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

COMMODITY FUTURES
TRADING COMMISSION,

Plaintiff,

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

Defendants.

Civil Action # 04-cv-1512

Honorable Robert B. Kugler

**McDERMOTT WILL & EMERY LLP'S MEMORANDUM IN RESPONSE
TO MOTION BY EQUITY RECEIVER FOR ENTRY OF TURNOVER ORDER**

McDermott Will & Emery LLP ("McDermott") hereby responds to the Equity Receiver's Motion for Entry of Turnover Order Directed at McDermott Will & Emery LLP ("Receiver's Motion"), which requests that McDermott turn over to the receivership estate the sum of \$164,362.43 that McDermott received from Tech Traders, Inc. as retainer funds and that McDermott stopped applying to invoices or outstanding fees following this Court's entry on April 1, 2004 of its Statutory Restraining Order and Order Appointing Receiver ("Restraining Order").

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I. PRELIMINARY STATEMENT

During the period of January through June 2004, McDermott provided services to three related clients, Tech Traders, Inc., Tech Traders, Ltd. and Coyt E. Murray. In response to the Court's April 1, 2004 Restraining Order, McDermott stopped applying the retainer funds in McDermott's possession related to these clients (\$164,362.43) to outstanding invoices or fees. Although McDermott received the retainer funds from Tech Traders, Inc., McDermott does not know the original source of the funds. Accordingly, McDermott informed the Receiver, Stephen Bobo, that McDermott would continue to hold the funds absent an appropriate court order and notice to Tech Traders, Ltd. and Coyt E. Murray. *See* S. Bobo Affidavit attached as Exhibit A to Brief of Equity Receiver in Support of Motion for Entry of Turnover Order Directed at McDermott Will & Emery ("S. Bobo Affidavit") at Att. 3.

McDermott wishes to cooperate with the Receiver and this Court in every way possible. As set forth below, in response to the Receiver's Motion, McDermott is prepared to immediately turn over to the receivership estate the sum of \$74,251.74, which represents the \$164,362.43 in retainer funds less \$90,110.69 in McDermott attorneys' fees and costs incurred and billed for March through June 2004.

II. BACKGROUND

McDermott was retained by Tech Traders, Inc. and Tech Traders, Ltd. on or about December 31, 2003 to provide legal services in connection with Commodity Futures Trading Commission ("CFTC") regulations. See Declaration of Paul J. Pantano, Jr. ("Pantano Declaration" or "Pantano Decl.") submitted herewith ¶ 3; S. Bobo Affidavit, Att. 1. On or about February 13, 2004, Coyt E. Murray, President of Tech Traders, Ltd. and Tech Traders, Inc., also retained McDermott to represent him with respect to issues related to CFTC regulations. *Id*; S. Bobo Affidavit, Att. 2.

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Between January 1, 2004 and March 31, 2004, Tech Traders, Inc. transferred a total of \$246,000 in retainer funds to McDermott. McDermott applied \$81,637.57 of this \$246,000 to invoices sent in February and March 2004 to Tech Traders, Inc., Tech Traders, Ltd and Coyt E. Murray for legal services provided during January and/or February 2004, leaving a balance of \$164,362.43. Pantano Decl. ¶ 4.

During March 2004, McDermott continued to provide legal services and advice to Tech Traders, Inc., Tech Traders, Ltd. and Coyt E. Murray related to CFTC regulations. Upon receiving notice of the April 1, 2004 Restraining Order, McDermott stopped applying the remaining \$164,362.43 in retainer funds to outstanding bills and fees. Pantano Decl. ¶ 5. On or about April 29, 2004, McDermott sent invoices to Tech Traders, Inc., Tech Traders, Ltd. and Coyt E. Murray, setting forth the fees and costs for services provided in March 2004. These invoices totaled \$20,254.50. Pantano Aff. ¶ 6.¹

¹ In a May 20, 2004 letter to the Receiver's attorney, Raven Moore, McDermott stated that the \$164,362.43 in remaining retainer funds did "not reflect charges for our services for April and May." S. Bobo Aff., Att. 4. Stated more accurately, the retainer funds did not reflect charges at that time for April and May invoices, which invoices set forth charges for services in March and April.

From April 1 through April 8, 2004, McDermott provided legal services to Tech Traders, Inc., Tech Traders, Ltd. and Coyt Murray related to the Restraining Order, including participating in a temporary restraining order hearing and meeting with Coyt Murray and the CFTC in North Carolina. As reflected on invoices dated May 12, 2004, the fees and costs for these services total \$58,396.76. Pantano Decl. ¶ 7.²

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By three separate letters dated April 8, 2004, McDermott informed Tech Traders, Inc., Tech Traders, Ltd. and Coyt E. Murray that McDermott's representation of Tech Traders, Inc., Tech Traders, Ltd. and Coyt E. Murray in his individual capacity terminated on April 7, 2004. Pantano Decl. ¶ 8; S. Bobo Affidavit, Att. 2. From April 8, 2004 through June 30, 2004, McDermott responded to requests for information from Coyt Murray and the Receiver and provided related services. The fees and costs for this period are reflected in May 12, June 30 and July 21, 2004 invoices totaling \$11,459.43. The invoices for the fees and costs for the services McDermott provided to Tech Traders, Inc., Tech Traders, Ltd. and Coyt Murray for March through June 2004 total \$90,110.69. Pantano Decl. ¶¶ 8-9.

III. MCDERMOTT IS ENTITLED TO REASONABLE ATTORNEYS FEES IN THE AMOUNT OF \$90,110.69 FOR SERVICES RENDERED FROM MARCH 2004 THROUGH JUNE 2004.

McDermott did not apply any retainer funds to any of the invoices described above totaling \$90,110.69 and has not received payment for them. Pantano Decl. ¶ 9. A description of the McDermott attorneys who provided the services and details regarding the time billed is set forth in the Pantano Declaration attached hereto.³ The fees charged are consistent with the

² The May 12, 2004 invoice to Coyt Murray includes a charge for \$275.00 for services performed on March 8, 2004.

³ If necessary, McDermott would be pleased to provide to the Court the invoices at issue for *in camera* inspection

national legal market and are reasonable in light of McDermott's reputation, the highly specialized nature of the representation and the educational backgrounds and work experience of the attorneys involved.

WHEREFORE, McDermott prays that this Court:

(a) enter an Order directing McDermott to turn over to the receivership estate the sum of \$74,251.74;

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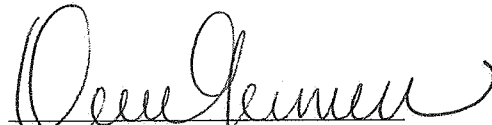
(b) grant such further relief to McDermott as is equitable and appropriate under the circumstances.

DATED this 2nd day of December, 2005.

Respectfully submitted,

MCDERMOTT WILL & EMERY LLP

By:


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Daniel Mullen
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New York, New York 10020

CERTIFICATE OF SERVICE

Robert J. Candella, pursuant to 28 USC 1746, hereby declares under penalty of perjury that, on

Friday, December 2, 2005, I served true copies of McDERMOTT WILL & EMERY'S

MEMORANDUM IN RESPONSE TO MOTION BY EQUITY RECEIVER FOR ENTRY OF

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TURNOVER ORDER and accompanying DECLARATION OF PAUL J. PANTANO, JR. via regular

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mail upon:

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