar in nature to the written solicitations for trading systems and trading information and techniques found in specific exhibits Shimer will offer at trial not for the truth of the statements contained therein but merely for the fact that Shimer and his wife as members of the investing public were constantly flooded with these sorts of solicitations.

One particular Exhibit contains representations that individuals who followed a trading system offered by a Mr. Larry Williams, for example, were able to achieve truly extraordinary rates of return. Mr. Williams' credentials purportedly include serving on the board of the National Futures Association, representing fellow Commodity Trading Advisors. He has also purportedly been written about in the publications *Barrons*, *The Wall Street Journal*, *Forbes*,

Money, Fortune and “countless smaller publications”. The following are only a small selected sample contained in Mr. Williams’ solicitation to Shimer describing purported extraordinary trading results achieved by purchasers of Mr. Williams’ trading system and course materials that Shimer will present to the court at trial not for the truth of the statements contained therein but merely to show they are typical of statements being consistently made to the public and specifically made previously to Mr. Shimer:

- 1) B. Rudee Schade featured on the inside cover of the first page which states that he made over \$130,000 in the first seven months by purchasing and “...by simply following the system...”;
- 2) A representation by a purported purchaser of Mr. Williams’ trading system identified only as “B.C. from Liberty, MO” who states on page 16. “I placed \$3,500 in coffee last January—just like you recommended. By February 14 my investment had grown to \$201,443.75. I made \$197,943.75 in just three weeks!”
- 3) A testimonial with the picture of a purported computer programmer named “Cedric Wynn” who “ran his \$50,000 account up to \$128,785 trading stock index and bond futures....” during a purported “August trading contest”. The purported source for this information found in Mr. Williams’ solicitation addressed specifically to Mr. Shimer was cited as “Futures Magazine, Oct. 1998”.
- 4) A statement that Larry Williams purportedly “traded real time with real money in front of 68 Money Tree students.” The specific days listed for this trading were stated to be “October 26th through October 28th”. Purportedly “(i)n just those three days alone, his net profits after all commissions and losses was a staggering \$273,120.00!!!”.

Teague had confirmed to Shimer that the previous rate of return performance numbers for the outside "hedge fund" Hanseatic were accurate as they were described under the general paragraph entitled "Hedge Fund Investment", in subparagraph (b) at the top of page 10 of Shasta's first PPM dated June 30, 2001. While Hanseatic's actual name was not disclosed in that PPM that particular subparagraph referred to the fact that Hanseatic had for the previous 5 years provided a general yearly average return on investment in excess of 100%. This audited average yearly rate of return for Hanseatic did not vary dramatically from the returns being reported consistently by Abernethy and conveyed to Shasta's CPA Teague. Shasta further disclosed to prospective members of Shasta that same fund (not specifically identified as Hanseatic in Shasta's PPM) had achieved a total return on investment of 1,600% through January, 2001 with full compounding of all profits. This information was also independently confirmed to Shimer by Teague.

Under certain circumstances, or, if they are particularly gifted, commodity futures traders can clearly achieve extraordinary audited returns. Shimer will refer at trial to Shimer Exhibit 2F which contains the cover page and certain pages of an SB-2 filing by the entity Hanseatic Discretionary Pool, LLC filed with the SEC on July 6, 2001. Page 23 of this SB-2 lists the past monthly performance of the pool. This page of the SB-2 filing for the pool reflects an ROR number of 19.43% for the month of June, 1999; 18.75% for the month of February, 2000; 47.77% for the month of March, 2000; 52.11% for the month of April, 2000; 9.60% for the month of July, 2000; and 15.50% for the month of November, 2000 reflecting an annual ROR for calendar year 2000 of 258.02%.

Page 25 of that same SB-2 filing discloses that Hanseatic Corporation, acting as the CTA had achieved with respect to a fund described as the "Hanseatic Discretionary Program" a fully

audited ROR of 181.48% for calendar year 2001 and for the calendar year 1998 had achieved a fully audited ROR of 293.08%. Page 26 of that same SB-2 filing indicated that the closed fund entitled "Hanscatic S&P 500 Futures Program" earned a fully audited ROR of 157.19% in 1996 and page 28 of that same SB-2 filing reflects a fully audited ROR of 105.56% for a fund previously managed by the pool described as "Hanseatic US Financials Trading Program".

Shimer was given the impression when he first met Abernethy in early July, 2001 that Abernethy had no prior association with Tech at the time that Murray suggested Abernethy to be the local verifying CPA of Tech's trading performance. That reasonable impression on the part of Shimer was later confirmed by Abernethy under oath during a deposition given by Abernethy in the summer of 2001. At the time Abernethy was retained by Tech to perform monthly trading verification of Tech's performance and at the time that Shimer believed the AUPs were developed by Abernethy and Teague there was absolutely no indication to Teague, Equity, Shimer, or Firth that Abernethy had any interest in soliciting for prospective members of Shasta thereby compromising his purported necessary independence.

Murray and Abernethy never gave Shimer, Firth or Equity any cause for concern that Abernethy was not reviewing original brokerage statements as a part of his monthly verification of Tech's trading performance. Teague, as Shasta's CPA, continued month after month to accept as accurate and reliable the ROR computations forwarded by Abernethy to her for the benefit of her client Shasta.

Teague always believed that Abernethy was competent to perform the computations requested of him and never experienced any doubt about the accuracy of Abernethy's reported ROR numbers for Tech. Teague, as Shasta's CPA, never indicated to Equity, Firth and/or Shimer

that she was concerned about the accuracy of the ROR information she consistently received month after month from CPA Abernethy for the benefit of her client Shasta.

Equity solicited membership interests in Shasta by various means, including individual solicitations primarily by Firth but also by Shimer, distribution of a private placement memorandum ("PPM"), operation of a web site, <http://www.shastacapitalassociates.com/> and provision of information to third parties that described various selected hedge funds on various web sites, including <http://www.hedgeco.net/>, <http://www.barclaygrp.com/>, and <http://www.hedgefundresearch.com/>. All methods of distributing information about Shasta accurately reflected the exact performance numbers of Tech's trading system that were verified monthly by Abernethy, provided to Teague in writing and subsequently reported by Teague to Equity.

The defendants Equity Firth and Shimer made no material misrepresentations or omitted any facts that were material to an investment in Shasta. Investors in Shasta clearly became members by reason of Tech's extraordinary consistent trading performance numbers provided by Abernethy to Teague as stated above. While Tech's trading performance numbers were extremely good, information available to Equity, Shimer and Firth at the time that Abernethy began verifying Tech's monthly rate of return revealed that Tech was not unique or alone in its apparent ability to generate extraordinary potential returns to investors. Tech's purported monthly rate of return was not out of line for a system that was purportedly developed over a period of time by Murray and his son, based upon sophisticated mathematics and purportedly subject to extensive rigorous back testing, optimization and review. The fact that Abernethy (a CPA with no previous relationship to Murray or his companies) was providing a verified

monthly ROR to Teague each month gave Equity Shimer and Firth great confidence that the performance numbers being reported monthly to Shasta's members were true and accurate.

Shimer reviewed in good faith definitions of the term "commodity pool operator" and "commodity trading advisor" in the fall of 2001 and prepared a memorandum that reflected his analysis after reviewing the NFA's definitions and one particular section of the CFTC's regulations. He forwarded that memo to a fellow attorney who, in turn, forwarded it to a Vice President of JP Morgan Chase after that VP questioned whether Shasta or its manager had to register with the CFTC. Shimer received confirmation weeks later through the other attorney that the "legal department" at JP Morgan Chase had reviewed Shimer's memorandum and concurred with Shimer's conclusion about the lack of any necessity that his clients register with the CFTC.

All documents prepared by Shimer as legal counsel for both Equity and Shasta were prepared by Shimer in good faith with no knowledge that any provision of any document drafted by Shimer violated any regulation of the CFTC. Shimer never drafted any document intended by Shimer to help Murray avoid any regulation that might otherwise apply to either Murray or his company Tech. Shimer at all times acted in good faith believing that his client did not have to register in any capacity with the CFTC and indicated on more than one occasion in the fall and winter of 2003 to the firm of Arnold & Porter that if he was not correct in that conclusion Shimer was more than happy to assist his clients to comply with whatever registration requirement might be required.

PART II. STIPULATED FACTS:

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 shareholder 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 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 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.

9. 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 TFI. 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 Tech Traders, Inc. 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. Shasta's website referred to the "astonishing" performance of the Synergy Trading System (aka Synergetic Portfolio Trading System) claiming that as a result of that trading system, Shasta had received returns of approximately 100% per annum on funds placed with the "Trading Company."

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 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 (also see Footnote 1).

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. The Shasta Private Placement Memorandum ("PPM") does convey the impression that Firth's previous NASD Series 7 license was current.

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 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.

24. Firth knew that the entity Kaivalya owed a lot of money to its individual lenders. Firth also knew about the profit sharing agreement between Tech and Shadetree. The Shasta PPM never disclosed the fact that Tech had agreed to share with Shadetree part of the profits specifically allocated to Tech by Tech's 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.hcdgcco.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, 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'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.

27. 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.

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 he 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 the 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 Trader's trading results.

37. Equity employed 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.

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 intelligent and honest. He also knew that she had a sense of humor, was patient and very kind. Many people who are good CPA's may not

necessarily possess good people skills. Also many people who are good CPAs are not necessarily 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.

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.

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

39. Originally, Shimer suggested to Murray that Teague perform the independent verification of Tech Trader's trading results. However, Murray did not want original brokerage 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.

40. 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 laws. Collis and Associates did not believe they had the expertise to verify performance returns for an investment and the CPA firm's insurer would require an extra premium to cover the engagement. Murray then decided to hire 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.

41. 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.

42. Firth played no role at all in the development of the AUP letter created by Abernethy. Firth looked to Shimer for assurance that whatever was created for the verification of Tech's rate of return was sufficient for the purpose intended.

Teague performed no independent review of the rate of return numbers provided to her by Abernethy. Teague's specific role as Shasta's CPA was disclosed to Shasta's members in a separate Agreement document they were all required to sign as a prerequisite for being admitted as a member of Shasta. Shasta's members received Agreements in either the form of Plaintiff's Exhibit 1089 or Shimer's Exhibit 25. Shasta's members also sent Teague a separate letter drafted by Shimer for consistency confirming their understanding of her role in the verification process. The letter that Shasta's members signed was in the form of Plaintiff's Exhibits 1074, 1094 or 1103.

Shimer and Firth requested that she be 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.

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

44. 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.

45. 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.

46. Relying upon Abernethy's resume, Shimer and Firth did not conduct any further investigation of Abernethy. Shimer or Firth did not ask Teague if she had conducted an investigation of Abernethy.

47. Firth was not at all involved in the verification process proposed by Abernethy and approved by Teague. Firth acknowledged that the CPA verification process was put in place to provide comfort to investors that the trading results were authentic.

48. Shimer first met Abernethy in July 2001. Teague never met Abernethy.

49. Teague sent Shimer emails in which she explained 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.

50. Teague asked Abernethy what method he was using to calculate the rate of return for Tech Traders. Abernethy did not answer her question.

51. 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. This was frustrating to Shimer because he considered it a simple process.

52. Shimer was Teague's main point of contact on her engagement by Shasta.

53. 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.

54. Shimer sent to Teague his draft revisions of Teague's proposed verification letter to Shasta in early November of 2001. Shimer's revisions to Teague's letter included 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.

55. Shimer wanted Abernethy to verify that Tech Traders had on deposit with its brokerage firms sufficient funds to cover the amount Shasta and New Century had on deposit with Tech Traders and spoke to Abernethy about performing this additional verification.

56. 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.

57. 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 Teaguc could replace Abernethy and provide the requested balance verification Murray told Shimer that Abernethy would do it.

58. 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.

Notice of Equity's Registration Requirements

59. 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.

60. 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.

61. 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.

62. 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.

63. 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.

64. 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.

65. 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.

66. Shimer often told Lee that Murray was a secretive man that had to be treated with kid gloves.

Exhibits

67. Plaintiff's Exhibit 1093, the Shasta Capital Associates Private Placement Memorandum dated as of June 30, 2001 is the same document that was sent to all members or potential members of Shasta who invested or expressed interest in investing between June 30, 2001 and February 18, 2003.

68. Plaintiff's Exhibit 1070, the Shasta Capital Associates Private Placement Memorandum dated as of February 18, 2003 is the same document that was sent to all members

or potential members of Shasta who invested or expressed interest in investing between February 18, 2003 and September 2, 2003.

69. Plaintiff's Exhibit 461, the Shasta Capital Associates Private Placement Memorandum dated as of September 2, 2003 is the same document that was sent to all members or potential members of Shasta who invested or expressed interest in investing between September 2, 2003 and April 1, 2004.

70. Each member of Shasta also received an Operating Agreement like Plaintiff's Exhibit 1090 between June 30, 2001 and September 2003 and an Operating Agreement like Exhibit 1110 between October 2003 and April 1, 2004.

71. Each member of Shasta also received an Investor Questionnaire like Exhibit 1084. Each member of Shasta also received an Agreement for Independent Verification of Shasta Capital Profits and Losses that was either like Plaintiff's Exhibit 1089 or Shimer's Exhibit 25.

72. Plaintiff's Group Exhibit 1009 consists of all of Abenethy's AUP Letters issued between October 2001 and February 2004.

73. Plaintiff's Group Exhibit 1012 consists of all of Teague's Verification Letters issued between June 2001 to February 2002 and April 2002 to February 2004.

74. Each member of Shasta received monthly investor statements from Shasta, similar in form to Group Exhibit Nos. 1096 and 1132, Shasta's Monthly Investor Statements from February, March and May 2002 through February 2004.

Miscellaneous Stipulations

75. All members and prospective members of Shasta were provided with the URL address of Shasta's web site.

76. Shasta never opened a commodity futures trading account in its name or in the name of any of its members at a brokerage account designated by the CFTC as a futures commission merchant.

77. Shasta's manager Equity never opened a commodity futures trading account in its own name, in the name of the entity Shasta or in the name of any of Shasta's members.

78. Teague's Final Report letter was always conveyed to Equity and/ or Shasta on Puttman and Teague's official letterhead.

79. Teague and her firm Puttman & Teague invoiced either New Century, Shasta or Equity as Shasta's manager on Puttman & Teague letterhead. Puttman & Teague were paid by Equity as Shasta's manager when they sent an invoice for services rendered to either Shasta, New Century, or to Equity as Shasta's manager.

80. Nick Stevenson is a sophisticated and accredited investor and his wife had previous work experience with a large hedge fund located in the San Francisco Bay area.

PART III. PLAINTIFF'S CONTESTED FACTS:

A. Plaintiff intends to prove the following contested facts with regard to liability:

1. Shimer and Firth did not have a reasonable basis to rely on Abernethy or Teague to verify the rate of return produced by Tech Trader's trading system.

2. Shimer and Firth ignored repeated warning signs that Tech Traders' performance numbers were fraudulent.

3. Shimer and Firth failed to disclose their poor track records with investing other people's money. This information would have been material in investors.

4. Firth fraudulently touted his success as a businessman when he was actually in poor financial condition.

5. Shimer and Firth failed to disclose their secret fee sharing agreement with Murray.

6. Abernethy and Teague were not independent CPAs.

7. Shimer knew that Equity should have been registered as a CPO or filed an exemption from registration.

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

9. The materials in the "three ring" binder that Murray produced to Firth and Shimer were an insufficient basis upon which to recommend the Tech Trader's trading system to investors.

10. The Edgar Holdings Inc. investment in Magnum was not a sufficient basis upon which to recommend the Tech Trader's trading system to investors.

11. Shimer's formula for determining the Tech Traders' performance rate of return was not an acceptable method for determining a rate of return for a commodity pool.

B. Plaintiff intends to prove the following contested facts with regard to damages:

1. Defendants Equity, Shimer and Firth owe, jointly and severally, estimated restitution of \$5,078,603.26 to Shasta pool participants plus prejudgment interest of \$1,134,934.46 for a total of \$6,213,537.72.

2. Defendant Equity should disgorge \$612,500 plus prejudgment interest of \$136,877.66, for a total of \$ 749,377.66.

3. Defendant Shimer should disgorge \$1,452,117, plus prejudgment interest of \$324,510.02, for a total of \$1,776,627.02.

4. Defendant Firth should disgorge \$450,313 plus prejudgment interest of \$100,633.13, for a total of \$550,946.13.

5. Defendant Equity should pay a civil monetary penalty of \$1,837,500.

6. Defendant Shimer should pay a civil monetary penalty of \$4,359,090.

7. Defendant Firth should pay a civil monetary penalty of \$1,348,200.

PART IV: EACH DEFENDANT'S CONTESTED FACTS:

A. Defendant Equity intends to prove the following contested facts with regard to liability:

1. Equity and its President did not know that the trading profits of Tech Traders as touted by Murray were untrue and inaccurate.

2. Equity and its President reasonably believed that the trading profits of Tech Traders as represented by Murray were accurate.

3. Equity reasonably believed that the procedures put in place to verify the trading returns of Tech Traders would be capable of ensuring accurate reports of the results of trading.

4. Equity reasonably believed that it did not have to register as a commodity pool operator.

B. Defendant Equity intends to prove the following contested facts with regard to damages:

1. Equity is not responsible for damages suffered by Shasta customers.

2. Alternatively, Equity's proportionate share of Shasta's customers' damages should be less than that imposed upon the other defendants.

C. Defendants Firth and Shimer intend to prove the following contested facts with regard to liability:

1. Shimer and Firth both relied upon the fact that Abernethy was a CPA and upon the facts about Abernethy reflected in Abernethy's resume in support of their reasonable belief that Abernethy had the knowledge, intelligence and ability to accurately verify Tech's monthly rate of return. That reliance by Firth and Shimer was reasonable and justified. Shimer relied completely upon Teague first as a CPA and secondly as his friend known by Shimer to be intelligent to advise Shimer if the stated procedures adopted for verifying Tech's rate of return were faulty or flawed in any way. That reliance upon Teague was justified and reasonable. Shimer and Firth continued to rely upon the ROR representations for Tech Traders purportedly verified by Abernethy, conveyed monthly in writing on his letterhead to Teague by Abernethy and subsequently conveyed by Teague in writing on her firm's letterhead to her CPA client Shasta throughout the engagement. That continued reliance by both Shimer and Firth was reasonable. Firth relied upon Shimer's confidence in Teague. Firth's reliance was reasonable and justified.

2. Abernethy was completely independent of both Murray and Tech at the time that he was hired to perform Tech's rate of return verification in the summer of 2001. Abernethy's independence continued throughout 2001. Though Abernethy did refer several people to Shasta in the late winter and spring of 2002, the performance numbers for Tech he was reporting during that relatively short period of time were consistent with the ROR numbers for Tech that Abernethy first reported in 2001. This consistency of reporting by Abernethy contributed to Shimer and Firth's reasonable belief that Abernethy's desire to refer investors to Shasta did not affect the accuracy of the rates of return Abernethy was verifying and conveying to Teague.

Abernethy's referral activity to Shasta was short lived and not successful. Abernethy's apparent independent status was reinstated after July, 2002 in the mind of both Shimer and Firth. Shimer and Firth were never given any information by either Abernethy or Murray after August, 2002 to question Abernethy's renewed independent status. Shimer and Firth's belief that Abernethy was acting independently of Tech and Shasta after August, 2002 was reasonable based on all of the facts known to Shimer and Firth at that time. The record supports the reasonable nature of their continued belief in Abernethy's renewed independence after August, 2002.

Teague was an independent CPA. Her demeanor was always one of professionalism and her independence was never compromised by the fact that she had known Shimer previously. She never indicated to either Shimer or Firth throughout her engagement as Shasta's CPA that her independent role as Shasta's CPA and the tasks that she performed for Shasta were compromised in any way. Teague's role in the verification process of Tech's trading performance was very limited. Her exact role in the verification process was clearly communicated to every investor in Shasta.

3. Shimer's belief that Shasta and Equity were not required to register with the CFTC was reasonable based upon his own research which provided a reasonable analysis to support Shimer's belief. The reasonable nature of that continued belief by Shimer's is supported by the fact Shimer's belief was confirmed by other attorneys that Shimer was told worked for a well know and long established investment and banking firm. That firm engaged in sophisticated investment transactions for both its own account and for the benefit of its high net worth clients.

4. Firth did not know that Equity "should have been registered as a CPO" as alleged by Plaintiff and there is no reasonable basis to impute that sort of knowledge to Firth who was not an attorney. It is clear from the written record even partners in the law firm of Arnold & Porter did not understand that the entity Equity might be charged by Plaintiff as the unregistered CPO of the entity Shasta. Arnold & Porter's written correspondence to Shimer continually expressed Lee's apparent confusion despite all of the information conveyed on October 24 and on October 27, 2003 by Shimer to Aronow. This apparent confusion in retrospect is demonstrated by the fact that the written record indicates that she continually referred to Shasta as a CPO and never referred once in writing to the fact that Shasta's manager, the entity Equity was possibly the CPO of the entity Shasta. Firth relied upon Shimer as legal counsel for Shasta and Equity to determine if registration with the CFTC by either Shasta or Equity was required. The record provides no basis at all to conclude that Firth should have known that the CFTC would take the position that the entity Equity might have to register as a CPO.

5. The materials in the three ring binder provided by Murray to both Shimer and Firth were sufficient to support the reasonable belief on the part of both Shimer and Firth that Murray had developed a very sophisticated trading system based upon advanced mathematical algorithms and other concepts. These three ring binder materials provided to Shimer and Firth reflected an apparent understanding by Murray of the concept of sophisticated trading system "optimization" vs simple "curve fitting". These materials also purported to represent that Murray understood very complicated advanced mathematics and also understood how complicated mathematical algorithms could be applied to predict short term price movements of various markets. These materials also included the step by step process purportedly engaged in by Murray and his son Lex in developing, testing and implementing all of the individual systems

that comprised Tech's overall trading system. These materials also reflected Murray's purported understanding of the importance of properly managing market risk by utilizing different trading systems (based upon varying and different mathematical principles and algorithms) that traded different markets in varying time frames throughout the day. The approach of Murray's trading system purported to be a brilliant way of managing the risks of futures trading. The information in these three ring binders was never considered by either Shimer or Firth to be a sufficient basis alone to recommend Tech's trading system to Shasta's investors.

6. The track record experienced by Edgar Holding Group, Inc. was never considered by either Shimer or Firth to be a sufficient basis for recommending the Tech Traders trading system to Shasta's investors. That track record played a significant but relatively small part in creating comfort in the mind of Shimer and Firth that Murray's trading system was, indeed, generating consistent profits.

7. Shimer's proposed formula for computing a rate of return for Tech Traders was clear, simple and sufficient for the purpose it was intended. If applied as suggested by Shimer it would have produced an accurate rate of return that properly accounted for additions and withdrawals. Shimer's approach was not deficient in any way in computing a net performance number necessary for arriving at an accurate rate of return. The CFTC's requirement that BNAV be time weight adjusted before dividing net performance by BNAV to arrive at a rate of return percentage makes little sense in the context of the type of intraday trading Tech was doing. The approach proposed by the CFTC's "expert" actually would have imposed for any given calendar month an artificial and unnecessary rate of return prejudice upon members of Shasta who did not contribute new funds during the month for which a ROR was being computed. Other than time weighting BNAV before arriving at the final ROR calculation, there is absolutely no significant

distinction between the ROR method proposed by the CFTC and the ROR method proposed by Shimer.

8. The actual rate of return performance numbers conveyed by Abcnethy to Shasta's CPA Teague did not provide any notice to either Shimer or Firth that these return could not be achieved by a person such as Murray who purportedly spent much time developing and testing a sophisticated trading system purportedly based upon advanced mathematical algorithms.

D. Defendants Firth and Shimer intend to prove the following contested facts with regard to damages:

1. The Defendants Shimer, Firth and Equity do not owe jointly and severally, the Plaintiff's estimated restitution of \$5,078,603.26 to Shasta pool participants. Nor do the Defendants owe prejudgment interest of \$1,134,934.46. The Defendants do not owe any amount of restitution to any of Shasta's members.

2. Defendant Equity should not disgorge \$612,500 plus prejudgment interest of \$136,877.66. Defendant Equity does not owe that amount or any other amount to anyone.

3. Defendant Shimer should not disgorge \$1,452,117, plus prejudgment interest of \$324,510.02. Defendant Shimer does not owe that amount or any other amount to anyone.

4. Defendant Firth should not disgorge \$450,313 plus prejudgment interest of \$100,633.13. Defendant Firth does not owe that amount or any other amount to anyone.

5. Defendant Equity should not pay a civil monetary penalty of \$1,837,500. Defendant Equity does not owe that amount or any other amount of civil monetary penalty to anyone.

6. Defendant Shimer should not pay a civil monetary penalty of \$4,359,090.

Defendant Shimer does not owe that amount or any other amount of civil monetary penalty to anyone.

7. Defendant Firth should not pay a civil monetary penalty of \$1,348,200. Defendant

Firth does not owe that amount or any other amount of civil monetary penalty to anyone.

Part V: Witnesses and Summary of Testimony

A. Plaintiff's Witnesses and Summary of Their Testimony

1. Plaintiff intends to call the following witnesses with regard to liability and anticipates they will testify as follows:

	NAME/ADDRESS	ROLE	SUBJECT OF INFORMATION
1	VINCENT J. FIRTH 3 Aster Court Medford, NJ 08055	DEFENDANT	Mr. Firth will testify as an adverse witness about his background, his relationship to Defendant Shimer, his role in Shasta, his communications to Shasta investors, and his communications with Murray, Abernethy, Teague and Lee.
2	ROBERT W. SHIMER 1225 West Leesport Rd Leesport, Pennsylvania 19533	DEFENDANT	Mr. Shimer will testify as an adverse witness about his background, his relationship to Defendant Firth, his role in Shasta, his communication to Shasta investors, and his communications with Murray, Abernethy, Teague and Lee.
3	J. VERNON ABERNETHY, CPA 6428 W. Wilkinson Blvd., #148 Belmont, NC 28012	DEFENDANT	Mr. Abernethy will testify about the development of his AUP procedures, the monthly verification process and his communications with Shimer, Murray and Teague.
4	COYT E. MURRAY 5089 Marianna Ct. Fort Mill, SC 29715	DEFENDANT	Mr. Murray will testify about his role in Tech Traders, Tech Traders' operations and his communications with Shimer, Firth and Abernethy.

5	ELAINE TEAGUE, CPA Puttman & Teague, LLP, CPAs 5200 SW Macadam Ave., #470 Portland, Oregon 97239	WITNESS	Ms. Teague, by deposition, will testify as a lay witness about her relationship with Defendant Shimer, her engagement to provide services to Shasta Capital Associates and New Century and the services provided
6	SUSAN LEE, ESQ. Arnold & Porter, LLP 555 Twelfth Street, NW Washington, DC 20004-1206	WITNESS	Ms. Lee, by deposition, will testify as a lay witness about her communications with Defendants Shimer and Firth
7	ROBERT COLLIS, CPA Collis and Associates 101 East Third Ave. Gastonia, NC 28052	WITNESS	Mr. Collis, by deposition, will testify as a lay witness about his communications with the defendants and the necessary qualifications an accountant would need to have to accept an agreed upon procedures engagement to verify performance returns for investors, such as Tech Traders engaged J. Vernon Abernethy to perform.
8	JEFF EVANS 26 Sorrell Court Napa, California 94558	WITNESS	Mr. Evans will testify as a lay witness about the website of Shasta Capital Associates
9	JOY MCCORMACK Commodity Futures Trading Commission Division of Enforcement 525 West Monroe, Ste. 1100 Chicago, IL 60661	CFTC INVESTIGATOR	Ms. McCormack will testify as a lay witness about the CFTC Investigation and Findings including the gathering of information and documents, review and analyses of bank and trading records, review and analyses of phone records, review and analysis of information from the webpages of Shasta, review and analysis of reports, letters and statements, and review and observations of the performance information of Shasta and Tech Traders and its use.
10	NETRIX REPRESENTATIVE 2801 Lakeside Drive - 1st Floor Bannockburn, IL 60015	WITNESS	A representative of Netrix will testify about the retrieval of computer records.
11	Robert Scott Batchelar 234 Kenrick Street Newton, MA 02458	INVESTOR	Mr. Batchelar will testify about his experience investing with Shasta Capital Associates

12	John P. Evans 1630 Williams Hwy., #186 Corants Pass, OR 97527	INVESTOR	Mr. Evans will testify about his experience investing with Shasta Capital Associates
13	James Chung 35250 Terrazzo Court Fremont, CA 94536	INVESTOR	Mr. Chung will testify about his experience investing with Shasta Capital Associates
14	Thomas Dent 3072 E. 100 N LaPorte, IN 46350	INVESTOR	Mr. Dent will testify about his experience investing with Shasta Capital Associates
15	Austin Kalb 21320 Blue Oaks Avenue Tehachapi, CA 93561	INVESTOR	Mr. Kalb will testify about his experience investing with Shasta Capital Associates
16	Thomas List 920 Imperial Drive Mohnton, PA 19540	INVESTOR	Mr. List will testify about his experience investing with Shasta Capital Associates and his previous investment experience with Defendant Shimer
17	Richard R. Loucks N.W. 715 Ritchie St. Pullman, WA 99163	INVESTOR	Mr. Loucks will testify about his experience investing with Shasta Capital Associates
18	Dr. Jeffrey Marrongelle 113 Pinecreek Dr. Orwigsburg, PA 17961	INVESTOR	Mr. Marrongelle will testify about his experience investing with Shasta Capital Associates, his previous investment experience with Defendant Shimer and his previous experience with an investment purportedly involving Defendant Murray
19	Paul G.M. McManigal 16 Inverness Lane Newport Beach, CA 92660	INVESTOR	Mr. McManigal will testify about his experience investing with Shasta Capital Associates
20	Stephen Northridge 6 Wood Lake Court Medford, NJ 08055	INVESTOR	Mr. Northridge will testify about his experience investing with Shasta Capital Associates
21	Nancy H. Omaha-Boy 509 Carsonia Ave. Reading, PA 19606	INVESTOR	Ms. Omaha-Boy will testify about her experience investing with Shasta Capital Associates and her previous investment experience with Defendant Shimer

22	Robert J. Richardson 10408 Falls Church Las Vegas, NV 89144	INVESTOR	Mr. Richardson will testify about his experience investing with Shasta Capital Associates, his experience investing with Universe Capital Appreciation and his previous investment experience with Defendant Shimer
23	Nicholas Stevenson 417 Belden Hill Road Wilton, CT 06897	INVESTOR	Mr. Stevenson, by deposition, will testify about his experience investing with Shasta Capital Associates
24	Philip A. Tate 1729 E. Page Ave Malverna, AR 72104	INVESTOR	Mr. Tate will testify about his experience investing with Shasta Capital Associates
25	Stan Triester Triester International Trading Corporation 111 Presidential Blvd., Ste. 230 B Bala Cynwyd, PA 19004	INVESTOR	Mr. Triester will testify about his experience investing with Shasta Capital Associates

2. Plaintiff intends to call the following witnesses with regard to damages and

anticipates they will testify as follows:

	NAME/ADDRESS	ROLE	SUBJECT OF INFORMATION
1	VINCENT J. FIRTH 3 Aster Court Medford, NJ 08055	DEFENDANT	In addition to the above, Mr. Firth will testify as an adverse witness about his financial dealings with regard to Shasta, Equity and Tech Traders.
2	ROBERT W. SHIMER 1225 West Leesport Rd Leesport, Pennsylvania 19533	DEFENDANT	In addition to the above, Mr. Shimer will testify as an adverse witness about his financial dealings with regard to Shasta, Equity and Tech Traders.
3	JOY MCCORMACK Commodity Futures Trading Commission Division of Enforcement 525 West Monroe, Ste. 1100 Chicago, IL 60661	CFTC INVESTIGATOR	In addition to the above, Ms. McCormack will testify as a lay witness about the gathering of information and review and analyses of bank and trading records and summaries as it pertains to damages.

4	STEPHEN BOBO, ESQ. Reed Smith Sachnoff & Weaver 10 S. Wacker Drive, 40 th Fl. Chicago, IL 60606-7484	RECEIVER	Mr. Bobo will testify as a lay witness about his receivership efforts in this case and findings of the receivership including the amount of damages that investors will suffer, the financial condition of the estates, including the amount of funds taken in by Equity and Tech Traders, the amount and disposition of those funds and the trading losses suffered. He may also testify about the financial condition of each estate at the time of trial, including the funds on hand, the unliquidated assets (such as claims and causes of action), the range of potential net recoveries from those assets (after considering the estimated costs involved), potential trade creditor claims, and the additional estimated costs of administering the receivership estates through their conclusion.
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Plaintiff reserves the right to call rebuttal witnesses which cannot be reasonably anticipated.

B. Defendant Equity has no objection to Plaintiff's witnesses.

C. Defendant Shimer and Firth's Objections to Plaintiff's Witnesses.

1. Elaine Teague, CPA

Defendants Shimer and Firth both strenuously object not to the fact that Plaintiff intends to call Elaine Teague as a witness but to the fact that Plaintiff intends to rely solely upon Teague's previous deposition testimony instead of calling her as Plaintiff's witness to testify in person at trial. The Court is specifically referred to Shimer's separate letter to Plaintiff's counsel dated May 17, 2007 incorporated by this reference explaining in more detail Shimer and Firth's strong objection to this "tactic" to restrict the quality and the amount of Teague's testimony to selected portions of a deposition that neither Shimer or Firth attended. If, despite the facts stated in my above referenced letter to Plaintiff's legal counsel, the Court is not willing to require

Plaintiff to call Teague to testify in person at trial then Shimer and Firth separately each on their own behalf pursuant to Federal Rule 32(a)(4) specifically request that the Court require that Plaintiff provide an amended Exhibit #1141 that includes a complete record of all of Ms Teague's deposition testimony taken by Plaintiff on January 12 and 13, 2006 and a complete record of Ms Teague's deposition testimony taken by Bina Sanghavi on the following day January 14, 2006.

2. Susan Lee

Defendants Shimer and Firth both strenuously object not to the fact that Plaintiff intends to call Susan Lee as a witness but to the fact that Plaintiff intends to rely only upon previous deposition testimony of Lee and that Plaintiff does not intend to call Lee to testify in person at trial. Lee has apparently made many statements in her deposition testimony that are specifically contradicted by the written record and will be contradicted by the direct testimony of Shimer and Firth at trial. For many of the factual reasons recited by Shimer in his letter to Plaintiff's legal counsel regarding the deposition testimony of Teague if the Court is unwilling to require Plaintiff to call Susan Lee as a witness at trial Shimer and Firth hereby specifically request pursuant to Federal Rule 32(a)(4) that the Court require Plaintiff to replace Plaintiff's present Exhibit #1142 with a new exhibit that includes all deposition testimony of Ms Lee taken by the Plaintiff on Monday January 23, 2006.

3. Robert Collis

Defendants Shimer and Firth both strenuously object not to the fact that Plaintiff intends to call Robert Collis as a witness but to the fact that Plaintiff intends to rely upon previous deposition testimony of Collis and that Plaintiff does not intend to call Collis to testify in person at trial. Portions of Collis's deposition are specifically objected to now and

will be at trial as set forth in Shimer's separate letter to Plaintiff's counsel dated May 20, 2007 incorporated by this reference. If Plaintiff is not willing to stipulate as to the one single fact that Collis is competent to testify about and if the Court is not willing to require Plaintiff to call Collis as a witness at trial Shimer and Firth hereby specifically request pursuant to Federal Rule 32(a)(4) that the Court require Plaintiff to replace Plaintiff's present Exhibit #1081 with a new exhibit that includes all deposition testimony of Rob Collis taken by the Plaintiff on Wednesday, January 25, 2006.

4. Nicholas Stevenson

Defendants Shimer and Firth both strenuously object not to the fact that Plaintiff intends to call Nicholas Stevenson as a witness but to the fact that Plaintiff intends to rely only upon previous deposition testimony of Stevenson and that Plaintiff apparently does not intend to call Stevenson to testify in person at trial. Shimer was present at Stevenson's telephone deposition but only by cell phone while traveling. At the end of Stevenson's deposition Shimer had an opportunity to ask some questions of Stevenson before the time expired for any further questions. Shimer as a *pro se* defendant was clearly inconvenienced by both the amount of time and the circumstances in which he was able to attend Stevenson's deposition. If the Court is unwilling to require Plaintiff to call Stevenson as a witness at trial Shimer and Firth hereby specifically request pursuant to Federal Rule 32(a)(4) that the Court require Plaintiff to replace Plaintiff's present Exhibit #1140 with a new exhibit that includes all deposition testimony of Mr. Stevenson taken by the Plaintiff on February 28, 2006 including all questions asked by Shimer and Stevenson's response thereto.

5. Defendants Shimer and Firth have no objections to any other stated witness of Plaintiff

D. Defendants' Witnesses and Summary of Their Testimony

1. Defendant Equity Financial

1	VINCENT FIRTH 3 Astor Court Medford, NJ	DEFENDANT	Mr. Firth will testify that he believed that the trading of Tech Traders was legitimate and that profitability of its trading was as reported; that he believed the process intended to verify the accuracy of the reported trading figures was reliable; and that he believed that registration of Equity as a CPO was not required. Mr. Firth will also testify about his personal background and work experience.
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2. Defendants Shimer and Firth intend to call the following witnesses with regard to liability and anticipate they will testify as follows:

Shimer will call himself as a witness and testify as follows:

Shimer will testify to his duties as legal counsel for both Shasta and Equity, New Century, and Shadetree; to relevant documents that he prepared as legal counsel for all of his legal clients; his communications both written and verbal with Coyt E. Murray, his visits to the offices of Coyt Murray in Gastonia, interactions he had with people working in Murray's office; his communications both written and verbal with Vernon Abernethy, Elaine Teague and Vincent Firth; to his communications with Susan Lee and Geoffrey Aronow; to the rate of return he proposed in both the Investment Agreement executed between his client Shasta and Tech and the calculation he suggested in writing to Teague; his belief about the basic mathematical simplicity of the ROR verification process generally and why that belief was justified using specific examples found in exhibits; his specific knowledge of CFTC regulations during the time period

of June 2001 until the Spring of 2004; his belief about the role that Teague played in the creation and approval of the procedures; his conversations with both Andre Alonzo and a certain VP of JP Morgan Chase about the issue of CFTC registration by his clients; his conversations with Shasta's investors, his understanding of Murray's trading system and the written information Murray provided to him about that trading system; his experience with Murray prior to the formation of Shasta and his role generally as legal counsel for New Century and Shadetree. Shimer will also testify as to his basis for concluding that the RORs being verified by Abernethy were accurate and reasonable in light of information he had received regularly from other sources about the possibility of extraordinary RORs not at all out of line with the monthly RORs being reported by Abernethy to Teague. Shimer will specifically refer in his testimony to several examples of representations made in both print and on television to the public about the possibility of earning extraordinary returns. He will also refer to generally available public information relevant to the investment activities of the firm JP Morgan Chase.

Contingent additional testimony of Shimer:

If the Court allows Plaintiff, over Shimer's objection, to introduce any evidence with respect to the prior activities of the non defendant entity Kaivalya Holding Group, Inc. Shimer will correct the record with extensive direct testimony with respect to the facts surrounding the activities of Kaivalya. Shimer has included on his list of defendants' exhibits what he describes as "Contingent Exhibits". Shimer does not propose to introduce these as Exhibits as a part of his direct testimony and unnecessarily extend the length of the trial itself unless the Court permits Plaintiff to introduce Kaivalya related exhibits currently on Plaintiff's list of exhibits.

Shimer will call Vincent Firth as a witness and Firth will testify as follows:

To his communications with Robert Shimer, Elaine Teague, Coyt and Coyt's son Lex Murray and Abernethy, to his conversations with Geoffrey Aronow and Susan Lee, to his responsibilities as manager of Equity to his visits to the offices of Murray and his interactions with all of the above stated persons, to his conversations and communications with Shasta's investors, to the representations about his past experience as stated in Shasta's PPM.

Shimer will call Alison Shimer as a witness and Alison will testify as follows: to her direct recollection of her husband Robert Shimer's interactions with Coyt Murray and Lex Murray, Elaine Teague and Vernon Abernethy, and to Alison interactions with Teague during Teague's visit to Coyt Murray's office in November of 2003;

Shimer will also call as a witness Plaintiff's expert witness Susan C. Koprowski if permissible cross examination of this witness does not allow Shimer to place into the record the testimony he seeks from this witness.

Shimer reserves the right to call as a witness Plaintiff's investigator Joy McCormack.

Shimer also reserves the right to subpoena the following hostile witnesses for direct examination at trial:

Elaine Teague
Nick Stevenson
Susan Lee

Firth will call himself as a witness and Firth will testify as follows:

To his communications with Robert Shimer, Elaine Teague, Coyt Murray and Coyt's son Lex Murray and Abernethy, to his conversations with Geoffrey Aronow and Susan Lee, to his responsibilities as manager of Equity to his visits to the offices of Murray and his

interactions with all of the above stated persons, to his conversations with Shasta's investors to the extent that Firth feels it necessary to add to his direct testimony in response to questions by Shimer.

Contingent testimony of Firth:

If the Court allows Plaintiff, over Firth's objection, to introduce any evidence about Firth's background not relevant to his specific duties as Equity's manager and his specific role with respect to the defendant Equity as the manager of the entity Shasta Firth will provide extensive clarification of any negative background information about Firth introduced by Plaintiff.

E. Plaintiff's Objections to Defendants' Witnesses:

Plaintiff objects to the testimony of Alison Shimer as it appears from the description of her testimony that her testimony will consist entirely of hearsay statements of out-of-court declarants or of her husband, defendant Robert Shimer.

Plaintiff also objects to Defendants' assertions that they will "subpoena" Elaine Teague, Susan Lee and Nicholas Stevenson as hostile witnesses. These non-parties are beyond the subpoena power of the court and there has been no showing that they are witnesses hostile to Defendants. Plaintiff also objects to mischaracterization of events during the discovery phase of this case that are set forth in the May 17, 2007 letter to Ms. Streit that Defendant Shimer seeks to incorporate into this Pretrial Order. Plaintiff asks that the Court strike this letter from the record.

Plaintiff also objects to any testimony by Defendants' remaining witnesses that consists of hearsay.

Plaintiff reserves the right to call any of Defendants' witnesses who are allowed as witnesses by the Court in its case in chief or in rebuttal.

PART VI: EXPERT WITNESSES:

A. Plaintiff's expert witness is:

<p>SUSAN KOPROWSKI National Futures Association 200 W. Madison St., #1600 Chicago, IL 60606-3447</p>	<p>EXPERT WITNESS</p>	<p>Ms. Koprowski, as an expert witness, will testify about various standards of the commodity futures industry, the general standards for operating as a commodity trading advisor; the general standards for operating a commodity pool; the standard for calculating a rate of return in a commodity pool; whether the calculation used by J. Vernon Abernethy is an approved method, the actual rate of return for the Tech Traders superfund, and a comparison of the rate of return calculation according to the July 2001 Investment Agreement between Tech Traders and Shasta and an actual calculation of the rate of return.</p>
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Ms. Koprowski's curriculum vitae is Plaintiff Exhibit 1062. Her expert report was served on all defendants or counsel for defendants on March 15, 2006, pursuant to the Court's Scheduling Order of January 31, 2006 (Docket Document 308.) It is marked as Plaintiff's Exhibit 1061.

B. Defendants Shimer and Firth have no objection to the qualification of Plaintiff's expert witness. The following hypothetical questions will be asked of Plaintiff's expert witness if Shimer calls Plaintiff's witness for direct examination:

- 1). If Defendant Abernethy had properly accounted for all additions and withdrawals for the Tech accounts you examined in preparation of Plaintiff's Exhibit #

1075, but did not time weight additions to Tech's accounts what would the resulting collective computed ROR have been for all of Tech's collective brokerage accounts that she examined when preparing Plaintiff's Exhibit 1075?

2) What would the difference have been between that ROR and the ROR she reported as being -8.61%?

3) In her expert opinion, is the AICPA formula found at the URL

<http://www.aicpa.org/PUBS/jofa/feb98/invest.htm> on the aicpa's web site sufficient for purposes of calculating an approved CFTC time weighted ROR where

$$\text{Return} = (MVE - MVB - F) / (MVB + FW)$$

and where MVE is market value--ending; MVB is market value--beginning; F is net cash inflows (outflows are negative); and FW is the net cash inflows weighted by the days invested?

4) If her answer is "No" please explain why not.

5) As a final follow up question, if her answer to Shimer question #3 is "no" please explain why the CFTC would require a different time weighted formula for computing ROR that varies from the standard formula apparently approved by the AICPA and published on its official web site?

6) Please explain why the CFTC's preferred time weighted method for adjusting BNAV represents a more accurate ROR for the collective trading accounts of the entity Tech Traders than a non time weighted ROR similar to that suggested by Shimer in the Tech/ Shasta Agreement (as further clarified by Shimer Exhibit #7) when time weighting Tech's ROR appears (according to Shimer Exhibit # 7) appears to adversely affect the ROR for Shasta members that did not place new funds through Shasta during the month.

7) Given the specific facts of Tech's intraday style of trading with little or no futures contracts ever marked to market from one month to the next, please explain why Shasta's preference for time weighting the reported ROR only for those funds of Shasta member who actually placed new funds with Shasta during the month is not more fair to all other members of Shasta who did not add more funds during the month than the CFTC's purported requirement that time weighting be applied to all trading by Tech.

PART VII. EXHIBITS

A. Plaintiff's Exhibits

1. Plaintiff intends to introduce the exhibits listed in Plaintiff's Exhibit List, a separate document, is incorporated herein.
2. Defendant Equity had no objections to Plaintiff's exhibits.
3. Defendant's Shimer and Firth object to the introduction by Plaintiff of the following specific exhibits proposed by Plaintiff:

Exhibit #3	Exhibit #4	Exhibit #8	Exhibit #171
Exhibit #173	Exhibit #190	Exhibit #195	Exhibit # 203
Exhibit # 375	Exhibit # 387	Exhibit #390	Exhibit #393
Exhibit # 399	Exhibit # 405	Exhibit #1000	Exhibit #1011
Exhibit # 1121	Exhibit # 1122	Exhibits # 1123-thru 1126	
Exhibit # 1129	Exhibit # 1139	Exhibit 1143	Exhibit # 1147
Exhibit #1150			

Shimer and Firth's reasons for objecting to the above specific exhibits are contained in Shimer's separate letter to Plaintiff dated May 18, 2007 incorporated by this reference.

B. Defendant's Exhibits

1. Defendant Equity will utilize, and incorporates by reference, exhibits from Plaintiff's Exhibit List and reserves the right to introduce additional exhibits as permitted by the Court.

2. Defendants Shimer and Firth intend to introduce the following exhibits into evidence:

See specific list of Shimer and Firth Proposed Exhibits provided and incorporated by this reference.

3. Plaintiff objects to Defendant Equity's introduction of additional exhibits not tendered in this Order in their case in chief.

4. Plaintiff objects to the introduction of Defendant Firth and Shimer's exhibits as described in Plaintiff's Objection to Defendant Firth and Shimer's Exhibit List, a separate document, incorporated herein.

5. Plaintiff reserves the right to use any of Defendants' Exhibits that are admitted into evidence.

Part VIII. LAW

A. Plaintiff's statement of the legal issues in this case:

**1. Count One: Violations of Section 4b(a)(2) of the Act:
Fraud by Misrepresentation**

Count One of the First Amended Complaint in this action alleges that defendants Firth, Shimer, and Equity cheated and defrauded or attempted to cheat or defraud and willfully deceived or attempted to deceive pool participants or prospective pool participants and clients and potential clients in violation of Section 4b(a)(2)(i)-(iii) of the Act.

From at least January 2002 to the present, Equity, Shimer and Firth are alleged to have 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 alleged to be 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 alleged to be 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 violations alleged in this count.

2. Count Two: Violations of Section 4o(1)(A) of the Act:

Commodity Pool Fraud

Pursuant to the Partial Summary Judgment Order dated December 18, 2006, Firth and Shimer were found to be acting as associated persons ("APs") of Equity, and Equity, Firth and Shimer were found to have violated Section 4o(1)(B) of the Act, 7 U.S.C. § 6o(1)(B), of Count Two. Therefore, the remaining issue for trial on Count Two of the First Amended Complaint in this action alleges that defendants Equity, acting as a commodity pool operator ("CPO"), and Firth and Shimer, acting as APs of Equity, violated Section 4o(1)(A) of the Act, 7 U.S.C. § 6o(1)(A), in that, by use of the mails or any means or instrumentality of interstate commerce,

they directly or indirectly employed or were employing a device, scheme, or artifice to defraud any client or participant or prospective client or participant.

From at least January 2002 through the present, Equity, Firth, and Shimer are alleged to have 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 alleged to be 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 alleged to be 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 violations alleged in this count.

3. Count Three: Violations of Section 4m(1) of the Act:

Failure to Register as a CPO

Pursuant to the Partial Summary Judgment Order dated December 18, 2006, Equity was found to have used instrumentalities of interstate commerce in connection with its business while acting as an unregistered CPO in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1). The remaining issue for trial on Count Three of the First Amended Complaint in this action alleges that defendant Shimer aided and abetted Equity's failure to register as a CPO. Shimer is alleged

to have 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. Consequently, Shimer allegedly 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). Firth and Shimer are also alleged to be liable for the violation of Section 4m(1) 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 violations alleged in this count.

B. Defendant Equity's Statement of the Legal Issues in the Case

1. Count I – CEA § 4b(a)(2) (Fraud):

Defendant Equity asserts with respect to Count I that the legal issues are: (a) whether Equity, acting through its agents, had the degree of willfulness and knowledge sufficient to find a violation of CEA § 4b(a)(2); and (b) whether Equity's agents' actions, assuming they lacked the willfulness and knowledge necessary to find a violation, were reckless. Equity argues and will show that both questions are answered in the negative.

2. Count II - CEA § 4o(1)(A) (CPO Fraud):

Defendant Equity asserts with a respect to Count II that the legal issues are: (a) whether Equity, acting through its agents, had the degree of willfulness and knowledge sufficient to find a violation of CEA § 4o(1)(A);(b) whether Equity as an unwitting participant in the Tech Traders scheme had the willfulness and knowledge sufficient to violate CEA § 4o (1)(A); and (c)

whether as an unwitting participant Equity can be found to have violated any other subsection of CEA § 4o. Equity argues and will show that all three questions are answered in the negative.

3. Count III – CEA § 4m(1):

Defendant Equity asserts with respect to Count III that the legal issue is whether Equity is a pool as defined by CEA §4m(1) and interpreted by case law. Along with defendants Firth and Shimer, Equity argues and will show that Equity is not a pool

C. Defendant Shimer's Statement of the Legal Issues in the Case

With respect to the remaining parts of Count III of the Amended Complaint:

Regarding Shimer:

Count III first alleges that as a principle of the defendant entity Equity Shimer willfully aided and abetted Equity's violation of Section 4m(1) of the CEA. (7 U.S.C. §6m(1) and that Shimer is therefore liable for Equity's Section 4m(1) violation under Section 13(a) of the Act (7 U.S.C. §13c(a) by reason of the fact that he acted as a principle of Equity. To first establish the alleged violation of Section 13a of the Act by Shimer Plaintiff must establish by a preponderance of the evidence that Shimer was a principal of the entity Equity and acted as a principal of that entity.

Plaintiff must also show by a preponderance of the evidence that Shimer "aided and abetted" the alleged violation by Equity. Federal case law cited previously with approval by the Third Circuit Court makes it perfectly clear that the standard to be applied to determining whether a defendant "aided and abetted" a violation of the CEA is the same standard contemplated by the federal criminal aider and abetter statute (18 USC Sec 2). See *Nicholas v Saul Stone & Co.* 224 F.3d 179 (3d Cir. 2000) citing with approval to the Seventh circuit case of *Damato v Hermanson*, 153 F.3d 464, (7th Cir. 1998).

To establish "aiding and abetting" by Shimer as alleged in Count III the CFIC must show at trial by a preponderance of the evidence more than just that Shimer acted recklessly or knew or should have known of Equity's alleged violation of Section 4m(1) of the CEA. The Plaintiff must show by a preponderance of the evidence at trial 1) that Shimer had knowledge of Equity's intent to commit a violation of Section 4m(1); and 2) Shimer had the intent to further that violation by Equity; and 3) Shimer committed some act in furtherance of Equity's objective.

D. Defendants Firth and Shimer's Statement of the Legal Issues in the Case

With respect to Count I of Plaintiff's Amended Complaint:

In order to find a violation of the CEA as alleged in Count I of Plaintiff's Amended Complaint the Court must first specifically find that the defendants Shimer and Firth engaged in behavior specifically prohibited by Section 4b(a)(2)(i)-(iii) of the CEA. The Court must also conclude that Shimer and Firth engaged in that specific behavior with the intent to perpetrate a fraud and/or to deceive the members of Shasta.

To conclude that such intent existed on the part of Shimer or Firth the Court must conclude that the facts introduced at trial support the legal conclusion by a preponderance of the evidence that Shimer and Firth knew *or had reason to know* that the monthly trading performance numbers being conveyed to Teague by Abernethy were not accurate. To support that legal conclusion, the court must find by a preponderance of the evidence that Shimer and Firth either 1) *knew or should have known* that Tech's numbers were not accurate; or 2) *knew or should have known* that the Abernethy was not performing an accurate ROR verification for Tech; or 3) that Shimer and Firth *knew or should have known* that the procedures proposed by

To conclude that such intent existed by reason of any actual representation of facts made with respect to the experience, expertise or background of both Firth and Shimer the Court must find that Shimer and/or Firth made inaccurate representations about their background, experience or expertise relevant and material to the commodity futures trading being conducted by the trading entity Tech Traders, Inc ("Tech") and that the preponderance of the evidence indicates that those misrepresentation were deliberately made with the specific intent to deceive the members of the entity Shasta.

To conclude that such intent existed by reason of any omission of some fact with respect to the experience, expertise or background of both Shimer and Firth the Court must find that Shimer and/or Firth omitted certain facts about their background, experience or expertise relevant and material to the commodity futures trading being conducted by the trading entity Tech and a preponderance of the evidence indicates the omissions were deliberate and omitted with the specific intent to deceive the members of Shasta.

With respect to the remaining parts of Count III of the Amended Complaint:

Regarding Shimer and Firth:

Shimer and Firth are also alleged to be liable for Equity's alleged violation of Section 4m(1) as controlling persons pursuant to Section 13(b) of the Act (7 U.S.C. § 13 c(b). To establish this alleged violation Plaintiff must first establish by a preponderance of the evidence at trial that Shimer was a controlling person of Equity and also by a preponderance of the evidence that Firth was a controlling person of Equity.

Plaintiff must also show by a preponderance of the evidence that Shimer and Firth acting as controlling persons did not act in good faith or knowingly induced the purported violation of Equity. To satisfy this standard Plaintiff must show at trial by a preponderance of the evidence

that amendments to this Joint Final Pretrial Order will not be permitted except where the court determines that manifest injustice would result if the amendment is not allowed.

Attorney(s) for Plaintiff:

Attorney for Defendant or Defendant:

Elizabeth M. ...

Jennifer S. ...


Entry of the foregoing Joint Pretrial Order is hereby APPROVED this _____ day _____ of _____, 2007.

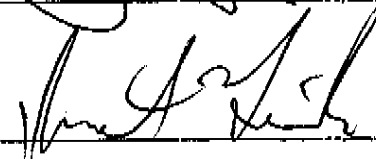
Ann Marie Donio
UNITED STATES MAGISTRATE JUDGE
United States District Court
for the District of New Jersey

that amendments to this Joint Final Pretrial Order will not be permitted except where the court determines that manifest injustice would result if the amendment is not allowed.

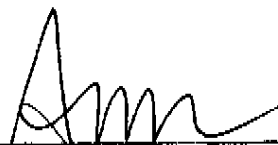
Attorney(s) for Plaintiff:

Attorney for Defendant or Defendant:





Entry of the foregoing Joint Pretrial Order is hereby APPROVED this 5th day
of JUNE, 2007.



Ann Marie Domino
UNITED STATES MAGISTRATE JUDGE
United States District Court
for the District of New Jersey

that amendments to this Joint Final Pretrial Order will not be permitted except where the court determines that manifest injustice would result if the amendment is not allowed.

Attorney(s) for Plaintiff:

Attorney for Defendant or Defendant:

David J. Hunter
atty. for Equity Financial

Entry of the foregoing Joint Pretrial Order is hereby APPROVED this _____ day
of _____, 2007.

Ann Marie Donio
UNITED STATES MAGISTRATE JUDGE
United States District Court
for the District of New Jersey