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Attorneys for Defendant Equity Financial Group LLC,

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

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COMMODITY FUTURES TRADING	:
COMMISSION,	:
	:
Plaintiff,	:
	:
vs.	:
	:
EQUITY FINANCIAL GROUP LLC, TECH	:
TRADERS, INC., TECH TRADERS, Ltd.,	:
MAGNUM INVESTMENTS, Ltd.,	:
MAGNUM CAPITAL INVESTMENTS, Ltd.,	:
VINCENT J. FIRTH, ROBERT W. SHIMER,	:
COYT E. MURRAY, and J. VERNON	:
ABERNETHY,	:
	:
Defendants.	:
-----X	

Civil Action No. 04-1512 (RBK)

DECLARATION OF SAMUEL F.
ABERNETHY IN SUPPORT OF
RENEWED MOTION TO
WITHDRAW

Motion Date: August 17, 2007

SAMUEL F. ABERNETHY 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, P.A. (“Witman Stadtmauer”) to defendant Equity Financial Group, LLC, (“Equity ”). I am fully familiar with the facts stated herein and make this declaration in support of Menaker & Herrmann’s and Witman Stadtmauer’s renewed motion to withdraw as counsel to Equity.

2. Previously, Menaker & Herrmann and Witman Stadtmauer. were counsel to defendants Vincent J. Firth and Robert W. Shimer, as well as Mr. Firth’s limited liability company Equity (Equity has no other owners). By motion dated April 1, 2005 Menaker & Herrmann and Witman Stadtmauer moved to withdraw as counsel for the two individuals and Equity, but by orders dated March 22 and April 22, 2005, Magistrate Judge Donio granted the motion as to representation of Messrs. Shimer and Firth, but denied it with respect to our representation of Equity. Thus, we have remained in the case as counsel to Equity since that time.

3. In view of the Court’s subsequent order issued December 18, 2006, granting in part the Plaintiff’s motion for summary judgment and is so doing holding that Messrs. Firth and Shimer are agents of Equity and that Equity is a commodity pool operator, and the imminent trial of this action, Menaker & Herrmann and Witman Stadtmauer renew their motion to withdraw as counsel

Restated Background

4. Menaker & Herrmann was retained in early April 2004 to represent the Equity Defendants in this action. Messrs. Firth and Shimer and Equity (together “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.

5. Significant differences arose between Menaker & Herrmann and the Equity Defendants as to the appropriate approach to our representation of them in this case, and an irrevocable breach developed. Simply put, the clients wished to pursue an approach which we believed to be unwarranted under applicable law. During the course of this dispute between attorney and clients, the Equity Defendants declined to pay for an extensive amount of the work we had done and advised that they would not pay for future work. All three Equity Defendants consented to our withdrawal, but Magistrate Judge Donio permitted withdrawal of representation of Messrs. Firth and Shimer, but not Equity, on the grounds that a "corporation" should be represented by counsel.

6. The Witman Stadtmauer firm agreed to act as local counsel on the basis of a long standing professional relationship with Menaker & Herrmann. At the time of the initial motion to withdraw, Witman Stadtmauer also had outstanding bills that the Equity Defendants declined to pay. Accordingly, that firm joined in the motion to withdraw, and had additional grounds to do so in view of the fact that it was serving as local counsel and was relying on Menaker & Herrmann for the substantive expertise in commodities litigation.

The Renewed Motion

7. The complaint in this action asserts five counts, three of which are asserted against Equity. Two of those three, the second and third counts - one alleging fraud by a commodity pool (Commodity Exchange Act ("CEA") §4o(1), 7 U.S.C. § 6o(1), and the other alleging failure to register as a commodity pool operator (CEA §4m(1), 7 U.S.C. §6m(1) - have been decided in Plaintiff's favor by Judge Kugler in his December 18, 2006 order. Thus, the sole count to be tried against Equity will be the fraud count, CEA §4b(a)(2).

8. Because Equity is a business entity, in this case a limited liability company, its liability will be derived from the acts of its agents. The Court has already determined the existence of that agency relationship and liability under CEA §2(a)(1)(B) in its December 18, 2006 order holding that Equity was liable for violations of CEA §§ 4m(1), 4k(2), and 4o(1)(B).

9. In the remaining CEA §4b(a)(2) count to be tried the Plaintiff will have the burden of establishing, *inter alia*, actual knowledge or recklessness on the part of either or both of Messrs. Firth or Shimer. Since the basis for Equity to be found liable arises automatically from whatever liability, if any, is imposed upon Messrs. Firth and/or Shimer, there can be no facts that Equity would be adducing at trial in defense of the claim that would not already be adduced by those two individuals in the defense of Plaintiff's allegations.

10. Moreover, we are constrained by New Jersey's Rules of Professional Conduct Rule 3.1 and New York's Professional Disciplinary Rule 701-02, which prevent a lawyer from advocating defenses that no reasonable adjudicator could find persuasive. As a consequence we find ourselves in an untenable position and seek relief from the Court in the form of granting our motion.

11. Failing to grant the motion would result in what we believe would be a wasteful, financially burdensome, empty exercise for Menaker & Herrmann and Witman Stadtmauer, with no benefit to Equity beyond what Messrs. Firth and Shimer will indirectly attempt to confer. Equity is a single member limited liability company, and accordingly has pass-through tax status identical to a sole proprietorship. It has no assets and is nothing more than a shell at this time. It has never paid any of its legal bills, and its sole member, Mr. Firth, has not demanded our services since the denial of our motion to withdraw as Equity's counsel

was denied. There is no reason to believe that Equity will operate as a business entity in the foreseeable future.

12. 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.”

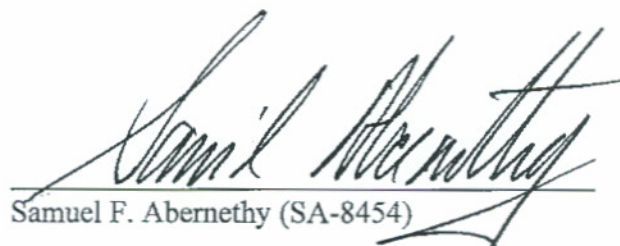
13. The foregoing provisions are applicable to the instant circumstances. Equity’s owner, Mr Firth, has sharp irreconcilable differences with this firm over what can be argued in Equity’s defense. Moreover, there have been sharp differences between counsel and the individual Equity Defendants as to the defenses that can be asserted by the Equity Defendants. Equity does not, and cannot, have any defenses that can be asserted in good conscience other than such defenses asserted by Messrs. Firth and Shimer individually as the Court may deem meritorious. Finally, there is no evidence that can be adduced on behalf of Equity that will not be adduced by Messrs. Firth and Shimer in their own defense.

14. It should be emphasized that Equity is not a corporation, but a limited liability company identical to a sole proprietorship other than limited liability. There are no owners or employees other than defendant Firth himself, who will be present in court to defend the claim against him. Whatever the results of the proceeding turn out to be with respect to Mr.

Firth or Mr. Shimer, who acted as Equity's agents, will automatically control the results for Equity, without any impact on other individuals.

15. In view of the ethical conundrum we face, the superfluity of our role at trial, and the other points raised above, Menaker & Herrmann and Witman Stadtmauer respectfully request that the Court issue an order granting them leave to withdraw as counsel of record for Equity and for such other and further relief as this Court deems just and equitable.

I declare under penalty of perjury that the foregoing is true and correct. Executed on August 2, 2007.


Samuel F. Abernethy (SA-8454)