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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)**

**Response to Firth's April 24,
2007 Letter**

Plaintiff, Commodity Futures Trading Commission (“CFTC”), files this in response to Defendant Vincent Firth’s (“Firth”) letter to the Honorable Ann Marie Donio dated April 24, 2007. As detailed more fully below, first, Defendant Robert Shimer (“Shimer”) cannot represent Defendant Firth because Defendant Shimer has not submitted a motion to appear *pro hac vice* before this Court nor identified a local counsel, and Defendant Shimer has a conflict of interest in representing Defendant Firth. Second, Defendant Firth should be required to attend this long-scheduled Pretrial Conference on June 1, 2007. Plaintiff’s current conflicts impede rescheduling the Pretrial Conference at such a late date.

In support of this response, the CFTC states the following:

1. The Complaint was filed on April 1, 2004, and the First Amended Complaint was filed on August 12, 2004. The Scheduling Order dated April 5, 2007 clearly states that the Final Pretrial Conference will be June 1, 2007 at 10:00 a.m. (Docket Document No. 475). Pursuant to the Scheduling Order and Federal Rule of Civil Procedure 16(d), Defendant Firth, acting *pro se*, is required to be at the conference. *See* Entry of Appearance *Pro Se* for Vincent Firth, (Docket Document No. 155). Defendant Firth now seeks to be excused from attending the pretrial conference scheduled for June 1, 2007 and requests that Defendant Shimer represent him at the scheduled pretrial conference, or, in the alternative, reschedule the pretrial conference.

2. Substantial conflicts of interest arise if Defendant Shimer is allowed to represent Defendant Firth. First, these are two party co-defendants. Their liability may very well be dependent on their conduct and relationship with each other during the period relevant to the First Amended Complaint. It will be difficult for Defendant Shimer to represent the best interests of Defendant Firth when they are in direct conflict with Defendant Shimer’s own best interest. Second, both Defendant Shimer and Defendant Firth will be called at trial as witnesses

in the Plaintiff's case in chief. Defendant Shimer cannot play multiple roles as defendant, witness, and attorney to his co-defendants without seriously jeopardizing Defendant Firth's legal posture.

3. Additionally, pursuant to Local Rule 101.1(c), Defendant Shimer cannot represent Defendant Firth because he has failed to file a motion to appear *pro hac vice*, and has not identified a member of the bar of this Court who will appear as counsel of record for Firth. Shimer is licensed to practice law in Massachusetts, not before this Court. Local Rule 101.1(c)(1) states that "...in the discretion of the Court, on motion..." an out of state attorney may appear in a matter. As the Court noted the last time Defendant Shimer attempted to represent Defendant Firth as well as himself, "...nothing in the record indicates that Mr. Shimer is authorized by law to represent [Firth] in this matter." (Order on Law Firm's Request to Withdrawal as Counsel, (Docket Document No. 139), p. 5). Local Rule 101.1(c)(4) also states that "Only an attorney at law of this Court may file papers, enter appearances for parties, sign stipulations, or sign and receive payments on judgments, decrees or orders." Since Defendant Shimer has not fulfilled the requirement of Local Rule 101.1(c), he should not be allowed to represent Firth at the pretrial conference.

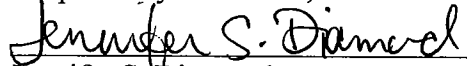
4. Moreover, on April 4, 2007, a telephone conference, to which Defendant Firth was a party, took place to determine, among other things, the date for the pretrial conference to take place. During that telephone conference, Judge Donio stated that the pretrial conference could take place on June 1, 2007, or the first week of June 2007. (Streit Decl. ¶ 2, attached hereto as Ex. A). Defendant Firth did not voice any objection to June 1, 2007 at that time. The next day, on April 5, 2007, the Court issued this Scheduling Order that scheduled the Pretrial Conference to June 1, 2007. Defendant Firth has had ample time and numerous occasions to

request a different date prior to the Scheduling Order being issued. Defendant Firth's objection to the pretrial date at this time appears to be a delay tactic because, despite the evidence presented to the Court and rulings thus far, Firth maintains that the CFTC Complaint is a "wrongful suit" against him. (Firth April 24, 2007 letter, Docket Document No. 483). While he claims to have had a scheduled conflict for months, Defendant Firth did not send his objection to the June 1 date until after April 24, 2007. *Id.* Notably, this was after Plaintiff sent its draft Joint Pretrial Order, including all proposed trial exhibits to Defendants. Plaintiff received Defendant Firth's letter via electronic filing on May 1, 2007. Plaintiff now has commitments impairing the ability to change the date of the scheduled June 1, 2007 Pretrial Conference. Additionally, Plaintiff was hoping for a late June 2007 trial date since a trial later in the summer months poses witness availability difficulties.

For the reasons set forth above, Plaintiff respectfully requests that the Court keep the scheduled date of June 1, 2007 for the Pretrial Conference, require Defendant Firth to attend, and not allow Defendant Shimer to represent Defendant Firth during the Pretrial Conference. Alternatively, the CFTC requests that Defendant Firth be allowed to appear via telephone for the June 1, 2007 Pretrial Conference.

Date: May 2, 2007

Respectfully submitted,



Jennifer S. Diamond

Trial Attorney

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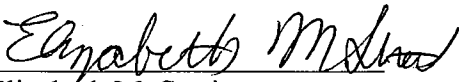
ATTORNEYS FOR PLAINTIFF

**Declaration under penalty of perjury of
Elizabeth M. Streit pursuant to 28 U.S.C. § 1746**

I, Elizabeth M. Streit, hereby declare as follows:

1. I am an attorney admitted to practice in the State of Illinois and am a Trial Team Leader with the Division of Enforcement of the United States Commodity Futures Trading Commission (“Commission” or “CFTC”), an independent regulatory agency of the United States Government. I have been employed with the Commission’s Division of Enforcement since 1998. I am the Lead Trial Attorney in the matter *Commodity Futures Trading Commission v. 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*, 04CV 1512, filed in the United States District Court for the District of New Jersey.
2. On April 4, 2007, I participated in a telephone status conference in the above captioned case. Defendants Firth and Shimer were present. Also present were Stephen Bobo, Equity Receiver, Samuel Abernethy, representing Defendant Equity Financial Group LLC, and Magistrate Ann Marie Donio. At this status conference, the subject of rescheduling the pretrial conference was discussed. Magistrate Donio stated that the pretrial conference would be rescheduled to either June 1, 2007 or sometime the following week. No one in attendance at the conference stated that they had a conflict with either June 1 or a date the following week

I declare under penalty of perjury that the foregoing is true and correct. Executed
this 2nd day of May 2007.


Elizabeth M. Streit
Lead Trial Attorney

CERTIFICATE OF SERVICE

The undersigned, a non-attorney, does hereby certify that on May 2, 2007, she caused true and correct copies of the foregoing *Commission's Response to Defendant Vincent Firth's Letter Dated April 24, 2007* to be served via first class mail:

***On behalf Coyt E. Murray, Tech Traders, Inc. Ltd.,
Magnum Investments, Ltd., and Magnum Capital
Investments, Ltd***

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***On behalf of Equity Financial Group,
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Receiver

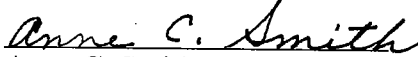
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Anne C. Smith
Secretary