

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF CALIFORNIA

3 U.S. COMMODITY FUTURES TRADING )  
4 COMMISSION and THE PEOPLE OF THE )  
5 STATE OF CALIFORNIA, by and through the )  
6 CALIFORNIA CORPORATIONS )  
7 COMMISSIONER, )  
8 )  
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15 )

Plaintiffs,

vs.

MOHIT A. KHANNA, an individual, and MAK )  
1 ENTERPRISES GROUP, LLC, a Nevada )  
limited liability company, )

Defendants; and )

FIRST OPPORTUNITIES MANAGEMENT )  
GROUP, INC., a Nevada corporation, )

Relief Defendant. )

Case No. 09cv1783 BEN (CAB)

ORDER GRANTING PLAINTIFF'S *EX PARTE* APPLICATION FOR STATUTORY RESTRAINING ORDER, APPOINTMENT OF RECEIVER, AN ACCOUNTING, EXPEDITED DISCOVERY, ORDER TO SHOW CAUSE REGARDING PRELIMINARY INJUNCTION, AND OTHER EQUITABLE RELIEF

16 Plaintiff U.S. Commodity Futures Trading Commission ("Commission") filed an *Ex*  
17 *Parte* Application for Statutory Restraining Order, Appointment of Receiver, An  
18 Accounting, Expedited Discovery, Order to Show Cause Regarding Preliminary Injunction,  
19 and Other Equitable Relief (the "Application") on August 17, 2009. The Court, having  
20 considered the Application and all other evidence presented by the Commission, finds that:

21  
22 1. This Court has jurisdiction over the parties and over the subject matter of this  
23 action pursuant to Section 6c of the Commodity Exchange Act ("Act"), 7 U.S.C. §§ 13a-1  
24 and Section 2(c)(2)(C)(i)-(iii) of the Act as amended by the Food, Conservation, and Energy  
25 Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act ("CRA")), §§  
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1 13101-13204, 122 Stat. 1651(enacted June 18, 2008) (to be codified at 7 U.S.C. §  
2 2(c)(2)(C)(i)-(iii)).

3           2. Venue lies properly within this District pursuant to Section 6c(e) of the Act,  
4  
5 7 U.S.C. § 13a-1(e) (2006).

6           3. There is good cause to believe that Defendants MAK 1 ENTERPRISES GROUP,  
7 LLC (“MAK 1”) and MOHIT A. KHANNA (“KHANNA”) (hereinafter collectively  
8 “Defendants”) have engaged, are engaging, and are about to engage in acts and practices  
9  
10 constituting violations of the Act.

11           4. There is good cause to believe that Relief Defendant FIRST OPPORTUNITIES  
12 MANAGEMENT GROUP, INC. (“First Opportunities”) (“Relief Defendant”) has received, is  
13 receiving, and is about to receive funds, assets or property as a result of Defendants’ violative  
14 acts and practices and has been unjustifiably enriched thereby. The Relief Defendant does not  
15  
16 have any legitimate interest or entitlement to these funds, assets or property received as a result  
17 of Defendants’ violative conduct.

18           5. There is good cause to believe that immediate and irreparable damage to the  
19 Court’s ability to grant effective final relief for customers in the form of monetary redress  
20  
21 will occur from the sale, transfer, assignment, or other disposition by Defendants and Relief  
22 Defendant of assets or records unless Defendants and Relief Defendant are immediately  
23 restrained and enjoined by Order of the Court.

24           6. Good cause exists for the freezing of assets owned, controlled, managed, or held  
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26 by, on behalf of, or for the benefit of Defendants and Relief Defendant (hereinafter “assets”).  
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1           7. Good cause exists for entry of an order prohibiting Defendants and Relief  
2 Defendant, their agents, servants, employees, assigns, attorneys, and persons in active concert  
3 or participation with the Defendants and Relief Defendant, including any successor thereof,  
4 from destroying records and/or denying agents of the Commission access to, inspect and  
5 copy records to ensure that Commission representatives have immediate and complete access  
6 to those books and records.  
7

8           8. Good cause exists for the appointment of a Receiver to take control of all assets  
9 owned, controlled, managed or held by, on behalf of, or for the benefit of Defendants  
10 (“Defendants' Assets”) and Relief Defendant (“Relief Defendant’s Assets”) in order to  
11 preserve assets, investigate and determine customer claims, determine unlawful proceeds  
12 retained by Defendants and Relief Defendant and amounts due to customers as a result of  
13 Defendants alleged violations, and distribute remaining funds under the Court's supervision.  
14

15           9. Good cause exists to require an accounting to determine the location and  
16 disposition of customer funds.  
17

18           10. Good cause exists to order repatriation of assets controlled by Defendants and  
19 Relief Defendant to assure payment of restitution and disgorgement as authorized and for the  
20 benefit of customers.  
21

22           11. Good cause exists for the Plaintiff and the Receiver to conduct expedited  
23 discovery in order to determine the full extent of Defendants’ alleged wrongdoing, locate  
24 Defendants’ other customers, identify customers’ funds and other assets, and clarify the  
25 source of various funds.  
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1 12. Weighing the equities and considering the Commission’s likelihood of success in  
2 its claims for relief, the issuance of a statutory restraining order is in the public interest.

3 **DEFINITIONS**

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

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6 13. The term “document” is synonymous in meaning and equal in scope to the usage  
7 of the term in the Federal Rules of Civil Procedure (“FRCP”) 34(a), and includes, but is not  
8 limited to, writings, drawings, graphs, charts, photographs, audio and video recordings,  
9 computer records, and other data compilations from which information can be obtained and  
10 translated, if necessary, through detection devices into reasonably usable form. A draft or  
11 non-identical copy is a separate document within the meaning of the term.  
12

13 14. The term “assets” means any legal or equitable interest in, right to, or claim to,  
14 any real or personal property, whether individually or jointly, directly or indirectly  
15 controlled, and wherever located, including but not limited to: chattels, goods, instruments,  
16 equipment, fixtures, general intangibles, effects, leaseholds, mail or other deliveries,  
17 inventory, checks, notes, accounts (including, but not limited to, bank accounts and accounts  
18 at other financial institutions), credits, receivables, lines of credit, contracts (including spot,  
19 futures, or option contracts), insurance policies, and all cash, wherever located.  
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22 15. “Defendants” shall mean and refer to not only MAK 1 and KHANNA, but also to  
23 any d/b/a, successor, affiliate, subsidiary, or other entity owned, controlled, managed, or held  
24 by, on behalf of, or for the benefit of MAK 1 and/or KHANNA.  
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1 16. "Relief Defendant" shall mean and refer to not only FIRST OPPORTUNITIES,  
2 but also to any d/b/a, successor, affiliate, subsidiary, or other entity owned, controlled,  
3 managed, or held by, on behalf of, or for the benefit of FIRST OPPORTUNITIES.  
4

5 **RELIEF GRANTED**

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

7 **IT IS HEREBY ORDERED that:**

8 17. Defendants, Relief Defendant, and their agents, servants, employees, assigns,  
9 attorneys, including any successor thereof, and persons in active concert or participation with  
10 them, who receive actual notice of this Order by personal service or otherwise, are  
11 immediately restrained and enjoined from directly or indirectly transferring, selling,  
12 alienating, liquidating, encumbering, pledging, leasing, loaning, assigning, concealing,  
13 dissipating, converting, withdrawing, or otherwise disposing of any of Defendants' Assets or  
14 Relief Defendant's Assets, wherever located, including Defendants' Assets and/or Relief  
15 Defendant's Assets held outside the United States, except as provided in Section II of this  
16 Order, or as otherwise ordered by the Court. The assets affected by this paragraph shall  
17 include both existing assets and those assets acquired after the effective date of this Order.  
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20 18. Defendants and Relief Defendant are immediately restrained and enjoined from  
21 directly or indirectly opening or causing to be opened any safe deposit boxes titled in the  
22 name of, or subject to access by, Defendants or Relief Defendant.  
23

24 **II. Accounting and Transfer of Funds and Documents**

25 **IT IS FURTHER ORDERED,** that **within five (5) business days** following the  
26 service of this Order, Defendants and Relief Defendant shall:  
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1 19. Provide the Commission and the Receiver with a full detailed accounting of all  
2 funds, documents, and assets, including the assets inside and outside of the United States that  
3 are held by each and every Defendant or Relief Defendant, for their benefit, or under their  
4 direct or indirect control, whether jointly or singly;  
5

6 20. Transfer to the territory of the United States and to the possession, custody, and  
7 control of the Receiver, all funds, documents, and assets, including the assets (other than real  
8 property), located outside the United States that are held by each and every Defendant or  
9 Relief Defendant, for their benefit, or under their direct or indirect control, whether jointly or  
10 singly; and  
11

12 **III. Directives to Financial Institutions and Others**

13 **IT IS FURTHER ORDERED**, pending further Order of this Court, that any  
14 financial or brokerage institution, business entity, or person that holds or has held, controls or  
15 has controlled, or maintains or has maintained custody of any of the assets at any time since  
16 January 1, 2000, shall:  
17

18 21. Prohibit Defendants, Relief Defendant, and all other persons from withdrawing,  
19 removing, assigning, transferring, pledging, encumbering, disbursing, dissipating,  
20 converting, selling, or otherwise disposing of the assets, except as directed by further Order  
21 of the Court;  
22

23 22. Deny Defendants and Relief Defendant and all other persons (except for the  
24 Commission or the Receiver) access to any safe deposit box that is: (a) owned, controlled,  
25 managed, or held by, on behalf of, or for the benefit of Defendants or Relief Defendant,  
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1 either individually or jointly, whether in the name, alias, or fictitious “doing business as”  
2 name; or (b) otherwise subject to access by Defendants or Relief Defendant;

3 **IV. Maintenance of Business Records**

4 **IT IS FURTHER ORDERED that:**

5 23. Defendants, Relief Defendant, and their agents, servants, employees, assigns,  
6 attorneys, and persons in active concert or participation with the Defendants or Relief  
7 Defendant, including any successor thereof, and all other persons or entities who receive  
8 notice of this Order by personal service or otherwise, are immediately restrained and  
9 enjoined from directly or indirectly destroying, mutilating, erasing, altering, concealing or  
10 disposing of, in any manner, directly or indirectly, any documents that relate to the business  
11 practices, or business or personal finances of Defendants or Relief Defendant and their  
12 subsidiaries and affiliates.  
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14 **V. Inspection and Copying of Books and Records**

15 **IT IS FURTHER ORDERED that:**

16 24. Representatives of the Commission and the Receiver shall be immediately  
17 allowed to inspect the books, records, and other documents of Defendants, Relief Defendant,  
18 and their agents, including, but not limited to, electronically stored information, tape  
19 recordings, and computer discs, wherever they may be situated and whether they are on the  
20 person of Defendants, Relief Defendant, or others, and to copy said documents, information  
21 and records, either on or off Defendants’ or Relief Defendant’s premises; and  
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23 25. Defendants, Relief Defendant, and their agents, servants, employees, assigns,  
24 attorneys, and persons in active concert or participation with the Defendants or Relief  
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1 Defendant, including any successor thereof, who receive actual notice of this Order by  
2 personal service or otherwise, including facsimile or e-mail transmission, shall cooperate  
3 fully with the Commission to locate and provide to representatives of the Commission all  
4 books and records of Defendants and Relief Defendant, wherever such books and records  
5 may be situated, and to locate and provide to representatives of the Commission information  
6 regarding the whereabouts of Defendants and Relief Defendant.  
7

8 **VI. Order Appointing Temporary Receiver**

9 **IT IS FURTHER ORDERED** that La Bella & McNamara LLP (“La Bella”) is  
10 appointed Temporary Receiver for the Defendants’ and Relief Defendant’s assets and the  
11 assets of any affiliates or subsidiaries of Defendants or Relief Defendant, with the full  
12 powers of an equity receiver. The Temporary Receiver shall be the agent of this Court in  
13 acting as Receiver under this Order.  
14

15 26. The Temporary Receiver is directed and authorized to accomplish the following:

- 16
- 17 a. Assume full control of the corporate Defendant and Relief Defendant and any  
18 business entities owned by any Defendant or Relief Defendant, by removing  
19 any officer, independent contractor, employee, or agent of a corporate  
20 Defendant or corporate Relief Defendant, from control and management of  
21 the affairs of the corporate Defendant or Relief Defendant and any business  
22 entities owned by any Defendant or Relief Defendant;
  - 23 b. Take exclusive custody, control, and possession of all the funds, property,  
24 mail and other assets of, in the possession of, or under the control of the  
25 Defendants and Relief Defendant, wherever situated. The Receiver shall have  
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1 full power to sue for, collect, receive and take possession of all goods,  
2 chattels, rights, credits, moneys, effects, land, leases, books, records, work  
3 papers, and records of accounts, including computer-maintained information,  
4 and other papers and documents of the Defendants and Relief Defendant,  
5 including documents related to customers or clients whose interests are now  
6 held by or under the direction, possession, custody or control of the  
7 Defendants and/or Relief Defendant. The Receiver shall have discretion to  
8 determine that certain personal property or other assets of the Defendants shall  
9 be under the Receiver's control, but shall remain in the possession or custody  
10 of the Defendants;  
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12  
13 c. Take all steps necessary to secure the business premises of the Defendants and  
14 Relief Defendant and any and all other premises under the control of the  
15 Defendants or Relief Defendant;  
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17 d. Preserve, hold and manage all receivership assets, and perform all acts  
18 necessary to preserve the value of those assets, in order to prevent any loss,  
19 damage or injury to Defendants' or Relief Defendant's customers or clients;  
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21 e. Prevent the withdrawal or misapplication of funds entrusted to the Defendants  
22 or Relief Defendant, and otherwise protect the interests of customers or  
23 clients;  
24

25 f. Manage and administer the Defendants and Relief Defendant by performing  
26 all acts incidental thereto that the Receiver deems appropriate, including  
27 hiring or dismissing any and all personnel or suspending operations;  
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- 1 g. Collect all money owed to the Defendants and Relief Defendant;
- 2 h. Initiate, defend, compromise, adjust, intervene in, dispose of, or become a
- 3 party to any actions or proceedings in state, federal or foreign court necessary
- 4 to preserve or increase the assets of the Defendants or Relief Defendant or to
- 5 carry out his or her duties pursuant to this Order;
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- 7 i. Choose, engage and employ attorneys, accountants, appraisers, and other
- 8 independent contractors and technical specialists, as the Receiver deems
- 9 advisable or necessary in the performance of duties and responsibilities under
- 10 the authority granted by this Order;
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- 12 j. Issue subpoenas to obtain documents and records pertaining to the
- 13 receivership, and conduct discovery in this action on behalf of the receivership
- 14 estate;
- 15
- 16 k. Open one or more bank accounts as designated depositories for funds of the
- 17 Defendants and Relief Defendant. The Receiver shall deposit all funds of the
- 18 Defendants and Relief Defendant in such designated accounts and shall make
- 19 all payments and disbursements from the receivership estate from such
- 20 accounts; and
- 21
- 22 l. Make payments and disbursements from the receivership estate that are
- 23 necessary or advisable for carrying out the directions of, or exercising the
- 24 authority granted by, this Order. The Receiver shall apply to the Court for
- 25 prior approval of any payment of any debt or obligation incurred by the
- 26 Defendants or Relief Defendant prior to the date of entry of this Order, except
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1 for payments that the Receiver deems necessary or advisable to secure assets  
2 of the Defendants.

3 30. Immediately upon service of this Order upon them, the Defendants, Relief  
4 Defendant, and any other person or entity served with a copy of this Order, shall immediately  
5 or within such time as permitted by the Receiver in writing, deliver over to the Receiver:  
6

- 7 a. Possession and custody of all funds, property, and other assets, owned  
8 beneficially or otherwise, wherever situated, of the Defendants and Relief  
9 Defendant;
- 10 b. Possession and custody of documents of the Defendants and Relief Defendant,  
11 including but not limited to, all books and records of accounts, all financial  
12 and accounting records, balance sheets, income statements, bank records  
13 (including monthly statements, canceled checks, records of wire transfers, and  
14 check registers), client lists, title documents and other papers;
- 15 c. Possession and custody of all precious metals, other commodities, funds, and  
16 other assets being held by or on behalf of the Defendants or Relief Defendant  
17 or on behalf of the Defendants' or Relief Defendant's customers or clients;
- 18 d. All keys, computer passwords, entry codes, and combinations to locks  
19 necessary to gain or to secure access to any of the assets or documents of the  
20 Defendants or Relief Defendant, including but not limited to, access to the  
21 Defendants' and Relief Defendant's residential and business premises, means  
22 of communication, accounts, computer systems, or other property; and  
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1 e. Information identifying the accounts, employees, properties or other assets or  
2 obligations of the Defendants or Relief Defendant.

3 31. The Defendants, Relief Defendant, and all other persons or entities served with  
4 a copy of this order shall cooperate fully with and assist the Receiver. This cooperation and  
5 assistance shall include, but not be limited to, providing any information to the Receiver that  
6 the Receiver deems necessary to exercising the authority; providing any password required to  
7 access any computer or electronic files in any medium; and discharging the responsibilities  
8 of the Receiver under this Order, and advising all persons who owe money to the Defendants  
9 or Relief Defendant that all debts should be paid directly to the Receiver.  
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12 32. Except by leave of the Court, during the pendency of the receivership ordered  
13 herein, the Defendants, Relief Defendant, and all other persons and entities seeking relief of  
14 any kind from Defendants' Assets and Relief Defendant's Assets (other than the present  
15 action by the Commission) including, but not limited to customers, clients, pool participants,  
16 investors, members, partners, trust beneficiaries, note holders, creditors, claimants, lessors, in  
17 law or in equity, and all persons acting on behalf of any such customer, client, pool  
18 participant, investor, member, partner, trust beneficiary, note holder, creditor, claimant,  
19 lessor, or other person, including sheriffs, marshals, and all offices and deputies, and their  
20 respective attorneys, servants, agents and employees, are, until further orders of this Court,  
21 hereby restrained, enjoined and stayed from doing anything, directly or indirectly, to interfere  
22 with the Receiver's performance of his duties and the administration of Defendants' Assets  
23 and Relief Defendant's Assets. Accordingly, all such persons are enjoined and stayed from  
24 taking any action to establish or enforce any claim, right or interest for, against, on behalf of,  
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1 in, or in the name of, the Defendants or Relief Defendant, the Receiver, receivership assets,  
2 or the Receiver's duly authorized agents acting in their capacities as such, including but not  
3 limited to, the following actions:

- 4 a. Commencing, prosecuting, litigating or enforcing any suit, except that actions  
5 may be filed to toll any applicable statute of limitations;
- 6 b. Accelerating the due date of any obligation or claimed obligation, enforcing  
7 any lien upon, or taking or attempting to take possession of, or retaining  
8 possession of, property of the Defendants or Relief Defendant, or any property  
9 claimed by the Defendants or Relief Defendant, or attempting to foreclose,  
10 forfeit, alter or terminate any of the Defendants' or Relief Defendant's  
11 interests in property, whether such acts are part of a judicial proceeding or  
12 otherwise;
- 13 c. Using self-help or executing or issuing, or causing the execution or issuance  
14 of any court attachment, subpoena, replevin, execution or other process for the  
15 purpose of impounding or taking possession of or interfering with, or creating  
16 or enforcing a lien upon any property, wherever located, owned by or in the  
17 possession of the Defendants or Relief Defendant, or the Receiver, or any  
18 agent of the Receiver; and
- 19 d. Doing any act or thing to interfere with the Receiver taking control,  
20 possession or management of the property subject to the receivership, or to in  
21 any way interfere with the Receiver or the duties of the Receiver; or to  
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1                   interfere with the exclusive jurisdiction of this Court over the property and  
2                   assets of the Defendants or Relief Defendant.

3                   This paragraph does not stay the commencement or continuation of an action or  
4                   proceeding by a governmental unit to enforce such governmental unit's police or regulatory  
5                   power.  
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7                   33. Within 60 days of the date of this Order, the Receiver shall file with this Court  
8                   and serve Plaintiff Commission a report outlining the steps taken to identify customers,  
9                   marshal assets, determine the amount invested by each customer, and the portion of assets  
10                  available to pay back customers. This report shall also include a statement as to the  
11                  estimated time it will take to distribute available assets to customers and wind up the  
12                  receivership.  
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14                  34. The Receiver and all personnel hired by the Receiver as herein authorized,  
15                  including counsel to the Receiver, are entitled to reasonable compensation for the  
16                  performance of duties pursuant to this Order and for the cost of actual out-of-pocket expenses  
17                  incurred by them, from the assets now held by, or in the possession or control of, or which  
18                  may be received by the Defendants or Relief Defendant. The Receiver shall file with the  
19                  Court and serve on the parties, including Plaintiff Commission, periodic requests for the  
20                  payment of such reasonable compensation, with the first such request filed no more than  
21                  sixty (60) days after the date of this Order. Plaintiff Commission may object to any part of a  
22                  request within 30 calendar days of service of a request. The Receiver shall not increase the  
23                  hourly rates used as the bases for such fee applications without prior approval of the Court.  
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1 **VII. Order Granting Expedited Discovery**

2 **IT IS HEREBY ORDERED that:**

3 35. The Commission and Receiver may conduct expedited discovery, removing the  
4 prohibition upon discovery before the early meeting of counsel pursuant to FRCP 26(f), in  
5 accordance with FRCP 26(d), and that the Commission and Receiver may take depositions of  
6 Defendants, Relief Defendant, and non-parties subject to two calendar days notice pursuant  
7 to FRCP 30(a) and 45, that notice may be given personally, by facsimile or by electronic  
8 mail. Further, more than ten depositions may be taken and, if necessary, any deposition may  
9 last more than seven hours.  
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11  
12 36. The Commission and Receiver may conduct expedited discovery to enable the  
13 Commission to fulfill its statutory duties and protect investors from further loss or damage.  
14 This expedited discovery will allow the Commission and Receiver to determine the full  
15 extent of Defendants' alleged wrongdoing (including, but not limited to, the possible  
16 involvement of others), locate Defendants' other customers, identify customers' funds, and  
17 other of Defendants' Assets and Relief Defendant's Assets, and clarify the sources of various  
18 funds.  
19

20 **VIII. Bond Not Required of Plaintiff**

21 **IT IS FURTHER ORDERED that:**

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23 37. The Commission is an agency of the United States of America and, accordingly,  
24 need not post a bond.

25 **IX. Order to Show Cause**

26 **IT IS FURTHER ORDERED that:**

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1           38. Defendants shall appear before this Court on August 31, 2009 at 4:00 p.m.  
2 before the Honorable Roger T. Benitez at the United States Courthouse for the Southern  
3 District of California, to show cause, if there be any, why an Order for Preliminary  
4 Injunction should not be granted to prohibit further violations of the Act and why the other  
5 relief requested should not be granted pending trial on the merits of this action.  
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7           39. Should any party wish to file a memorandum of law or other papers in  
8 opposition to Plaintiff's Motion for a Preliminary Injunction, all papers shall be filed on or  
9 before August 24, 2009 and served via facsimile or overnight delivery to the Commission's  
10 Washington D.C. office. Any reply papers shall be filed with the Court and delivered to  
11 opposing counsel no later than August 27, 2009. Service of all papers shall be by electronic  
12 mail, facsimile, or personal service.  
13

14 **X. Service**

15 **IT IS FURTHER ORDERED that:**

16           40. Copies of this Order may be served by any means, including facsimile and e-  
17 mail transmission, upon any entity or person that may have possession, custody, or control of  
18 any documents or the assets of Defendants or Relief Defendant, or that may be subject to any  
19 provision of this Order, and, additionally, that any representative of the Commission, of the  
20 Receiver, or of the U.S. Marshal Service are specially appointed by the Court to effect  
21 service. Further, service of the Summons, Complaint, or other process may be effected by  
22 any Commission representative, the Receiver, any U.S. Marshal or deputy U.S. Marshal, or  
23 in accordance with FRCP 4, and service on corporate entities may be effected by serving the  
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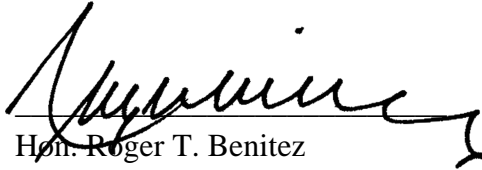
1 Summons, Complaint, or other process via overnight delivery to the registered agent of said  
2 corporate entities.

3 **XI. Force and Effect**

4 **IT IS FURTHER ORDERED** that:

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6 31. This Order shall remain in full force and effect until further order of this Court  
7 and that this Court retains jurisdiction of this matter for all purposes.

8 **IT IS SO ORDERED**, at 4:30 p.m. on the 18th day of August 2009.

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12 Hon. Roger T. Benitez  
13 United States District Court Judge  
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