

DANIEL

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
MANHATTAN DIVISION

UNITED STATES COMMODITY
FUTURES TRADING COMMISSION,

Plaintiff,

v.

ANTHONY J. KLATCH II; AMERICAN
PRIVATE EQUITY, LLC; ARM CAPITAL
MANAGEMENT, LLC; TASK CAPITAL
MANAGEMENT, LLC; VIGILANT
CAPITAL MANAGEMENT, LLC,

Defendants.

Civil Action No. 11CV5191(GBD)

(PROPOSED) ORDER GRANTING
PLAINTIFF'S *EX PARTE*
EMERGENCY MOTION FOR
STATUTORY RESTRAINING
ORDER, EXPEDITED DISCOVERY,
PRELIMINARY INJUNCTION AND
OTHER EQUITABLE RELIEF

This matter came before the Court for hearing on July 27, 2011, on

Plaintiff's *Ex Parte* Emergency Motion for Statutory Restraining Order, Expedited Discovery, Preliminary Injunction, and Other Equitable Relief, and Memorandum in Support ("Motion") in the above-captioned proceeding. The Court, having considered the Motion, memorandum in support, and all other evidence presented by Plaintiff, and having heard the arguments of Plaintiff's counsel, finds that:

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

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

3. There is good cause to believe that Anthony J. Klatch II; American Private Equity, LLC; ARM Capital Management, LLC; TASK Capital Management, LLC; and Vigilant Capital Management, LLC (hereinafter, collectively “Defendants”) have engaged, are engaging, and are about to engage in acts and practices constituting violations of the Act, to be codified at 7 U.S.C. §§ 1 *et seq.*, the Act as Amended by the CRA, and Commission Regulations (“Regulations”), 17 C.F.R. §§ 1.1, *et seq.* (2011).

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

5. Good cause exists for the freezing of assets owned, controlled, managed, or held by, on behalf of, or for the benefit of Defendants.

6. Good cause exists for entry of an order prohibiting Defendants, their agents, servants, employees, assigns, attorneys, and persons 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. Good cause exists for the Plaintiff to conduct expedited discovery in order to determine the full extent of Defendants’ alleged wrongdoing, locate Defendants’ other pool participants, identify pool participants’ and pool funds and other of the assets of the Defendants, and clarify the source and disposition of various funds.

8. Weighing the equities and considering the Commission’s likelihood of success in its claims for relief, the issuance of a statutory restraining order is in the public interest.

DEFINITIONS

For purposes of this Order, the following definitions apply:

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

10. “Assets” means any legal or equitable interest in, right to, or claim to, any real or personal property, whether individually or jointly, direct or indirect control, 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 futures or option contracts), insurance policies, and all cash.

11. “Defendants” shall mean and refer to not only Anthony J. Klatch II; American Private Equity, LLC; ARM Capital Management, LLC; TASK Capital Management, LLC; and Vigilant Capital Management, LLC, but also to any d/b/a, successor, affiliate, subsidiary, or other entity owned, controlled, managed, or held by, on behalf of, or for the benefit of Anthony J. Klatch II; American Private Equity, LLC; ARM Capital Management, LLC; TASK Capital Management, LLC; and Vigilant Capital Management, LLC.

RELIEF GRANTED

I. Order Against Transfer, Dissipation, and Disposal of Assets

IT IS HEREBY ORDERED that:

12. Defendants, 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 restrained and enjoined from directly or indirectly transferring, selling, alienating, liquidating, encumbering, pledging, leasing, loaning, assigning, concealing, dissipating, converting, withdrawing, or otherwise disposing of any of the Assets, wherever located, including the Assets held outside the United States, except as provided in Section II of this Order, or as otherwise ordered by the Court. The assets affected by this paragraph shall include both existing assets and assets acquired after the effective date of this Order.

13. 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.

II. Accounting and Transfer of Funds and Documents

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

14. Provide the Commission with a full detailed accounting of all funds, documents, and assets, including the Assets, inside and outside of the United States that are held by each and every Defendant for their benefit, or under their direct or indirect control, whether jointly or singly;

15. Transfer to the territory of the United States all funds, documents, and assets, including the Assets (other than real property), located outside the United States that are held by

each and every Defendant for their benefit, or under their direct or indirect control, whether jointly or singly; and

16. Provide the Commission immediate access to all records of 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.

III. Directives to Financial Institutions and Others

IT IS FURTHER ORDERED, pending further Order of this Court, that any financial or brokerage institution, business entity, or person that holds or has held, controls or has controlled, or maintains or has maintained custody of any of the Assets at any time since December 1, 2007, shall:

17. Prohibit Defendants and all other persons from withdrawing, removing, assigning, transferring, pledging, encumbering, disbursing, dissipating, converting, selling, or otherwise disposing of the Assets, except as directed by further Order of the Court;

18. Deny Defendants 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, either individually or jointly, whether in the name, alias, or fictitious "doing business as" name; or (b) otherwise subject to access by Defendants;

19. Provide counsel for the Commission, within five (5) business days of receiving a copy of this Order, a statement setting forth: (a) the identification number of each and every account or other asset owned, controlled, managed, or held by, on behalf of, or for the benefit of Defendants (as defined above), either individually or jointly; (b) 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, and the name of the person or entity to whom such account or other asset was remitted; and (c) the identification of any safe deposit box that is 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 Defendants; and

20. Upon request by the Commission promptly provide the Commission with copies of all records or other documentation pertaining to such account or asset, 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, Forms 1099, and safe deposit box logs.

IV. Maintenance of Business Records

IT IS FURTHER ORDERED that:

21. Defendants, their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with the Defendants, including any successor thereof, and all other persons or entities who receive notice of this Order by personal service or otherwise, are restrained and enjoined 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 Defendants.

V. Inspection and Copying of Books and Records

IT IS FURTHER ORDERED that:

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

23. Defendants, their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with the Defendants, including any successor thereof, who receive actual notice of this Order by personal service or otherwise, including facsimile transmission, shall cooperate fully with the Commission to locate and provide to representatives of the Commission all books and records of Defendants, wherever such books and records may be situated, and to locate and provide to representatives of the Commission information regarding the whereabouts of Defendants.

24. Defendants, and their subsidiaries, affiliates, and their officers, agents, servants, employees and attorneys, shall, within 24 hours of the issuance of this Order, 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.

25. Defendants, and their subsidiaries, affiliates, and their officers, agents, servants, employees and attorneys, shall, within 24 hours of the issuance of this Order, cause to be

prepared and delivered to the Commission, a detailed and complete schedule of all desk top computers, laptop computers and/or personal digital assistants (PDA) owned and/or used by them in connection with Defendants' business. The schedules required by this section shall include at a minimum the make, model and description of each computer and/or PDA, along with its 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).

26. All persons, including but not limited to the Defendants, their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with any Defendant, including any successor thereof, and any persons who receive actual notice of this Order by personal service or otherwise, are enjoined from in any way interfering with or in any way disturbing the assets and from filing or prosecuting any actions or proceedings which involve or which affect the assets, specifically including any proceeding initiated pursuant to the United States Bankruptcy Code or pursuant to New York statutes, except with the prior permission of this Court.

27. Defendants, their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with the Defendants, including any successor thereof, and any persons who receive actual notice of this Order by personal service or otherwise, shall cooperate in every way with the Commission and others working with them and provide such information related to the assets as the Commission reasonably request.

VI. Order Granting Expedited Discovery

IT IS HEREBY ORDERED that:

28. The Commission may conduct expedited discovery, removing the prohibition upon discovery before the early meeting of counsel pursuant to FRCP 26(f), in accordance with FRCP 26(d), and that the Commission may take depositions of Defendants and non-parties subject to two calendar days notice pursuant to FRCP 30(a) and 45, that notice may be given personally, by facsimile, or by electronic mail, and more than ten depositions may be taken.

29. 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 pool participants, identify pool participants' and pool funds and other of the Assets, and clarify the sources of various funds.

VII. Order Appointing Temporary Receiver

IT IS FURTHER ORDERED that:

30. Mark Silverio is appointed as Temporary Receiver of American Private Equity, LLC; ARM Capital Management, LLC; TASK Capital Management, LLC; and Vigilant Capital Management, LLC (collectively the "Receivership Defendants"), and their subsidiaries and affiliates, with full powers of an equity receiver, including, but not limited to, full power over all funds, assets, collateral, premises (whether owned, leased, occupied, or otherwise controlled), choses in action, books, records, papers and other property belonging to, being managed by or in the possession of or control of the Receivership Defendants, and their subsidiaries and affiliates. The Court makes this appointment of a Temporary Receiver after having duly considered the qualifications and experience of said Temporary Receiver and determining said Temporary Receiver qualified. The Temporary Receiver shall be the agent of

this Court in acting as Temporary Receiver under this Order. The Temporary Receiver is immediately authorized, empowered and directed:

- A. to have access to and to collect and take custody, control, possession, and charge of all funds, assets, collateral, premises (whether owned, leased, occupied, or otherwise controlled), choses in action, books, records, papers and other real or personal property, wherever located, of or managed by the Receivership Defendants, and their subsidiaries and affiliates, with full power to sue, foreclose, marshal, collect, receive, and take into possession all such property (including access to and taking custody, control, and possession of all such Receivership Defendants property, and that of their subsidiaries and affiliates;
- B. to have control of, and to be added as the sole authorized signatory for, all accounts of the entities in receivership, including all accounts at any bank, title company, escrow agent, financial institution or brokerage firm (including any futures commission merchant) which has possession, custody or control of any assets or funds of the Receivership Defendants, and their subsidiaries and affiliates, or which maintains accounts over which the Receivership Defendants, and their subsidiaries and affiliates, and/or any of their employees or agents have signatory authority;
- C. to conduct such investigation and discovery as may be necessary to locate and account for all of the assets of or managed by the Receivership Defendants, and their subsidiaries and affiliates, and to engage and employ attorneys, accountants and other persons to assist in such investigation and discovery;

- D. to take such action as is necessary and appropriate to preserve and take control of and to prevent the dissipation, concealment, or disposition of any assets of or managed by the Receivership Defendants, and their subsidiaries and affiliates;
- E. to make an accounting, as soon as practicable, to this Court, the Commission, and any interested government agencies of the assets and financial condition of the Receivership Defendants, and to file the accounting with the Court and deliver copies thereof to all parties;
- F. to make such payments and disbursements from the funds and assets taken into custody, control, and possession or thereafter received by him or her, and to incur, or authorize the making of, such agreements as may be necessary and advisable in discharging his or her duties as Temporary Receiver;
- G. to employ attorneys, accountants and others to investigate and, where appropriate, to institute, pursue, and prosecute all claims and causes of action of whatever kind and nature which may now or hereafter exist as a result of the activities of present or past employees or agents of the Receivership Defendants, and their subsidiaries and affiliates; and
- H. to have access to and monitor all mail, electronic mail, and videophone of the entities in receivership in order to review such mail and e-mail which he or she deems relates to their business and the discharging of his or her duties as temporary receiver.

31. Defendants and their subsidiaries, affiliates, including all the other entities in receivership, and their officers, agents, servants, employees and attorneys, shall, within 24 hours of the issuance of this Order, caused to be prepared and delivered to the Temporary Receiver, 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 Defendant has access.

32. Defendants and their subsidiaries, affiliates, including all the other entities in receivership, and their officers, agents, servants, employees and attorneys, shall, within 24 hours of the issuance of this Order, caused to be prepared and delivered to the Temporary Receiver, a detailed and complete schedule of all desk top computers, laptop computers and/or personal digital assistants (PDA) owned and/or used by them in connection with their business. In the case of Defendant Klatch, he shall, within 24 hours of the issuance of this Order, caused to be prepared and delivered to the Temporary Receiver, a detailed and complete schedule of all desk top computers, laptop computers and/or personal digital assistants (PDA) owned and/or used by him for any purpose. The schedules required by this section shall include at a minimum the make, model and description of each computer and/or PDA, along with its location, the name of the person primarily assigned to use computer and/or PDA, and all passwords necessary to access and use the software contained on the computer and/or PDA. The Temporary Receiver 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).

33. Defendants and their subsidiaries, affiliates, including all the other entities in receivership, and their officers, agents, servants, employees and attorneys, and any other persons who are in custody, possession or control of any assets, collateral, books, records, papers or other property of or managed by any entities in receivership, shall forthwith give access and control of such property to the Temporary Receiver and cooperate with and assist the Temporary Receiver

and shall take no action, directly or indirectly, to hinder, obstruct, or otherwise interfere with the Temporary Receiver or his or her attorneys, accountants, employees or agents, having access or gaining control of such property, or in the conduct of the Temporary Receiver's duties or to interfere in any manner, directly or indirectly, with the custody, possession, management, or control by the Temporary Receiver of the funds, assets, collateral, premises, and choses in action described above.

34. No officer, agent, servant, employee, or attorney of Defendants shall take any action or purport to take any action, in the name of or on behalf of the Receivership Defendants without the written consent of the Temporary Receiver or order of this Court.

35. Defendants and their subsidiaries and affiliates, shall pay the costs, fees and expenses of the Temporary Receiver incurred in connection with the performance of his or her duties described in this Order, including the costs and expenses of those persons who may be engaged or employed by the Temporary Receiver to assist him or her in carrying out his or her duties and obligations. All applications for costs, fees and expenses for services rendered in connection with the receivership other than routine and necessary business expenses in conducting the receivership, such as salaries, rent and any and all other reasonable operating expenses, shall be made by application setting forth in reasonable detail the nature of the services and shall be heard by the Court.

36. No bond shall be required in connection with the appointment of the temporary receiver. Except for an act of gross negligence, the temporary receiver shall not be liable for any loss or damage incurred by any of Defendants, their officers, agents, servants, employees and attorneys or any other person, by reason of any act performed or omitted to be performed by the temporary receiver in connection with the discharge of his or her duties and responsibilities.

37. Representatives of the Commission and any other interested government agency are authorized to have continuing access to inspect or copy any or all of the corporate books and records and other documents of Defendants and the other entities in receivership, and continuing access to inspect their funds, property, assets and collateral, wherever located.

VIII. Injunction Against Interference in the Temporary Receiver's Performance of Duties

38. Absent express permission and leave by this Court, during the pendency of this receivership, all clients, investors, trust beneficiaries, note holders, creditors, claimants, lessors, and all other persons or entities seeking relief of any kind from Defendants' Assets (other than the present action by the Commission and/or any action brought by the U.S. Securities and Exchange Commission or any Federal criminal action), in law or in equity, and all persons acting on behalf of any such investor, trust beneficiary, note holder, creditor, claimant, lessor, consultant group, or other person, including sheriffs, marshals, and all officers and deputies, and their respective attorneys, servants, agents and employees, are, until further order of this Court, hereby are restrained and enjoined from doing anything, directly or indirectly, to interfere with the Temporary Receiver's performance of his or her duties and the administration of Defendants' Assets. Accordingly, all such persons are enjoined from engaging in any self-help, including set-offs, and from filing or prosecuting any actions or proceedings which involve the Temporary Receiver or which affect Defendants' Assets, specifically including any proceeding initiated pursuant to the United States Bankruptcy Code, except with prior permission of this Court. Moreover, any such actions that are so authorized shall be filed in this Court.

IX. Bond Not Required of Plaintiff

IT IS FURTHER ORDERED that:

39. Plaintiff Commission is an agency of the United States of America and, accordingly, need not post a bond.

X. Order to Show Cause

IT IS FURTHER ORDERED that:

40. Defendant shall appear before this Court on the 4 day of August, 2011, at 10:00, a.m., before the Honorable George B. Daniels at the United States Courthouse for the Southern District of New York, 500 Pearl Street, New York, NY 10007, to show cause, if there be any, why an Order for Preliminary Injunction should not be granted to prohibit further violations of the Act and why the other relief requested should not be granted pending trial on the merits of this action.

41. Should any party wish to file a memorandum of law or other papers in opposition to Plaintiff's Motion for a Preliminary Injunction, all papers shall be filed on or before August 1, 2011 and served via facsimile or overnight delivery to the Commission's Washington D.C. office no later than 5 o'clock p.m. on August 1, 2011. Any reply papers shall be filed with the Court and delivered to opposing counsel no later than 5 o'clock p.m. on August 3, 2011. Service of all papers shall be by electronic mail, facsimile, or personal service.

XI. Service

IT IS FURTHER ORDERED that:

42. Copies of this Order may be served by any means, including facsimile transmission, upon any entity or person that may have possession, custody, or control of any documents or the Assets that may be subject to any provision of this Order, and, additionally, that Andrew Ridenour, Brian Walsh, Jessica Harris, Kenneth McCracken, Erica Bodin and

Richard Glaser, or representatives thereof, and representative(s) of the U.S. Marshal Service are specially appointed by the Court to effect service. Further, service of the Summons, Complaint, or other process may be effected by any Commission representative, any U.S. Marshal or deputy U.S. Marshal, or in accordance with FRCP 4, and service on corporate entities may be effected by serving the Summons, Complaint, or other process via overnight delivery to the registered agent of said corporate entities.

43. U.S. Marshal's Office as well as state and local law enforcement agencies are authorized to accompany and to assist the Commission's representatives outside and inside the premises, as well as secure the premises, in the service and execution of this Order and to undertake such efforts as are reasonably necessary to ensure that the Commission's representatives have an unimpeded right to inspect and copy books, records and documents as set forth above.

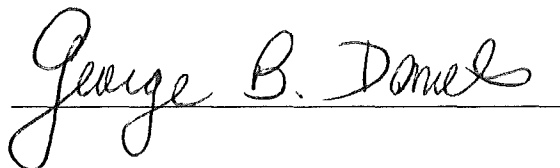
XII. Force and Effect

IT IS FURTHER ORDERED that:

44. 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.

IT IS SO ORDERED, at New York, New York on the 27 day of

July, 2011, at 10:30 a.m.



UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF NEW YORK



CONSENT TO RELEASE OF FINANCIAL RECORDS

I, _____, a resident of _____, do hereby direct any bank, trust, or other financial company, as well as any of its officers, employees, and agents, at which I have or had a bank account or other financial account of any kind operated under my name or any other name (including any corporation or other entity) for which I am or was authorized to draw on the account, to disclose all information and deliver copies of all documents of every nature in the bank's, trust's, or other financial company's possession or control which relate to said bank or other financial accounts to any attorney or investigator of the United States Commodity Futures Trading Commission and to give evidence relevant thereto, in the matter of *United States Commodity Futures Trading Commission v. Anthony J. Klatch II, et al.*, Case No. _____, now pending before the United States District Court for the Southern District of New York, and this shall be irrevocable authority for so doing. This direction is intended to apply to not only the laws of the United States, but also to the law of countries other than the United States which restrict or prohibit the disclosure of bank information without the consent of the holder of the account, and shall be construed as consent with respect thereto, and the same shall apply to any of the bank accounts or other financial accounts for which I may be a relevant principal.

Dated: _____

Signature