

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION**

U.S. COMMODITY FUTURES :
TRADING COMMISSION, :
 : CIVIL ACTION NO.: 1: 15cv538-MHT
 :
Plaintiff, :
 :
v. :
 :
 :
 :
DINAR, CORP., INC.; :
MY MONEX, INC., a Nevada Corporation; and :
HUSAM TAYEH :
 :
 :
 :
Defendants, : **FILED UNDER SEAL**
 :
 :
THEODORE S. HUDSON, II; and :
MY MONEX, INC., an Alabama Corporation :
 :
 :
 :
Relief Defendants :
 :

**SEALED ORDER GRANTING COMMISSION'S *EX PARTE* STATUTORY
RESTRAINING ORDER**

Plaintiff, the U.S. Commodity Futures Trading Commission (“Commission”), has filed a Complaint for Permanent Injunction and Other Relief, and has moved, pursuant to Section 6c(a) of the Commodity Exchange Act (the “Act”), 7 U.S.C. § 13a-1(a) (2012) and Federal Rule of Civil Procedure (“Fed. R. Civ. P.”) 65(b), for an *in camera*, *ex parte* statutory restraining order enjoining Defendants Dinar Corp, Inc. (“DCI”), My Monex, Inc., a Nevada corporation (“Monex NV”) and Husam Tayeh (“Tayeh”) (collectively the “Defendants”) and Relief Defendants Theodore S. Hudson, II (“Hudson”) and My Monex, Inc., an Alabama corporation (“Monex AL”) (collectively the “Relief Defendants”), from destroying, altering, or disposing of, or refusing to permit authorized representatives of the Commission to inspect and copy any books or records or other documents, including electronically stored

information (“ESI”), and further enjoining Defendants and Relief Defendants from withdrawing, transferring, removing, dissipating, or disposing of any funds, assets or other property. The Court has considered the pleadings, declarations, exhibits, and memorandum filed in support of the Commission’s motion for a statutory restraining order, and finds that:

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

2. Venue lies properly within this District pursuant to Section 6c(e) of the Act, 7 U.S.C. 13a-1(e) (2012) in that the acts or practices described in the Complaint took place and/or are taking place within this District.

3. There is good cause to believe that Defendants have engaged in, are engaging in and are about to engage in certain unlawful conduct, including, but not limited to: a fraudulent scheme involving the offering of agreements, contracts or transactions in off-exchange foreign currency (“forex”) on a leveraged, margined, or financed basis, totaling more than \$27 million, to retail customers who were not eligible contract customers (“ECPs”) and that do not result in actual delivery of forex within two (2) days of the transaction date(s); the failure of DCI and Monex NV to register with the Commission as registered foreign exchange dealers (“RFED”); and the failure of Tayeh to register with the Commission as an associated person (“AP”) of the RFEDs DCI and/or Monex NV, in connection with financed retail forex transactions as described in Section 2(c)(2)(C)(i) of the Act, 7 U.S.C. § 2(c)(2)(C)(i) (which are subject to the anti-fraud provisions of Section 4b(a)(2)(A) and (C) of the Act, 7 U.S.C. § 6b(a)(2)(A), (C), pursuant to Sections 2(c)(2)(C)(ii)(I) and 2(c)(2)(C)(iv) of the Act, 7 U.S.C. §§ 2(c)(2)(C)(ii)(I), 2(c)(2)(C)(iv)), in violation of Sections

2(c)(2)(C)(iii)(I)(aa), and 4b(a)(2)(A), (C) of the Act, 7 U.S.C. §§ 2(c)(2)(C)(iii)(I)(aa) and 6b(a)(2)(A), (C) (2012), and Commission Regulation 5.3(a)(6)(i) and (ii), 17 C.F.R. §5.3(a)(6)(i) and (ii) (2014). In addition, there is good cause to believe that some of the Defendants' customers' funds have been and/or are currently held in one or more accounts in the name of, or under the control of, Relief Defendants, who have no legitimate interest in or entitlement to these funds received as a result of Defendants' unlawful conduct.

4. There is good cause to believe that immediate and irreparable damage to the Court's ability to grant effective final relief for customers in the form of monetary redress will occur from the sale, transfer, assignment, or other disposition by Defendants and/or Relief Defendants of assets or records unless Defendants and Relief Defendants are immediately restrained and enjoined by Order of the Court.

5. There is good cause for the Court to impose a restraining order prohibiting Defendants and Relief Defendants and their agents, servants, employees, attorneys, and other persons who are in active concert or participation with them, from withdrawing, transferring, removing, dissipating, or disposing of any funds, assets, or other property owned, controlled, managed, or held by or on behalf of, or for the benefit of Defendants and/or Relief Defendants.

6. There is good cause for entry of an order prohibiting Defendants and Relief Defendants, and their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with the Defendants and/or Relief Defendants, including any successor thereof, from destroying records and/or denying agents of the Commission access to inspect and copy records to ensure that Commission representatives have immediate and complete access to all such books and records.

7. Absent the entry of this statutory restraining order, the Defendants and Relief Defendants are likely to dissipate or transfer assets and destroy business records.

8. This is a proper case for granting an *ex parte* statutory restraining order to preserve the *status quo*, protect public customers from loss and damage, and enable the Commission to fulfill its statutory duties, therefore the Court orders as follows:

DEFINITIONS

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

9. The term “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, contracts (including spot, futures, options, or swaps contracts), insurance policies, and all cash, wherever located, whether in the United States or outside the United States.

10. The term, “document” is synonymous in meaning and equal in scope to the usage of the term in Fed. R. Civ. P. 34(a), and includes, but is not limited to, all writings or printed matter of any kind, including without limitation: records, correspondence, memoranda, notes, rolodexes, address books, diaries, statistics, e-mail, letters, telegrams, minutes, contracts, reports, studies, checks, statements, receipts, returns, summaries, pamphlets, books, prospectuses, interoffice or intra-office communications, telephone message slips, offers, notations of conversations, bulletins, drawings, plans, computer printouts, computer input or output, teletypes, facsimiles, invoices, worksheets, ledger books,

books of accounts, and all drafts, alterations, modifications, changes and amendments of any of the foregoing. The term “document” also includes graphs, charts, photographs, phonographic record, audio and video recordings, computer records, and other data compilations from which information can be obtained or translated, if necessary, through detection devices into reasonable usable form. The term “document” also refers to each and every document in your actual or constructive possession, including but not limited to: (i) all documents within your custody or control of any of your present or former agents, employers, employees, partners, and (ii) all documents which you have a legal or equitable right to obtain from another person. A draft or non-identical copy is a separate document within the meaning of the term. A document also includes the file and folder tabs associated with each original and copy.

11. “Defendants” refers to DCI, Monex NV and Tayeh, and/or any person insofar as he or she is acting in the capacity of an officer, agent servant, employee, and/or attorney of the Defendants and any person or entity who receives actual notice of this Order by personal service or otherwise insofar as he, she or it is acting in concert or participation with the Defendant(s).

12. “Relief Defendants” refers to Hudson and Monex AL, and/or any person insofar as he or she is acting in the capacity of an officer, agent servant, employee, and/or attorney of the Relief Defendants and any person or entity who receives actual notice of this Order by personal service or otherwise insofar as he, she or it is acting in concert or participation with the Relief Defendant(s).

RELIEF GRANTED

**I. RESTRAINING ORDER PROHIBITING THE
TRANSFER, REMOVAL, DISSIPATION AND DISPOSAL
OF ASSETS**

IT IS HEREBY ORDERED that

13. Plaintiff's *Ex Parte* Motion for Statutory Restraining Order (doc. no. 5) is **GRANTED** as set forth herein.

14. The Defendants and Relief Defendants and their agents, servants, employees, assigns, attorneys, person and/or entity in active concert or participation with them, including any successor thereof, and persons in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise, are immediately restrained and enjoined, except as otherwise ordered by this Court, from directly or indirectly: transferring, selling, alienating, liquidating, encumbering, pledging, leasing, loaning, assigning, concealing, dissipating, converting, withdrawing, or otherwise disposing of any assets, wherever located, including Defendants' and/or Relief Defendants assets held outside the United States; *provided however*, that if Defendants DCI, Monex NV and/or Tayeh have or control any accounts in which there are any open trading positions in contracts, agreements, or transactions in commodity futures, options on commodity futures, and/or forex or options relating thereto, Defendants shall forthwith close out or liquidate any and all such open positions.

15. Defendants and Relief Defendants are restrained and enjoined from directly or indirectly opening or causing to be opened any safe deposit boxes titled in the name of, or subject to, access by Defendant(s) and/or Relief Defendants.

16. The assets affected by this Order shall include both existing assets and assets acquired after the effective date of this Order.

II. MAINTENANCE OF AND ACCESS TO BUSINESS RECORDS

IT IS HEREBY ORDERED that:

17. The Defendants, Relief Defendants, and their agents, servants, employees, assigns, attorneys, and person in active concert or participation with them, including any successor thereof, who receive actual notice of this Order by personal service or otherwise, are restrained from directly or indirectly destroying, mutilating, erasing, altering, concealing or disposing of, in any manner, directly or indirectly, any documents that relate to the business practices or business or personal finances of any Defendant and/or Relief Defendant.

III. BOND NOT REQUIRED OF PLAINTIFF

IT IS FURTHER ORDERED that:

18. As Plaintiff is an agency of the United States of America which has made a proper showing under Section 6c(b) of the Act, 7 U.S.C. 13a-1(b) (2012), this restraining order is granted without bond. Accordingly, the Commission need not post a bond.

IV. INSPECTION AND COPYING OF BOOKS AND RECORDS

IT IS FURTHER ORDERED that:

19. Representatives of the Commission shall be immediately allowed to inspect the books, records, and other documents of the Defendants, Relief Defendants, and their agents including, but not limited to, paper documents, electronically stored information (“ESI”), tape recordings, and computer discs, wherever they may be situated and whether they are in the possession of the Defendants, Relief Defendants or others, and to copy said documents, data and records, either on or off the premises where they may be situated.

20. Defendants and Relief Defendants shall, within 24 hours of the service of this Order upon them, cause to be prepared and delivered to the Commission, a detailed and complete schedule of all passwords for any encrypted ESI in the possession or control of the Defendants and/or Relief Defendants that relate to the business practices of any Defendant and/or Relief Defendant or the business or personal finances of any Defendant and/or Relief Defendant. Defendants and Relief Defendants shall, within 24 hour of the service of this Order upon them, cause to be prepared and delivered to the Commission, a detailed and complete schedule of all desk top computers, laptop computers and/or other computers owned and/or used by them in connection with their business. The schedules required by this section shall include at a minimum the make, model and description of each, along with the location, the name of the person primarily assigned to use the computer, and all passwords necessary to access and use the software contained on the computer and/or PDA. The Commission and/or its representative shall be authorized to make an electronic, digital or hard copy of all of the data contained on the computer(s).

21. **Within five (5) business days following the service of this Order,**

Defendants and Relief Defendants shall provide the Commission immediate access to all records of Defendants and/or Relief Defendants held by financial institutions located within or outside the territorial United States by signing the Consent to Release of Financial Records attached to this Order and submitting same to counsel for the Commission.

V. SERVICE OF ORDER AND ASSISTANCE OF FEDERAL BUREAU OF INVESTIGATION, UNITED STATES MARSHALS SERVICE AND OTHER LAW ENFORCEMENT

IT IS FURTHER ORDERED that:

23. Copies of this Order may be served by any means, including facsimile transmission, upon any financial institution or other entity or person that may have possession, custody, or control of any documents or assets of any Defendant and/or Relief Defendant or that may be subject to any provision of this Order.

22. Timothy J. Mulreany, JonMarc P. Buffa, Kyong J. Koh, Patricia Gomersall, Jeremy Christianson, and representatives of the Federal Bureau of Investigation, and the United States Marshal Service are specially appointed by the Court to effect service.

23. The Federal Bureau of Investigation and the United States Marshal's Service and other any other cooperating federal, state or local law enforcement officials, are hereby authorized to accompany and assist the Commission's representatives outside and inside the premises of Defendants and/or Relief Defendants, as well as to secure the premises, in the service and execution of this Order.

24. The Commission shall promptly file proof of service with the Court once service has been accomplished.

V. SERVICE ON THE COMMISSION

IT IS FURTHER ORDERED that:

25. The Defendants and Relief Defendants shall comply with all electronic filing rules and requirements of the U.S. District Court of the Middle District of Alabama and shall serve all pleadings, correspondence, notices required by this Order, and other materials on the Commission by delivering a copy to Timothy J. Mulreany, Division of Enforcement, U.S. Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581, by electronic filing, e-mail, personal delivery or courier service (such as Federal Express or United Parcel Service) and not by regular mail due to potential delay resulting from heightened security and decontamination procedures applicable to the Commission's regular mail.

VI. FORCE AND EFFECT

IT IS FURTHER ORDERED that:

26. This Statutory Restraining Order is binding on all parties to this action, their officers, agents, servants, employees, and attorneys, and on those persons in active concert or participation with them who receive actual notice of this Statutory Restraining Order. This Court retains jurisdiction of this matter for all purposes.

27. Plaintiff is directed to comply with Local Rule 4.1, and promptly effect service of process on Defendants and Relief Defendants in accordance with Local Rule 4.1, and to provide Defendants and Relief Defendants with all of the material required by the Local Rules. Plaintiff is under a continuing obligation to notify and serve any papers subsequently filed with the Court on Defendants and Relief Defendants until the preliminary injunction

hearing or until counsel for Defendants and Relief Defendants files a notice of appearance, whichever occurs first.

28. Defendants and Relief Defendants are hereby ordered to **SHOW CAUSE** why the Plaintiff's separately filed Motion for Preliminary Injunction should not be granted, and shall file their response(s) thereto, including all counter or opposing affidavits and a memorandum of legal authority, **within ten (10) days of service**.

29. The **restraining order** will expire 14 days from the date of this order, on **August 10, 2015**.

30. A **HEARING** as to whether this Statutory Restraining Order should be converted to a preliminary injunction will be held on **August 10, 2015 at 10:00 a.m.** in Courtroom 2FMJ of the Frank M. Johnson Jr. United States Courthouse Complex, One Church Street, Montgomery, Alabama, before the undersigned. Counsel shall appear in person and telephonic appearances will not be permitted.

31. The Clerk of the Court is **DIRECTED** to email a copy of this Order to counsel for the Plaintiff and confirm receipt of same.

DONE, this the 27th day of July, 2015.

/s/ Myron H. Thompson
UNITED STATES DISTRICT JUDGE

cc: Counsel of Record