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24 UNITED STATES DISTRICT COURT  
25 CENTRAL DISTRICT OF CALIFORNIA

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21 U.S. Commodity Futures Trading  
22 Commission,

23 Plaintiff,

24 vs.

25 Gordon A. Driver, Axxess Automation  
26 LLC, and Axxess Fund Management  
27 LLC,

28 Defendants.

Case No. SACV09-0578

0AW(R20)  
MAY 14 2009

EX PARTE STATUTORY  
RESTRAINING ORDER Freezing  
Assets, Prohibiting Destruction or  
Alteration of Documents, for  
Expedited Discovery, and an Order to  
Show Cause Why a Preliminary  
Injunction Should Not be Entered

ORIGINAL

1 Plaintiff U.S. Commodity Futures Trading Commission ("Commission" or  
2 "CFTC") has filed a complaint for a preliminary and permanent injunction and  
3 other relief, and moved *ex parte* pursuant to Sections 6c, 4n(3)(A) and 4o(1) of the  
4 Commodity Exchange Act (the "Act"), 7 U.S.C. § 13a-1, 6n(3)(A) and 6o(1)  
5 (2006), Section 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. § 6b(a)(2)(i)-(iii) for conduct  
6 before June 18, 2008, and Section 4b(a)(1)(A)-(C) of the Act, for acts on or after  
7 June 18, 2008, as amended by the Food, Conservation, and Energy Act of 2008,  
8 Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act ("CRA")), §  
9 13102, 122 Stat. 1651 (effective June 18, 2008), to be codified at 7 U.S.C. §  
10 6b(a)(1)(A)-(C), and CFTC Regulations 1.31(a), 4.20(c) and 4.23, 17 C.F.R. §§  
11 1.31(a), 4.20(c) and 4.23, for a statutory restraining order freezing assets,  
12 prohibiting destruction or alteration of books, records or other documents, leave for  
13 the CFTC to engage in expedited asset discovery for the purpose of discovering the  
14 nature, location, status, and extent of assets, and ordering Defendants Gordon A.  
15 Driver ("Driver"), Axxess Automation LLC ("Axxess Automation") and Axxess  
16 Fund Management LLC ("Axxess Fund Management") (collectively the  
17 "Defendants") to show cause why a preliminary injunction should not be issued.

18 The Court has considered the pleadings, the declarations, and the  
19 memorandum of law filed in support of the CFTC's application and now, being  
20 fully advised in the premises, finds that:

- 21 1) This Court has jurisdiction over the subject matter of this case, and Section  
22 6c of the Act, 7 U.S.C. § 13a-1, as amended by the CRA, authorizes the  
23 requested relief;
- 24 2) There is good cause to believe that the Defendants have engaged, are  
25 engaging, or are about to engage in fraud constituting violations of Sections  
26 4b(a)(2)(i)-(iii) (for acts before June 18, 2008) and 4o(1) of the Act, 7  
27 U.S.C. §§ 6b(a)(2)(i)-(iii) and 6o(1), and Section 4b(a)(1)(A)-(C) of the  
28 Act, as amended by the CRA, for acts on or after June 18, 2008, to be

1 codified at 7 U.S.C. § 6b(a)(1)(A)-(C), and in acts constituting violations of  
2 Section 4n(3)(A) of the Act, 7 U.S.C. § 6n(3)(A), and CFTC Regulations  
3 1.31(a), 4.20(c), and 4.23, 17 C.F.R. §§ 1.31(a), 4.20(c), and 4.23;

- 4 3) Absent the entry of this statutory restraining order, the Defendants are likely  
5 to cause the dissipation or transfer of assets and the destruction of business  
6 records. As such, good cause exists for the freezing of Defendants' assets  
7 and for the entry of an Order prohibiting the Defendants from withdrawing,  
8 transferring, removing, dissipating, or disposing of any assets and denying  
9 agents of the CFTC access to inspect and copy records;
- 10 4) Good cause exists for the freezing of Defendants' assets and for entry of an  
11 order prohibiting the destruction or alteration of records and denying agents  
12 of the CFTC access to inspect and copy records;
- 13 5) Good cause exists to permit asset discovery before the meeting of counsel  
14 pursuant to Fed. R. Civ. P. 26(d);
- 15 6) Pursuant to Fed. R. Civ. P. 30(a)(2), immediate depositions are consistent  
16 with the principles of Fed. R. Civ. P. 26(b)(2);
- 17 7) Weighing the equities and considering the CFTC's likelihood of success in  
18 its claims for relief, the issuance of a statutory restraining order is in the  
19 public interest; and
- 20 8) This is a proper case for granting a statutory restraining order to preserve  
21 the status quo, protect customers from loss and damage, and enable the  
22 CFTC to fulfill its statutory duties, therefore the Court orders as follows:

### 23 DEFINITIONS

24 For the purpose of this Order, the following definitions apply:

- 25 1. "Assets" means any legal or equitable interest in, or claim to, any real or  
26 personal property, including but not limited to chattels, goods, instruments,  
27 equipment, fixtures, general intangibles, effects, charts, photographs, audio  
28 and video recordings, computer records, and other data compilations from

1 which information can be obtained and translated, if necessary, through  
2 detection devices into a reasonably usable form. A draft or non-identical copy  
3 is a separate document within the meaning of the term.

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

11 3. The term "Defendants" refers to Gordon A. Driver, Axxess Automation  
12 LLC, and Axxess Fund Management LLC and any person insofar as he or she  
13 is acting in the capacity of an officer, agent, servant, employee, or attorney of  
14 any of the Defendants, and any person who receives actual notice of this Order  
15 by personal service or otherwise insofar as he or she is acting in concert or in  
16 participation with any of the Defendants.

## 17 RELIEF GRANTED

### 18 *I. Asset Freeze*

19 **IT IS HEREBY ORDERED** that the Defendants, except as otherwise  
20 ordered by this Court, are restrained and enjoined from directly or indirectly:

- 21 A. Transferring, selling, alienating, liquidating, encumbering, pledging,  
22 leasing, loaning, assigning, concealing, dissipating, converting,  
23 withdrawing or otherwise disposing of any assets, wherever located,  
24 including assets held outside the United States, except as provided in  
25 this Order, or as otherwise ordered by this Court;
- 26 B. Opening or causing to be opened any safe deposit boxes titled in the  
27 name of or subject to access by any of the Defendants.  
28

1 *II. Identification and Preservation of Assets*

2 **IT IS FURTHER ORDERED**, pending further order of this Court, that any  
3 financial or brokerage institution or business entity that holds, controls or  
4 maintains custody of any account or asset titled in the name of, held for the benefit  
5 of, or otherwise under the control of any of the Defendants, or has held, controlled,  
6 or maintained custody of any such account or asset of any of the Defendants at any  
7 time since at least February 2006 shall:

- 8 A. Prohibit any of the Defendants and all other persons from withdrawing,  
9 removing, assigning, transferring, pledging, encumbering, disbursing,  
10 dissipating, converting, selling or otherwise disposing of any such asset,  
11 except as directed by further order of this Court;
- 12 B. Deny any of the Defendants and all other persons access to any safe deposit  
13 box that is titled in the name of any of the Defendants or otherwise subject to  
14 access by any of the Defendants;
- 15 C. Provide the CFTC, within five (5) business days of receiving a copy of this  
16 Order, a statement setting forth:
- 17 a. the identification, number of each account titled in the name of any of  
18 the Defendants or held on behalf of, or for the benefit of any of the  
19 Defendants or under the control of any of the Defendants;
- 20 b. the balance of each such account, or a description of the nature and  
21 value of such asset as of the close of business on the day which this  
22 Order is served, and, if the account or other asset has been closed or  
23 removed, the date the account was closed or removed, the total funds  
24 removed in order to close the account, the name of the person or entity  
25 to whom such account or other asset was remitted; and
- 26 c. the identification of any safe deposit box that is either titled in the  
27 name of any of the Defendants, or is otherwise subject to access by  
28 any of the Defendants;

- 1 D. Upon request by the CFTC, promptly provide the CFTC with copies of all  
2 records or other documentation pertaining to such account or asset,  
3 including, but not limited to, originals or copies of account applications,  
4 account statements, signature cards, checks, drafts, deposit tickets, transfers  
5 to and from the accounts, all other debit and credit instruments or slips,  
6 currency transaction reports, 1099 forms, trading records, and safe deposit  
7 box logs; and
- 8 E. Cooperate with all reasonable requests of the CFTC relating to  
9 implementation of this Order, including producing records relating to  
10 Defendants' accounts.

11 *III. Accounting of Assets*

12 **IT IS FURTHER ORDERED** that within five (5) business days following  
13 service of this Order, Defendants shall:

- 14 A. Provide the CFTC with a full accounting of all funds, accounts, and assets  
15 both within and outside the United States which are (1) titled in the name of  
16 any of the Defendants; or (2) held by any person or entity, for the benefit of  
17 any of the Defendants; or (3) under any of the Defendants' direct or indirect  
18 control; and
- 19 B. Provide the CFTC access to all records of accounts or assets of any of the  
20 Defendants held by financial institutions located both within and outside the  
21 territorial United States by signing the Consent to Release of Financial  
22 Records attached to this Order.

23 *IV. Maintenance of and Access to Business Records*

24 **IT IS FURTHER ORDERED** that the Defendants, and all persons or  
25 entities who receive notice of this Order by personal service or otherwise, are  
26 restrained and enjoined from directly or indirectly destroying, mutilating, erasing,  
27 altering, concealing or disposing of, in any manner, directly or indirectly, any  
28

1 documents that relate to the business practices or business finances of any of the  
2 Defendants.

3 *V. CFTC's Access to and Inspection of Documents*

4 **IT IS FURTHER ORDERED** that representatives of the CFTC be  
5 immediately allowed to inspect the books, records, and other documents of any of  
6 the Defendants and their agents including, but not limited to, paper documents,  
7 electronically stored data, tape recordings, and computer discs, wherever they may  
8 be situated and whether they are in the possession of any of the Defendants or  
9 others, and to copy said documents, data and records, either on or off the premises  
10 where they may be situated. Upon request of the CFTC, the Defendants are  
11 ordered to deliver to the CFTC documents of any of the Defendants, including but  
12 not limited to all books and records of accounts, all financial and accounting  
13 records, balance sheets, income statements, bank records (including monthly  
14 statements, cancelled checks, records of wire transfers, and check registers), lists of  
15 customers, title documents, other papers, all keys, computer passwords, entry  
16 codes, and combinations to locks necessary to gain or to secure access to any of the  
17 assets or documents of any of the Defendants, including but not limited to, access  
18 to the Defendants' business premises, means of communication, accounts,  
19 computer systems, or other property and information identifying the accounts,  
20 employees, properties, or other assets or obligations of the Defendants.

21 *VI. Service of Order*

22 **IT IS FURTHER ORDERED** that copies of this Order may be served by  
23 any means, including facsimile or e-mail transmission, upon any financial  
24 institution or other entity or person that may have possession, custody, or control  
25 of any documents or assets of any of the Defendants or that may be subject to any  
26 provision of this Order.

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1 *VII. Expedited Asset Discovery*

2 **IT IS FURTHER ORDERED** that the CFTC is granted leave, at any time  
3 after service of this Order, to take the deposition of and demand the production of  
4 documents from any person or entity for the purpose of discovering the nature,  
5 location, status, and extent of assets of any of the Defendants, and the location of  
6 documents reflecting the business transactions of any of the Defendants; forty-  
7 eight (48) hours notice shall be deemed sufficient for any such deposition and five  
8 (5) days notice shall be deemed sufficient for the production of any such  
9 documents.

10 *VIII. Depositions*

11 **IT IS FURTHER ORDERED** that the limitations and conditions set forth  
12 in Fed. R. Civ. P. 30(a)(2)(B) regarding subsequent depositions of an individual  
13 shall not apply to depositions taken pursuant to this Order. No depositions taken  
14 pursuant to Paragraph VII shall count toward the ten-deposition limit set forth in  
15 Fed. R. Civ. P. 30(a)(2)(A).

16 *IX. Service on the CFTC*

17 **IT IS FURTHER ORDERED** that that the Defendants shall serve all  
18 pleadings, correspondence, notices required by this Order, and other materials on  
19 the CFTC by delivering a copy to W. Derek Shakabpa, Senior Trial Attorney,  
20 Division of Enforcement, U.S. Commodity Futures Trading Commission, Eastern  
21 Regional Office, 140 Broadway, 19<sup>th</sup> Floor, New York, New York 10005.

22 *X. Order to Show Cause*

23 **IT IS FURTHER ORDERED** that Defendants shall appear before this  
24 Court on the 22<sup>nd</sup> day of MAY, 2009, at 2<sup>00</sup> o'clock, before the  
25 Honorable OTIS D. WRIGHT at the United States District Court for the  
26 Central District of California, G-8 United States Courthouse, 312 North Spring  
27 Street, Los Angeles, CA, 90012 to show cause why this Court should not enter a  
28 preliminary injunction:



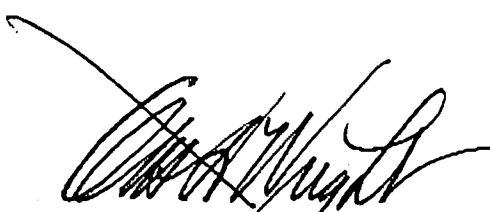
- 1 A. Enjoining the Defendants from further violations of the Act; specifically,  
2 prohibiting the Defendants from violating Sections 4b(a)(2)(i)-(iii), for  
3 acts before June 18, 2008, 4n(3)(A) and 4o(1) of the Act, 7 U.S.C. §§  
4 6(a)(2)(i)-(iii), 6n(3)(A) and 6o(1), and Section 4b(a)(1)(A)-(C) of the  
5 Act, for acts on or after June 18, 2008, as amended by the CRA, to be  
6 codified at 7 U.S.C. § 6b(a)(1)(A)-(C), and CFTC Regulations 1.31(a),  
7 4.20(c), and 4.23, 17 C.F.R. §§ 1.31(a), 4.20(c), and 4.23;  
8 B. Continuing the freeze on the assets of the Defendants;  
9 C. Ordering the Defendants, financial and brokerage institutions, business  
10 entities, and others to provide all documents specified in this Order to the  
11 CFTC; and  
12 D. Ordering any additional relief this Court deems appropriate.

13 Should the Defendants wish to file a memorandum of law or other papers  
14 concerning the issuance of a preliminary injunction against the Defendants, such  
15 materials shall be filed, served and received by all parties at least two (2) business  
16 days before the hearing date ordered above.

17 *XI. Force and Effect*

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

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22 **SO ORDERED** on this 14 day of MAY, 2009.

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UNITED STATES DISTRICT COURT JUDGE  
CENTRAL DISTRICT OF CALIFORNIA