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

COMMODITY FUTURES TRADING	:	
COMMISSION,	:	
	:	
Plaintiffs,	:	Civ.No.: 04-cv-1512 (RBK)
	:	
v.	:	
	:	
EQUITY FINANCIAL GROUP, LLC.,	:	
TECH TRADERS, INC., TECH TRADERS, LTD.,	:	
MAGNUM CAPITAL INVESTMENTS, LTD.,	:	
VINCENT J. FIRTH, ROBERT W. SHIMER,	:	
COTY E. MURRAY, and J. VERNON	:	
ABERNETHY	:	
	:	
Defendants.	:	
	:	

**CMP FUND AND DRL TWENTY PLUS FUNDS’ RESPONSE AND OBJECTION TO
MOTION OF EQUITY RECEIVER REGARDING TREATMENT OF THE
STERLING CLAIMS AND THE CLAIMS OF STERLING INVESTORS**

This Response and Objection is submitted by CMP Fund and DRL Twenty Plus Fund, with leave of Court, to the Motion of Equity Receiver (“Receiver”) Regarding Treatment of the Sterling Claims and the Claims of Sterling Investors and Memorandum in Support thereof,

Docket No. 482 (the “Motion”). As set forth below, this Court should approve a modified plan of distribution in accordance with the Court’s tiered system and the CFTC’s tracing analysis contained in the Declaration of Joy McCormack, CFTC’s Senior Futures Trading Investigator. (Docket No, 482, Exhibit C to Aff. of Stephen T. Bobo).

I. OVERVIEW

CMP Fund, A Limited Partnership, (“CMP”) is a Delaware limited partnership, and is currently winding-up its affairs due to its failed investment with Sterling Bank Ltd., a St. Lucian chartered bank (“Sterling Bank”). CMP’s general partner is ESMC, LLC, which is managed by David Loeser. CMP has 61 individual investors. CMP invested \$9,050,000 in three transactions with Sterling Bank Ltd. in March 2004 to be placed with its “trading arm,” Tech Traders.

DRL Twenty Plus Fund Ltd. (“DRL”) was an international business corporation and is currently winding-up its affairs due to its failed investment with Sterling Bank. DRL International Corp. was its manager/adviser, with Mr. Loeser as its sole director and Chairman of the Board. DRL has 10 individual investors. DRL invested \$1,200,000 with Sterling Bank in January 2004. CMP and DRL are “Tier II” investors, with Sterling Bank as their “Tier I” investor with Tech Traders.

Although not required by order at the time, on September 27, 2004, CMP and DRL submitted separate, detailed sworn proofs of claim to Receiver identifying all of the individual beneficiaries of the funds. CMP and DRL’s managers also met with CFTC representatives and Receiver several times in 2004 and 2005 to discuss the investments made with Sterling Bank, the documents relating to the investments and the individual investors in each fund. In the fall of 2005, this Court approved a plan to make a 38% distribution to Tech Trader’s Tier I

investors, but did not include any immediate distribution to any Sterling entity or their Tier II investors.

On December 6, 2005, Receiver filed his Submission in Support of Motion of Equity Receiver for Authority to Make Interim Distribution to Certain Tier 2 Sterling Bank Ltd. Investors, (Docket No. 289) (the “Interim Distribution Motion”). The Interim Distribution Motion sought approval to make a reduced, provisional distribution of approximately 25% of CMP and DRL’s investments with Sterling Bank (as opposed to 38% for Tier I investors). The funds were then disbursed to CMP and DRL’s individual investors (Tier III). Several of CMP and DRL’s investors had contacted Receiver directly to plead for interim relief due to the financial hardships imposed by the freeze. Interim Distribution Mtn., Aff. of Stephen T. Bobo at ¶ 14. On January 9, 2006, the Court granted Receiver’s motion. Funds were disbursed to CMP and DRL and then to their individual investors, pursuant to approved plans submitted by Mr. Loeser to Receiver.

As set forth herein, CMP and DRL strongly encourage this Court to approve a modified distribution plan that will enable their investors to recover in the same manner as similarly situated Tier II and Tier III investors. CMP and DRL object, however, to Receiver’s request that all Sterling entities’ claims must be “aggregated into a single claim” before the amount of any Sterling Tier II and Tier III investors’ claims can be determined. Motion at ¶¶ 17-21. The tracing analysis conducted by Ms. McCormack on behalf of the CFTC relating to Sterling Bank conclusively establishes that CMP and DRL’s investments were placed with Sterling Bank (their Tier I) and then into Tech Traders. Most critically, Sterling Bank received *no withdrawals* from Tech Traders, or was any return made by Sterling Bank to CMP or DRL. McCormack Dec. at ¶ 9(b), (c) and (i).

Unlike Sterling Bank, other Sterling entities apparently have not been as straightforward to examine, as explained by Ms. McCormack in her Declaration and by Receiver in his Affidavit attached to the Motion. Sterling ACS, Sterling Investment Management, Ltd., Sterling Casualty & Insurance, Ltd., Sterling Trust (Anguilla), Ltd., Sterling Alliance, and Strategic Investment Portfolio, LLC (the “other Sterling Entities”), primarily maintained offshore accounts and access to their records was limited, at best. Nevertheless, Receiver and the CFTC were able to determine that several other Sterling Entities (*excluding* Sterling Bank) had received net withdrawals from Tech Traders totaling \$2,135,198.40 in prior years.

The result of aggregating Sterling Bank’s investment in Tech Traders with the other Sterling Entities’ investments will cause the other entities’ prior withdrawals to be applied to *reduce* the proportional allowed claims by Sterling Bank, CMP and DRL. That penalty is contrary to this Court’s tiered distribution system and inequitable. Because the CFTC’s tracing analysis (as relied upon by Receiver) conclusively shows that Sterling Bank (a Tier I investor) never received any prior withdrawals from Tech Traders, its Tier II investors – CMP and DRL – should not be saddled with a penalty of “prior withdrawals” received *by other* Sterling Tier I entities or their Tier II investors.

Addressing CMP and DRL’s Response and Objection will not unduly delay these proceedings in light of the three years that have passed while Receiver and the CFTC have conducted their investigation. No new examination of Sterling Bank’s records will be necessary, either. CMP and DRL hereby expressly adopt the CFTC’s tracing analysis as set forth in Ms. McCormack’s Declaration. All of the documents necessary for making a ruling on an appropriate distribution to Sterling Bank and its Tier II investors are in the possession

of Receiver. To the extent that any document is missing, Receiver can condition his support of Sterling Bank's approved claim on its St. Lucian administrator's complete cooperation. Nor is a motion for a final distribution presently before the Court. Accordingly, CMP and DRL respectfully request that Receiver be ordered to re-calculate the distributions for the Sterling Bank investors, without the prior withdrawal penalty being assessed to Sterling Bank, CMP or DRL.

II. CMP AND DRL'S FUNDS WERE TRANSFERRED TO STERLING BANK, LTD. AND THEY HAVE NOT RECEIVED ANY PRIOR WITHDRAWALS FROM TECH TRADERS

A. Receiver's Interim Distribution Motion Laid The Groundwork For The Acceptance Of CMP and DRL's Modified Distribution Plan.

After several weeks of negotiations and Receiver's detailed investigation of CMP and DRL's investments with Sterling Bank, Receiver agreed to seek an interim distribution of funds to CMP and DRL's investors, many of whom had informed Receiver of their severe financial hardships. Interim Distribution Mtn., Bobo Aff. at ¶ 14. In his December 6, 2005 Affidavit, Receiver stated that Sterling Bank had placed \$9,177,500 with Tech Traders (¶ 7; this number was later modified by the CFTC and Receiver following further investigation), of which CMP placed a total of \$9,050,000. Receiver also reported that DRL's claim was for \$1,200,000 for funds transferred to Sterling Bank and eventually to Tech Traders. Id. at ¶ 12. Lastly, Receiver identified two investors of Sterling Bank – 620 Market Street and Intertrust Anguilla – that placed \$127,500 with it. Id. at ¶ 8.

Receiver gave three additional reasons to justify the proposed interim distribution to CMP investors:

First, a review of the relevant documents shows that all the funds that CMP Fund invested with Tech Traders through Sterling Bank came from third parties and not from other Sterling entities or insiders, unlike the situation with other Sterling

entities. CMP Fund's claim form and supporting documents shows that it transferred funds to Sterling Bank for the sole purpose of investing with Tech Traders and did so shortly before April 1, 2004 when this Court shut down Tech Trader's operations. No other activities of Sterling Bank therefore should affect the amount of CMP Fund's proportionate interest in the receivership distribution to be made to Sterling Bank.

Second, CMP Fund has provided the CFTC and me the identities of the ultimate beneficial owners of and the amounts of their respective investments, again unlike other Sterling entities....

Third, because Sterling Bank made no prior withdrawals from Tech Traders, the amount of Sterling Bank's allowable claim (if it were not aggregated with those of the other Sterling entities) can easily be calculated and CMP Fund's pro rata share of that claims also can be easily calculated.

Id. at ¶ 9 (emphasis added). Receiver repeated the same three reasons in support of his request to approve the interim distribution to DRL's investors. Id. at ¶ 13 ("Finally, because Sterling Bank made no prior withdrawals from Tech Traders, DRL 20 Plus's pro rata share as a Tier 2 investor can be easily calculated.").

In conclusion, Receiver proposed a "conservative approach" to the issue of allocating distributions among Sterling entities:

Although neither Sterling Bank nor CMP Fund or DRL 20 Plus ever received a withdrawal of funds from Tech Traders and may well be entitled to a larger share of the Sterling Reserve than other Sterling entities (and their respective investors) which did receive withdrawals from Tech Traders, I propose that the provisional distribution to CMP Fund and DRL 20 Plus be based on a strict pro rata share of the Sterling Reserve. If it is later determined that they are entitled to additional amounts, those amounts could be distributed at a later time.

Id. at ¶ 17 (emphasis added; at that time, a provisional \$100,000 hold-back was proposed).

This Court granted the Interim Distribution Motion on January 9, 2006, and CMP and DRL received approximately 25% of their original investments back.

B. The CFTC's Tracing Analysis Of Sterling Bank's (Tier I) And CMP/DRL's (Tier II) Claims Supports Their Modified Plan.

Receiver reported that “[t]o understand the ultimate source of much of the Sterling Entities’ funds invested with Tech Traders, the Receiver has relied in part upon the tracing analysis regarding the Sterling Claims done by Joy McCormack, Senior Futures Trading Investigator with the CFTC. That tracing analysis is summarized in the Declaration of Joy McCormack (“McCormack Declaration”), which is attached as Exhibit C to the Receiver’s Affidavit.” Docket No. 482, Mtn. at ¶¶ 9, 10 and Declaration of Joy McCormack, Ex. C, thereto. In her Declaration, Ms. McCormack states that she conducted an extensive investigation and review of information that relates to Sterling Bank and other Sterling Entities and their investments in Tech Traders. She described her objective: “to trace, to the extent possible, the ultimate sources of the funds the [Sterling Bank and other Sterling Entities] invested in the Tech Traders’ investment scheme, as well as the ultimate beneficiaries of the funds, which the [Sterling Bank and other Sterling Entities] withdrew from the scheme.” McCormack Decl. at ¶ 3.

In addition to describing the source materials she reviewed, Ms. McCormack stated that: “Based on my analysis and review of FGМК’s (Receiver’s accountants) financial analysis, I was able to identify and document all of Tech Trader’s transactions relating to Sterling Entities [including Sterling Bank].” McCormack Decl. at ¶ 4 (emphasis added). That source material included all of Sterling Bank’s accounts at BB&T and Bank of America (its U.S. bank accounts). Id. at ¶ 5. She also reviewed 17 claim forms from various Sterling investors (including CMP and DRL’s). In conclusion, Ms. McCormack stated that she was able to “conclusively trace the funds originating from the Sterling Entities [including Sterling Bank and the other Sterling Entities] and their investors to the ultimate sources (or

beneficiaries) for 24 of the 54 transactions.” Id. at ¶ 8. She attached a detailed spreadsheet of the transactions. Id. (exhibit A thereto).

Under the heading “Claims Recommended as Fully Allowable by Receiver” in paragraphs 9(b) and (c) of her Declaration (without relying on Receiver’s affidavit or supporting memorandum to form her conclusions as stated in footnote 2), Ms. McCormack specifically addressed CMP and DRL’s claims. She reported that CMP provided a claim form and documentation supporting the investment group’s investment with Sterling Bank in March 2004 and the “tracing analysis confirms that Sterling Bank Ltd. transferred \$9,050,000 to Tech Traders in three separate transactions (Transactions #48, 49 and 54 on Exhibit A).” Id. at ¶ 9(b) (emphasis added). Ms. McCormack similarly addressed DRL’s investment finding that DRL provided a claim form and documentation supporting its investment with Sterling Bank in January 2004 and “the bank records show that Sterling Bank Ltd. transferred \$1,200,000 to Tech Traders on January 16, 2004 (Transaction #39 on Exhibit A).” Id. at ¶ 9(c).

Ms. McCormack investigated Sterling Bank’s \$300,000 claim, as well. She determined that Sterling Bank, n/k/a Entrust Bank, Ltd., sent \$127,500 to Tech Traders (Transactions #29 and #30). Id. at ¶ 9(i). She found no documentation to support the \$172,500 portion of Sterling Bank’s claim. Id. Sterling Bank’s current St. Lucian government-appointed administrator, Wendell Skeete, presented the claim.

Ms. McCormack’s analysis also included other Sterling investor’s claims. For example, she concluded that one claimant, Luci Johnson, had received a withdrawal of \$6,219 of Tech Trader funds through a different Sterling entity called “Sterling ACS” (Transactions #18B, #23B, #32B on Exhibit A). Id. at ¶ 9(k).

In sum, Ms. McCormack confirmed that CMP and DRL sent funds to Sterling Bank and that Sterling Bank transferred those funds to Tech Traders. She confirmed that Sterling Bank, CMP and DRL never received any withdrawals from Tech Traders. CMP and DRL rely on and adopt the tracing analysis conducted by Ms. McCormack.

C. Appropriately, Receiver Reviewed Ms. McCormack's Tracing Analysis.

Following its review of the CFTC's tracing work and documentation, Receiver stated: "In addition to being a conduit for \$10,250,000 of funds invested with Tech Traders by CMP Fund and DRL Twenty Plus Fund, Sterling Bank Ltd. claims that it invested \$300,000 with Tech Traders." Motion at ¶¶ 9, 10(c). Like the CFTC, Receiver rejected \$172,500 of Sterling Bank's claim and recommended approval of only \$127,500 of the claim. *Id.*

In contrast with Receiver's findings relating to Sterling Bank's and its investors' claims, he discovered that the other Sterling Entities' claims had numerous questionable entries, substantial gaps in documentation and that many had received *substantial withdrawals* from Tech Traders. See, e.g., Motion at ¶ 10(e), (f) and (g). He described that most of the other claim's problems were exacerbated by Sterling Investment Management's failure to provide information. Receiver further explained that several entities lacked ongoing operations ("with the partial exception of Sterling Bank Ltd." that is being administered by Wendell Skeete). *Id.* at ¶ 11.

Receiver did not refute the CFTC's tracing analysis relating to Sterling Bank's transfers to Tech Traders and the absence of withdrawals by Sterling Bank.

III. RECEIVER'S PROPOSED DISTRIBUTION PLAN IS FLAWED BECAUSE IT UNFAIRLY FOISTS PREVIOUS WITHDRAWALS RECEIVED BY OTHER INVESTORS ON CMP AND DRL, THUS IMPROPERLY REDUCING CMP AND DRL'S RECOVERIES

Receiver explains that he explored several alternative methods of distribution. Motion at ¶ 12. CMP and DRL have no quarrel with Receiver's conclusion that none of the alternatives are perfect. The clearly favored approach would be to have this Court authorize Receiver to complete a distribution to the Sterling investors in this proceeding with as little additional costs as possible, but also in the manner previously approved by this Court. The method proposed by Receiver and described in his Chart as Exhibit D to his Motion, however, is flawed.

A. The Proper Method of Distribution Requires Leaving Prior Withdrawals With The Sterling Tier I Entity That Received Them.

Receiver reports that \$15,944,011 from "all Sterling entities" was transferred to Tech Traders. Motion at ¶ 18. He further reports that a total of \$2,135,198.40 was returned by Tech Traders to "the Sterling Entities." Id. Receiver, however, defined "Sterling Entities" as every Sterling entity, *including* Sterling Bank. Id. at ¶ 1, ¶ 18. Yet, Receiver provides *no* evidence that Sterling Bank received *any portion* of the withdrawals attributed to the other Sterling Entities, such as Sterling Alliance, Sterling ACS, Sterling Investment Management or Sterling Trust. Indeed, as explained above, Ms. McCormack's investigation revealed that Sterling Bank, CMP and DRL did *not* receive any prior withdrawals from Tech Traders. Consequently, Receiver's collectivization of Sterling Bank with the other "troublesome" Sterling entities with muddled documentation that received prior withdrawals from Tech Traders is inaccurate.

B. Receiver Cannot Aggregate All Sterling Tier I Investor Claims As It Can Trace The Funds That Sterling Bank Sent To Tech Traders.

Receiver refuses to apply Ms. McCormack's actual tracing analysis to the claims of CMP and DRL. Instead, Receiver supports his decision to "aggregate" all of the Sterling related entity Tier I claims by citing to the Woltz's involvement in each entity, the Woltz's lack of cooperation and the documentation gaps related to the other Sterling Entities' claims. Because Receiver cannot argue that he could not trace the funds sent by Sterling Bank to Tech Traders, he leans heavily on the "taint" of Vernice and Howell Woltz's plea agreements and his inability to "straighten out the various Sterling Claim inconsistencies and irregularities" to support aggregation. Motion at ¶¶ 5-6, 24. The standard for each Tier I investor is not perfection, but a rational degree of accuracy based on the information at hand. Motion at ¶ 32 ("The Receiver's recommendations are based on the information that is available, even though that information is less than conclusive in certain instances."). Receiver does *not* have to straighten out *every* Sterling transaction to sufficiently confirm that the financial transactions relating to *Sterling Bank* and Tech Traders are clear, as confirmed by the CFTC's investigation.

Indeed, Receiver approves *Sterling Bank's* claim for \$127,500 based on the evidence presented by Sterling Bank's current administrator, Wendell Skeete. If Receiver is missing any documentation from Sterling Bank, he can easily condition payment to Sterling Bank on Mr. Skeete's cooperation in submitting further information. Receiver cannot cover every Sterling entity with the same taint brush to avoid the fact that Sterling Bank, CMP and DRL have provided the necessary proof to obtain a recovery based on *their* investments with Tech Traders.

For each approved claim that the CFTC examined, that individual claimant's Tier I investor *is* identified. McCormack Decl. at ¶ 9 (a)-(n). Notwithstanding the CFTC's or Receiver's inability to trace every dollar that was transferred between Tech Traders and Sterling ACS or to Sterling Investment Management, for example, they did trace the funds from Sterling Bank's investors to Sterling Bank and then to Tech Traders. Again, *none* of those funds ever made it back from Tech Traders to Sterling Bank, CMP or DRL.

Here, the application of the rising tide and tiered distribution system already approved by this Court will not prevent other Sterling investors of other Sterling Entities from receiving a recovery. Receiver has notified the Court that although it sent 53 proof of claim forms to Sterling Tier I and Tier II investors, only 17 claim forms were received, of which only 14 had adequate documentation. Motion and Receiver's Affidavit at ¶¶ 28-29. The result leads to an additional \$1.4 million in funds available for distribution to approved Sterling investors. Any proposed distribution plan that treats CMP and DRL differently than "similarly situated investors alike", however, is not supported by the case law cited by Receiver in his Motion or under any principles of equity. See *SEC v. Elliott*, 953 F.3d 1560, 1570 (11th Cir. 1992), *rev'd in part*, 998 F.2d 922 (11th Cir. 1993); *SEC v. Black*, 163 F.2d 188, 198-99 (3rd Cir. 1998).

CMP and DRL agree that the best alternative distribution plan is to have this Court resolve the Sterling claims (as suggested in alternative (e) in his Motion), but to order Receiver to use of the proper methodology as set forth herein.

IV. CMP AND DRL ARE ENTITLED TO RECEIVE THEIR RESPECTIVE PRO RATA DISTRIBUTIONS OF STERLING BANK'S CLAIM

Receiver provided a mathematical framework for establishing the amount of Sterling Bank, CMP and DRL's claims. Motion at ¶ 41 and exhibit D thereto. CMP and DRL propose using a similar framework, but based on the undisputed facts cited herein.

Sterling Bank sent a total of **\$10,377,500** to Tech Traders, as confirmed by Ms. McCormack. McCormack Decl. at ¶ 9(b)(c) and (i). CMP invested \$9,050,000, DRL invested \$1,200,000 and Entrust invested \$127,500 and those funds. Id. Sterling Bank, CMP and DRL received no prior withdrawals from Tech Traders. Id. Receiver does not and cannot dispute these facts.

Under Receiver's analysis, the hypothetical recovery for Tier I investors from the Tech Trader's receivership will be approximately **50%**. Therefore, the total gross return from the receivership for Sterling Bank, CMP and DRL should be 50% of \$10,377,500 = **\$5,188,750**.

Receiver suggests that this Court then deduct Sterling related attorney's fees of over \$85,000 (plus additional fees for work done in 2007) from the total gross return from Tech Traders. CMP and DRL have no objection to Receiver deducting from all Sterling investors' returns a reasonable fee for the work he has performed. For the sake of keeping the mathematical calculations straightforward, CMP and DRL will assume that a portion of such fees eventually will be deducted from their returns.

Each Tier II investors' claim is then multiplied by its percentage of the total amount of funds that their Tier I investor sent to Tech Traders. CMP's investment was .872079017 percent of the total of \$10,377,500; DRL's investment was .115634786 percent of the total; and Entrust's investment was .012288196 percent of the total.

Once the percentage of investment of each Sterling Bank Tier II investor is applied to the gross hypothetical return of \$5,188,750 (less reasonable fees), the amount of any prior withdrawals from Tech Traders must be applied. Because Sterling Bank, CMP and DRL have not received any prior withdrawals from Tech Traders, the adjustment to their returns is **\$0**.

Next, the provisional interim distributions of \$2,542,248.78 to CMP and \$337,093.76 to DRL, made pursuant to this Court's January 9, 2006 order, must be deducted from the CMP and DRL recoveries.

Therefore, this Court should approve distributions to the Sterling investors through Sterling Bank (Tier I) as follows:

- CMP: $\$5,188,750 \times .872079017 = \$4,525,000$ (- \$2,542,248.78 interim return) = **\$1,982,751.22;**
- DRL: $\$5,188,750 \times .115634786 = \$599,999.95$ (- \$337,093.76 interim return) = **\$262,906.24;** and
- Sterling Bank: $\$5,188,750 \times .012288196 = \$63,760.38.$

CMP and DRL would each comply with the same plan of distribution they submitted to Receiver in 2006 for returning the funds to their Tier III investors.

In contrast, Receiver's proposed methodology will result in at least a \$271,000 *reduction* in CMP's allowed claim and \$45,000 *reduction* in DRL's allowed claim, due to Receiver's proposed method to "aggregate" all Sterling entities' claims and deducting from the gross distribution \$2.1 million in "prior withdrawals" from Tech Traders. Receiver's plan treats CMP and DRL unfairly by attributing to them prior withdrawals that their Tier I investor, Sterling Bank, never received.

V. THIS COURT'S ORDER RELATING TO THE UNIVERSAL AND KAIVALYA INVESTOR CLAIMS FURTHER SUPPORTS CMP AND DRL'S OBJECTION.

On March 26, 2007, this Court issued an Opinion approving Receiver's proposed distribution to those investors of two related Tier II investors of Shasta Capital – Kaivalya

Holding Group, Inc. and Universal Capital Appreciation, LLC. In its Opinion, this Court applied its prior judgment:

Under this [tiered] system, Tier I investors, who invested directly with Tech Traders, receive a percentage of their investment based on a plan that accounts for prior withdrawals. A Tier II investor received distributions based on the amount distributed to that investor's Tier I investor. The system permits Tier I investors to keep funds they previously received, but those previous withdrawals will be credited against the Tier I investors pro rata share, which is based on the full amount of invested.

Order of March 26, 2007, p. 2 (emphasis added). The Court approved a distribution plan that examined whether the Tier III claimants had received any prior withdrawals from Universe and/or Kaivalya, their Tier II investors. Order of March 26, 2007, pp 4-5. For example two investors, Amanda Graves and Harry Schmalz, had not received previous withdrawals from Universe but only withdrawals from Kaivalya. Thus, both Graves and Schmalz received net returns on their investments. *Id.* Other claimants, however, who received prior withdrawals from both Universe and Kaivalya were not entitled to receive further returns under the Order. Many of the same individuals had invested in both Kaivalya and Universe. See Receiver's Aff. in Support of Motion to Disallow Certain Universe Investor Claims, Jan. 19, 2007, at ¶¶ 14-16. Yet, each Tier III and Tier II investor was examined *individually* – a prior withdrawal received by one investor was not improperly applied to any other investor's *individual* claim. Order, at p. 5 (chart).

Here, the same legal and equitable principles should apply. Because neither Sterling Bank nor any of its Tier II investors received any withdrawals from Tech Traders, they should not have their pro rata recoveries reduced by others' prior withdrawals, even if the Tier I entities are "related" in some way. CMP and DRL should not be saddled with prior withdrawals received by Luci Johnson from Sterling ACS, for example. Nor should

withdrawals received by other named or unnamed Sterling investors from *other* Sterling Entities apply to CMP and DRL's claims through Sterling Bank. CMP and DRL's modified distribution plan, on the other hand, is entirely consistent with the CFTC's tracing analysis and complies with this Court's approved tiered distribution system.

WHEREFORE, for all of the foregoing reasons, CMP and DRL respectfully request that this Court sustain its Objection to Receiver's Motion and approve a modified distribution plan that does not aggregate Sterling Bank, CMP and DRL's claims with all other Sterling Entities or their investors' claims, grant a hearing in this matter if the Court determines that factual issues exist, and grant such other relief as this Court deems just and appropriate.

Dated: May 17, 2007

Respectfully submitted,

**CMP FUND, A LIMITED
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PLUS FUND LTD.**, by their managers, Tier
II Claimants

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