

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

U.S. COMMODITY FUTURES)	
TRADING COMMISSION,)	
)	Case No. CIV-16-32-M
Plaintiff,)	
)	
v.)	
)	
KEVIN J. DAVIS,)	
)	
Defendant.)	

TEMPORARY RESTRAINING ORDER

Plaintiff U.S. Commodity Futures Trading Commission (the “Commission”) filed a Complaint against Defendant Kevin J. Davis (“Davis”) seeking injunctive and other equitable relief and civil monetary penalties for violations of the Commodity Exchange Act (the “Act”), 7 U.S.C. §§ 1 *et seq.* (2012). Before the Court is Plaintiff’s Motion for Temporary Restraining Order and Brief in Support (the “Motion”) [Dkt. No. 4], a copy of which was served by e-mail on Davis on January 15, 2016. This Court, having considered the Commission’s Complaint and the Motion and all declarations and exhibits thereto, **GRANTS** the Commission’s Motion and finds that:

1. This Court has jurisdiction over the parties and the subject matter of this action pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a) (2012), and Section 2(c)(2) of the Act, 7 U.S.C. § 2(c)(2) (2012).

2. Venue properly lies in this District pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2012).

3. The Commission has made a sufficient and proper showing in support of the relief granted herein, by evidence establishing a prima facie case and a reasonable likelihood that Davis has engaged, is engaging, is about to engage, and will continue to engage in, unless restrained and enjoined by order of this Court, violations of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2012), and Regulation 4.20(a)-(c), 17 C.F.R. § 4.20(a)-(c) (2014).

4. There is good cause to believe that immediate and irreparable harm to the Court's ability to grant effective final relief for Davis' commodity pool participants in the form of monetary redress will occur from the sale, transfer, assignment, or other disposition by Davis of assets or records unless Davis is immediately restrained and enjoined by order of this Court.

5. Good cause exists for the Court to freeze assets owned, controlled, managed, or held by or on behalf of, or for the benefit of Davis.

6. Good cause exists for entry of an order prohibiting Davis, his agents, servants, employees, assigns, attorneys, and persons in active concert or participation with Davis from destroying books and records and/or denying Commission representatives immediate and complete access to such books and records for inspection and /or copying.

DEFINITIONS

For the purposes of this Order, the following definitions apply:

7. “Assets” means any legal or equitable interest in, right to, or claim to any real or personal property, whether individually or jointly, directly or indirectly controlled, and wherever located, including, but not limited to, chattels, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, mail or other deliveries, inventory, checks, notes, accounts (including, but not limited to, bank accounts and accounts at other financial institutions), credits, receivables, lines of credit, securities, contracts (including spot, futures, options, or swaps contracts), insurance policies, and all cash, wherever located.

8. “Document” is synonymous in meaning and equal in scope to the usage of the term in Rule 34(a) of the Federal Rules of Civil Procedure and includes, but is not limited to, all writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained and translated through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term.

RELIEF GRANTED

I. PROHIBITION FROM FUTURE VIOLATIONS

IT IS ORDERED that Davis is temporarily restrained and enjoined from, directly or indirectly:

a. Acting in a capacity that requires registration with the Commission as a commodity pool operator (“CPO”);

b. Soliciting, accepting, or receiving from others, funds, securities, or property for the purpose of trading in commodity interests, including off-exchange foreign currency contracts (“forex”); and/or

c. Using the mails or instrumentalities of interstate commerce in connection with his CPO business while unregistered in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2012).

II. ASSET FREEZE

IT IS FURTHER ORDERED that Davis is restrained and enjoined from, directly or indirectly, withdrawing, transferring, removing, dissipating, concealing, assigning, pledging, leasing, encumbering, disbursing, converting, selling, or otherwise disposing of, in any manner, any funds, assets, or other property, wherever located, including funds, assets, or other property held outside the United States, except as ordered by the Court. The assets affected by this Order shall not include assets that are obtained by Davis after entry of this Order **and** are not derived from or otherwise related to the activities alleged in the Complaint.

As provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Order by personal service or otherwise: (a) Davis’ officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Davis or with anyone described in (a).

IT IS FURTHER ORDERED that, pending further Order of this Court, any bank, financial or brokerage institution, entity, or person that holds, controls, or

maintains custody of any accounts, assets, or other property titled in the name of, held for the benefit of, or otherwise under the control of Davis, or has held, controlled, or maintained custody of any such accounts, assets, or other property at any time since February 1, 2012, shall:

a. Prohibit Davis and any other person from withdrawing, transferring, removing, dissipating, concealing, assigning, pledging, leasing, encumbering, disbursing, converting, selling, or otherwise disposing of, in any manner, any such assets, except as directed by further order of the Court;

b. Deny Davis and any other person access to any safe deposit box that is: (1) owned, controlled, managed, or held by, on behalf of, or for the benefit of Davis, either individually or jointly; and

c. Cooperate with all reasonable requests of the Commission relating to implementation of this Order, including producing records relating to Davis' accounts, assets, or other property.

III. MAINTENANCE OF AND ACCESS TO BOOKS AND RECORDS

IT IS FURTHER ORDERED that Davis is restrained and enjoined from, directly or indirectly, destroying, mutilating, erasing, altering, concealing, or disposing of, in any manner, any books, records, or other documents, including electronically stored information, relating to Davis' CPO business, the solicitation of existing or prospective commodity pool participants, and/or Davis' forex trading activities.

IT IS FURTHER ORDERED that representatives of the Commission be allowed to immediately inspect the books, records, and other documents, including electronically stored information, relating to Davis' CPO business, the solicitation of existing or prospective commodity pool participants, and/or Davis' forex trading activities, wherever they may be situated and whether they are in the possession of Davis or others, and to copy said books, records, and other documents, either on or off the premises where they may be situated.

As provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Order by personal service or otherwise: (a) Davis' officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Davis or with anyone described in (a).

IV. SERVICE OF ORDER

IT IS FURTHER ORDERED that copies of this Order may be served by any means, including personal service, United Parcel Service, Federal Express, or other commercial overnight service, email, facsimile, Rule 5 of the Federal Rules of Civil Procedure, or Articles 2 through 10 of the Hague Convention, Service Abroad of Judicial and Extrajudicial Documents, upon any financial institution or other entity or person that may have possession, custody, or control of any documents or assets of Davis or that may be subject to any provision of this Order. Daniel Burstein, Trial Attorney for the Commission, and Melissa Cavers, a Commission investigator, are

hereby specially appointed to serve process, including of this Order and all other papers in this case.

V. BOND NOT REQUIRED

IT IS FURTHER ORDERED THAT, pursuant to Section 6c(b) of the Act, 7 U.S.C. § 13a-1(b) (2012), no bond need be posted by the Commission, which is an agency of the United States of America.

VI. SERVICE ON THE COMMISSION

IT IS FURTHER ORDERED that Davis shall serve all pleadings, correspondence, and other materials on the Commission by delivering a copy to Daniel Burstein, Trial Attorney, Division of Enforcement, U.S. Commodity Futures Trading Commission, 525 W. Monroe St., Suite 1100, Chicago, Illinois, 60661 and/or by filing such pleadings or other materials electronically with the Court. All such notices to the Commission shall reference the name and docket number of this action.

VII. COURT MAINTAINS JURISDICTION

IT IS FURTHER ORDERED that this Order shall remain in full force and effect until further order of this Court, and that this Court retains jurisdiction of this matter for all purposes.

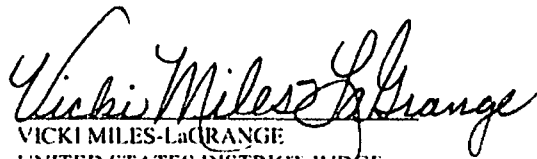
VIII. FURTHER COURT HEARINGS

IT IS FURTHER ORDERED that Davis shall appear before this Court at 10:30 a.m., on the 4th day of February, 2016, in Courtroom 304 of the United States Courthouse, Oklahoma City, Oklahoma, to show cause, if any exists, why this Court should not enter a preliminary injunction extending the relief granted in this Order

until a final adjudication on the merits may be had. The Commission and Davis shall file with the Court any papers in support of or in opposition to such relief no later than January 25, 2016. The parties may file responsive briefs with the Court no later than February 1, 2016.

IT IS SO ORDERED.

Dated: January 15, 2016


VICKI MILES-LAGRANGE
UNITED STATES DISTRICT JUDGE