

WITMAN, STADTMAUER & MICHAELS, P.A.
26 Columbia Turnpike
Florham Park, New Jersey 07932
(973) 822-0220
Lewis Cohn (LC-0979)

MENAKER & HERRMANN LLP
10 East 40th Street
New York, New York 10016
(212) 545-1900
Samuel F. Abernethy (SA-8454)
Paul M. Hellegers (PH-1073)

Attorneys for Defendants Equity Financial Group LLC,
Vincent J. Firth and Robert W. Shimer

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

-----X
:
COMMODITY FUTURES TRADING :
COMMISSION, :
:
Plaintiff, : Civil Action No. 04-1512 (RBK)
:
vs. :
:
EQUITY FINANCIAL GROUP LLC, TECH : DECLARATION OF SAMUEL F.
TRADERS, INC., TECH TRADERS, Ltd., : ABERNETHY IN SUPPORT OF
MAGNUM INVESTMENTS, Ltd., : MOTION TO WITHDRAW
MAGNUM CAPITAL INVESTMENTS, Ltd., :
VINCENT J. FIRTH, ROBERT W. SHIMER, :
COYT E. MURRAY, and J. VERNON :
ABERNETHY, :
Defendants. :
Motion Date: April 1, 2005
-----X

SAMUEL F. ABERNETHY, under penalty of perjury, declares as follows:

1. I have been admitted *pro hac vice* to practice before this Court, am admitted to the Bar of the State of New York, and am a member of the firm of Menaker &

Herrmann LLP (“Menaker & Herrmann”), counsel along with Witman Stadtmauer & Michaels, P.A. (“Witman Stadtmauer”) to defendants Equity Financial Group, LLC, Robert W. Shimer, and Vincent J. Firth (“Equity Defendants”). I am fully familiar with the facts stated herein and make this affidavit in support of Menaker & Herrmann’s and Witman Stadtmauer’s motion to withdraw as counsel to the Equity Defendants.

2. Menaker & Herrmann was retained in early April 2004 to represent the Equity Defendants in this action. The Equity Defendants signed a retainer agreement to pay Menaker & Herrmann’s bills for fees and disbursements. On or about April 7, 2004 Witman Stadtmauer was retained to act as local counsel.

3. Significant differences have arisen between Menaker & Herrmann and the Equity Defendants as to the appropriate approach to our representation of them in this case, and an irrevocable breach has developed. Simply put, the clients wish to pursue an approach which we believe to be imprudent and with which we disagree. In addition, the Equity Defendants have declined to pay for an extensive amount of the work we have done and do not wish to pay for any future work. The Equity Defendants have consented to our withdrawal by signing the stipulation attached hereto as Exhibit A.

4. Menaker & Herrmann has devoted over 400 hours to representing the Equity Defendants, who have paid for only a portion of that work and the firm’s disbursements, and currently over \$100,000 is owed to the firm. Since the clients have provided no reasonable assurances of future remittance, continued representation of these clients would constitute a financial hardship for our firm.

5. The Witman Stadtmauer firm agreed to act as local counsel on the basis of a long standing professional relationship with Menaker & Herrmann. I am informed by Mr. Lewis Cohn, a partner of that firm, that the Equity Defendants owe Witman Stadtmauer over

\$3,400 and that no payments have been made to them since August 2004 . Mr. Cohn has informed me that his firm wishes to join in this motion to withdraw, explaining that his firm was relying on Menaker & Herrmann for the substantive expertise in commodities litigation.

6. We have given prior warning to the Equity Defendants that we would have to withdraw unless they met their obligations, including making installment payments against our outstanding bills, and they have made clear that they understand this to be the case.

7. No prejudice to the other parties in this action should result from the withdrawal of Menaker & Herrmann and Witman Stadtmauer. The matter is in the middle stages of discovery and no dispositive motions have been made.

8. In consenting to our withdrawal, the Equity Defendants have recognized that they will not be prejudiced. If they do not secure replacement counsel, Mr. Shimer, who is an attorney, can represent Mr. Firth and Equity Financial Group, LLP and will also appear pro se in his own behalf.

9. Rule 1.16(b) of the New Jersey Rules of Professional Conduct provides that “a lawyer may withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interests of the client , or if ... (3) a client insists upon pursuing an objective that the lawyer considers ... imprudent; (4) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer’s services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled; (5) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or (6) other good cause for withdrawal exists.” The foregoing provisions are applicable to the instant circumstances.

10. Wherefore, Menaker and Herrmann and Witman Stadtmauer respectfully request that the Court issue an order granting them leave to withdraw as counsel of record for the Equity Defendants and for such other and further relief as this Court deems just and equitable.

I certify that all of the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: New York, New York
March 3, 2005

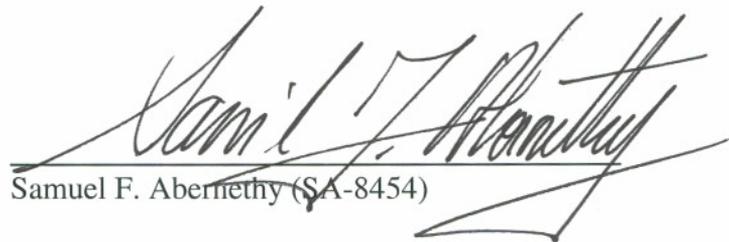

Samuel F. Abernethy (SA-8454)

EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

-----X
:
COMMODITY FUTURES TRADING
COMMISSION, :

Plaintiff, :

-against- :

EQUITY FINANCIAL GROUP, LLC, TECH
TRADERS, INC., VINCENT J. FIRTH, and,
ROBERT W. SHIMER, :

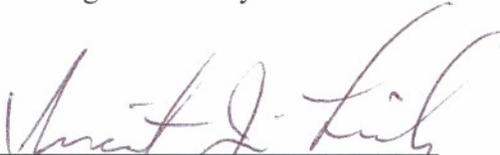
Defendants. :

Civ. Action No. :

: CONSENT TO
: CHANGE ATTORNEY
:

-----X
IT IS HEREBY CONSENTED THAT Robert W. Shimer, Esq. of 1225 W. Leesport
Road, Leesport, PA 19533 be substituted as attorney of record for the undersigned parties in the
above-entitled action in place and stead of the undersigned attorneys as of the date hereof.

Dated: _____

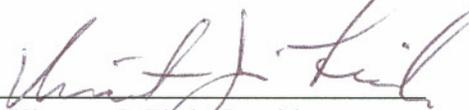


Vincent J. Firth



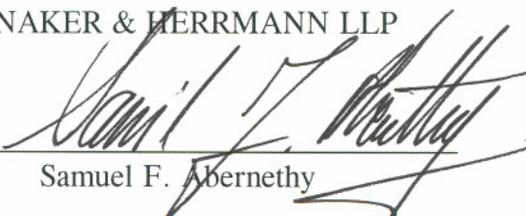
Robert W. Shimer

EQUITY FINANCIAL GROUP, LLC

By: 

Vincent J. Firth, President

MENAKER & HERRMANN LLP

By: 

Samuel F. Abernethy

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

On the 7th day of April, 2004, before me personally came Vincent J. Firth, to me known, who, being by me duly sworn, did depose and say that he is the first individual named in and who executed the above instrument.

Paul M. Hellegers

Notary Public

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

PAUL M. HELLEGERS
Notary Public, State of New York
No. 02HE6006359
Qualified in New York County
Commission Expires May 4, 2006

On the 7th day of April, 2004, before me personally came Robert W. Shimer, to me known, who, being by me duly sworn, did depose and say that he is the second individual named in and who executed the above instrument.

Paul M. Hellegers

Notary Public

PAUL M. HELLEGERS
Notary Public, State of New York
No. 02HE6006359
Qualified in New York County
Commission Expires May 4, 2006

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

On the 7th day of April, 2004, before me personally came Vincent J. Firth, to me known, who, being by me duly sworn, did depose and say that he is the President and sole shareholder of Equity Financial Group, LLC, the limited liability company named in and which executed the above instrument; and that he signed his name thereto in such capacities.

Paul M. Hellegers

Notary Public

PAUL M. HELLEGERS
Notary Public, State of New York
No. 02HE6006359
Qualified in New York County
Commission Expires May 4, 2006