

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

U.S. COMMODITY FUTURES
TRADING COMMISSION

Plaintiff,

v.

EMINI EXPERTS LLC,
CAPITAL TRADING CONCEPTS LLC, and
DANTE S. GIOVANNETTI,

Defendants,

CAPITAL FUTURES LLC,

Relief Defendant.

Civil Action No. 6:14-cv-1766-OL-40 GJK

**ORDER GRANTING
PLAINTIFF'S EX PARTE
APPLICATION FOR
STATUTORY RESTRAINING
ORDER, EXPEDITED
DISCOVERY, ASSET
FREEZE, ORDER TO SHOW
CAUSE REGARDING
PRELIMINARY
INJUNCTION, AND OTHER
EQUITABLE RELIEF**

Plaintiff U.S. Commodity Futures Trading Commission (the "Commission") has filed a complaint for a preliminary and permanent injunction and other relief, and has moved pursuant to Section 6c of the Commodity Exchange Act (the "Act"), for an *ex parte* statutory restraining order freezing assets, granting expedited discovery, prohibiting destruction or denial of access to, books and records and ordering Defendants Emini Experts LLC, Capital Trading Concepts LLC, and Dante S. Giovannetti to show cause why a preliminary injunction should not be issued.

The Court has considered the Complaint, the Declaration of Christopher Giglio, and the Memorandum Of Law Of Plaintiff U.S. Commodity Futures Trading Commission In Support Of Its Application For An Ex Parte Statutory Restraining Order, Asset Freeze, Expedited Discovery,

I CERTIFY THE FOREGOING TO BE A TRUE AND CORRECT COPY OF THE ORIGINAL

Order To Show Cause Regarding Preliminary Injunction, And Other Equitable Relief, and now, being fully advised in the premises, finds that:

SHERYL L. LOESCH, CLERK
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

BY: _____

DEPUTY CLERK

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

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

3. There is good cause to believe that the Defendants, including by and through agents, principals, and control persons, have engaged in, are engaging in, among other things, fraudulently soliciting investors to invest money with Commodity Pool Operators, issuing false trading statements about these investments, commingling investors funds, and making misrepresentations to or concealing material facts from, and failing to cooperate with, the National Futures Association in its investigation of Defendants' conduct.

4. There is good cause to believe that funds that Defendants received from investors were transferred to Relief Defendant, and that Relief Defendant has no legitimate claim to these funds.

5. There is good cause for the Court to freeze assets owned, controlled, managed, or held by or on behalf of, or for the benefit, of Defendants and Relief Defendant.

6. There is good cause for entry of an order prohibiting Defendants, Relief Defendant, their agents, servants, employees, assigns, attorneys, and persons acting in active concert or participation with the 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 those books and records.

7. There is good cause for the Plaintiff to conduct expedited discovery in order to determine the full extent of Defendants' alleged wrongdoing, locate any other investors, identify investor funds and other assets of the Defendants and Relief Defendant, and clarify the source and whereabouts of various funds.

8. Absent the entry of this statutory restraining order, the Defendants and Relief Defendant are likely to dissipate or transfer assets, destroy, or otherwise prevent access to business records.

9. This is a proper case for granting an *ex parte* statutory restraining order to preserve the status quo, to protect public investors, clients or participants 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:

10. The term "asset" 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, insurance policies, and all cash, wherever located, whether in the United States or outside the United States.

11. The term "document" is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 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 one's actual or constructive possession, including but not limited to: (i) all documents within the custody or control of any present or former agents, employers, employees, partners, and (ii) all documents which one has 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.

12. The term "Defendants" refers to Emini Experts LLC, Capital Trading Concepts LLC, and Dante S. Giovannetti and any other person insofar as he or she is acting in the capacity of an officer, agent, servant, employee, or attorney of any of the Defendants, and any person who receives actual notice of this Order by personal service or otherwise insofar as he or she is acting in concert or participation with any of the Defendants. "Defendants" also refers to any d/b/a, successor, affiliate, subsidiary, or other entity owned, controlled, managed, or held by, on behalf of, or for the benefit Emini Experts LLC, Capital Trading Concepts LLC, and Dante S. Giovannetti.

13. The term "Relief Defendant" refers to Capital Futures LLC and any other person insofar as he or she is acting in the capacity of an officer, agent, servant, employee, or attorney of any of Relief Defendant, and any person who receives actual notice of this Order by personal service or otherwise insofar as he or she is acting in concert or participation with Relief Defendant. "Relief Defendant" also refers to any d/b/a, successor, affiliate, subsidiary, or other entity owned, controlled, managed, or held by, on behalf of, or for the benefit Capital Futures LLC.

RELIEF GRANTED

I.

**Asset Freeze Order Prohibiting the Transfer, Removal,
Dissipation, and Disposal of Assets**

IT IS HEREBY ORDERED that:

14. The Defendants and Relief Defendant and their agents, servants, employees, assigns, attorneys, and persons 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' Assets or Relief Defendant's Assets held outside the United States;

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 Defendants or Relief Defendants.

16. The assets affected by this paragraph shall not include assets that have been obtained by the Defendants or Relief Defendants after the entry of this order, unless such assets are derived from or otherwise related to the activities alleged in the Commission's complaint.

II.

Directives to Financial Institutions and Others

IT IS FURTHER ORDERED that:

17. Pending further Order of this Court, any financial or brokerage institution, business entity, or person that holds, controls, or maintains custody of any account or asset titled in the name of, held for the benefit of, or otherwise under the control of any of the Defendants or Relief Defendant, or has held, controlled, or maintained custody of any such account or asset of the Defendants or Relief Defendant, and/or their affiliates, subsidiaries, and assigns, shall:

a. Prohibit Defendants and Relief Defendant and all other persons from withdrawing, removing, assigning, transferring, pledging, encumbering, disbursing, dissipating, converting, selling, or otherwise disposing of Defendants' or Relief Defendant's assets, except as directed by further order of the Court.

b. Deny Defendants and Relief Defendant and all other persons access to any safe deposit box that is: (a) owned, controlled, managed, or held by, on behalf of, or for the benefit of Defendants or Relief Defendant, either individually or jointly; or (b) otherwise subject to access by Defendants or Relief Defendant.

c. Provide promptly, and in any event within forty-eight (48) hours of receiving a copy of this Order, the Commission with (i) the identification number of each and every account or asset owned, controlled, managed, or held by, on behalf of, or for the benefit of Defendants, either individually or jointly; (ii) the balance of each such account, or a description of the nature and value of such asset as of the close of business on the day on

which this Order is served, and, if the account or other asset has been closed or removed, the date closed or removed, the total funds removed in order to close the account, the name of the person or entity to whom such account or other asset was remitted; and (iii) the identification of any safe deposit box that is either owned, controlled, managed, or held by, on behalf of, or for the benefit of Defendants, either individually or jointly, or is otherwise subject to access by the Defendants;

d. Provide within five (5) business days copies of all records or other documentation pertaining to such account or asset requested by the Commission, including, but not limited to, originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, trading records, and safe deposit box logs.

e. Cooperate with all reasonable requests of the Commission relating to implementation of this Order, including producing records related to Defendants' accounts or assets.

**III.
Maintenance of and Access to Business Records**

IT IS FURTHER ORDERED that:

18. The Defendants and all persons or entities who receive 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.

**IV.
Bond Not Required of Plaintiff**

IT IS FURTHER ORDERED that:

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

**V.
Inspection and Copying of Books and Records**

IT IS FURTHER ORDERED that:

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

21. Upon request of the Commission, the Defendants shall within 48 hours cause to be prepared and delivered to the Commission, a detailed and complete schedule of all passwords and identification (ID) numbers for all websites, electronic mail accounts, videophone accounts and all accounts at any bank, financial institution, or brokerage firm (including any introducing broker or futures commission merchant) operated by or to which any of the Defendants has access.

22. Upon request of the Commission, Defendants shall within 48 hours cause to be prepared and delivered to the Commission, a detailed and complete schedule of all desktop computers, laptop computers, and personal digital assistants (PDA) 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/or PDA, and all passwords necessary to access and use the software contained on the computer and/or PDA. The Commission shall be authorized to make an electronic, digital, or hard copy of all of the data contained on the computer(s) and/or PDA(s).

**VI.
Service of Order**

IT IS FURTHER ORDERED that:

23. Copies of this Order may be served by any means, including via overnight delivery to home or business addresses, facsimile transmission, or email upon any Defendant, financial institution, or other entity or person that may have possession, custody, or control of any documents or assets of any Defendant, or that may be subject to any provision of this Order.

24. David Acevedo, David Oakland, Neel Chopra, Christopher Giglio, Lenel Hickson, and Manal M. Sultan, and representatives of the United States Marshals Service are specially appointed by the Court to effect service.

25. The United States Marshals Service is authorized to assist the Commission in the service of the summons, complaint, and this statutory restraining order on the Defendants in accordance with Federal Rule of Civil Procedure 4.

**VII.
Expedited Discovery**

IT IS FURTHER ORDERED that:

26. The Commission is granted leave, at any time after service of this Order, to take the deposition of and demand the production of documents from any person or entity for the purpose of discovering the nature, location, status, and extent of assets of the Defendants, and the location of documents reflecting the business transactions of the Defendants. Forty-eight (48)

hours' notice, personally, by facsimile, by overnight delivery, or by electronic mail, shall be deemed sufficient for any such deposition and five (5) days' notice, personally, by facsimile, by overnight delivery, or by electronic mail, shall be deemed sufficient for the production of any such documents.

27. The Commission may conduct expedited discovery to enable the Commission to fulfill its statutory duties and protect investors from further loss or damage. This expedited discovery will allow the Commission to determine the full extent of Defendants' alleged wrongdoing (including, but not limited to, the possible involvement of others), locate Defendants' other investors, identify investors' funds and other assets, and clarify the sources of various funds.

28. The limitations and conditions set forth in Federal Rule of Civil Procedure 30(a)(2)(A) regarding subsequent depositions of an individual shall not apply to depositions taken pursuant to this Order. No depositions taken pursuant to this Section shall count toward the ten-deposition limit set forth in Federal Rule of Civil Procedure 30(a)(2)(A).

VIII.
Service on the Commission

IT IS FURTHER ORDERED that:

29. The Defendants shall comply with all electronic filing rules and requirements of the U.S. District Court for the Middle District of Florida and shall serve all pleadings, correspondence, notices required by this Order, and other materials on the Commission by delivering a copy to David Acevedo, Chief Trial Attorney, Division of Enforcement, U.S. Commodity Futures Trading Commission, Eastern Regional Office, 140 Broadway, 19th Floor, New York, New York 10005 by electronic filing, email, personal delivery, overnight 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.

IX.
Order to Show Cause

IT IS FURTHER ORDERED that:

30. Defendants shall appear before this Court on November 7 2014, at 10:00 A.M., before the Honorable Paul G. Byron, Room 4/B, at United States Courthouse, Orlando, Fla. etc., to show cause why this Court should not continue the freeze on the assets of the Defendants and why an order should not be issued pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), ordering that:

- A. Defendants and any of their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with the Defendants, including any successor thereof, be restrained and preliminarily enjoined from further violations of the Act and Commission Regulations; specifically, prohibiting the Defendants from engaging in conduct in violation of Sections 4b(a)(1)(A)-(C) of the Act, 7 U.S.C. §§ 6b(a)(1)(A)-(C) (2012); Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2012); Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2012); Section 6(c)(1) of the Act, 7 U.S.C. § 9(c)(1); Section 9(a)(4) of the Act, 7 U.S.C. § 9(a)(4); and Regulations §§ 4.20(c), 4.30(a) and 180.1(a), 17 C.F.R. §§ 4.20(C), 4.30(a) and 180.1(a);
- B. Defendants and any of their agents, servants, employees, assigns, attorneys, and persons in active concert of participation with the Defendants, including any successor thereof, be prohibited from directly or indirectly:
 - i. Cheating or defrauding or attempting to cheat or defraud any other person, or willfully making or causing to be made any false report or statement thereof, or willfully deceiving or attempting to deceive any other person by any means whatsoever, in or in connection with any order to make, or the making of, any contract of sale of any commodity in interstate commerce or for future delivery that is made, or to be made, on or subject to the rules of a designated contract market, by, among other things, soliciting potential clients or participants with and sending to existing clients or participants false accounts statements in violation of Section 4b(1)(A)-(C);

- ii. Employing use of the mails or any means of interstate commerce in connection with its business as a CPO, while failing to so register, in violation Section 4m(1) of the Act;
- iii. Employing any device, scheme or artifice to defraud any client or participant or prospective client or participants, or engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or participant or prospective client or participant by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, while acting as a CPO or an associate person of a CPO, as defined in Section 1a(11) of the Act, 7 U.S.C. § 1a(11), and Commission Regulations 1.3(aa) and 1.3(bb), 17 C.F.R. §§ 1.3(aa)-(bb), in violation of Section 4o of the Act, 7 U.S.C. § 6o(1);
- iv. Using or employing , or attempting to use or employ, in connection with any swap, or a contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, any manipulative or deceptive device, scheme or artifice to defraud, or making or attempting to make any untrue or misleading statement of a material fact or to omit to state a material fact necessary in order to make the statements made not untrue or misleading, or engaging or attempting to engage in any act, practice, or course of business, which operates or would operate as a fraud or deceit upon any person, by, among other things, soliciting potential clients or participants with and sending to existing clients or participants false accounts statements, in violation of Section 6(c)(1) of the Act, 7 U.S.C. § 9(c)(1), and Commission Regulation 180.1(a), 17 C.F.R. § 180.1(a);
- v. Willfully falsifying, concealing, or covering up by any trick, scheme or artifice a material fact, making any false, fictitious, or fraudulent statements or representations, or making or using any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry to a registered entity, board of trade, or futures association designated or registered under the Act acting in furtherance of its official duties under the Act, in violation of Section 9(a)(4) of the Act, 7 U.S.C. § 13(a)(4);
- vi. Commingling the property of any pool that it operates or that it intends to operate with the property of any other person, in violation of Commission Regulation 4.20(c), 17 C.F.R. § 4.20(c); and/or
- vii. Soliciting, accepting or receiving from an existing or prospective client funds, securities or other property in a commodity trading advisor's name (or extend credit in lieu thereof) to purchase, margin, guarantee or secure any commodity interest of the client, in violation of Commission Regulation 4.30(a), 17 C.F.R. § 4.30(a).

- C. Defendants and any of their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with the Defendants, including any successor thereof, be prohibited from directly or indirectly:
1. Engaging in any activity related to trading in any commodity, as that term is defined in Section 1a(4) of the Act, 7 U.S.C. § 1a(4) (“commodity interest”), including but not limited to the following:
 - a. Trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(29) of the Act, 7 U.S.C. § 1a(29));
 - b. Entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 1.3(hh), 17 C.F.R. § 1.3(hh) (“commodity options”), swaps (as that term is defined in Section 1a(47) of the Act, 7 U.S.C. § 1a(47), and as further defined by Commission regulation 1.3(xxx), 17 C.F.R. § 1.3(xxx)), security futures products and/or foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act, 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i)) (“forex contracts”) for his own personal account or for any account in which any Defendant has a direct or indirect interest;
 - c. Having any commodity futures, options on commodity futures, commodity options, security futures products, swaps, and/or forex contracts traded on their behalf;
 - d. Controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity futures, options on commodity futures, commodity options, swaps, security futures products and/or forex contracts;
 - e. Soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling any commodity futures, options on commodity futures, commodity options, swaps, security futures products and/or forex contracts;
 - f. Applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission, except

as provided for in Commission Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9); and

g. Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a)), agent, or any other officer or employee of any person registered, exempted from registration, or required to be registered with the Commission, except as provided for in Commission Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9);

D. the Court's Order Granting Plaintiff's *Ex Parte* Motion for Statutory Restraining Order, Expedited Discovery, Asset Freeze, Order to Show Cause, And Other Equitable Relief remain in full force and effect until further order of the Court;

E. and granting any additional relief this Court deems appropriate.

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


FORCE AND EFFECT OF ORDER

IT IS FURTHER ORDERED that:

32. This Order shall remain in full force and effect until further order of this Court, and this Court retains jurisdiction of this matter for all purposes.

SO ORDERED.

On this 30th day of October 2014 at 10:52am.


UNITED STATES DISTRICT JUDGE
United States District Court
Middle District of Florida