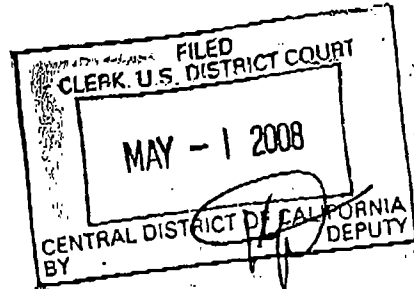


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 21 Futures Trading Commission



17 UNITED STATES DISTRICT COURT
 18 FOR THE CENTRAL DISTRICT OF CALIFORNIA

19 _____)
 20 U.S. COMMODITY FUTURES)
 21 TRADING COMMISSION)

22 Plaintiff,)

23 SAFEVEST LLC,)
 24 JON G. ERVIN, and)
 25 JOHN V. SLYE,)

26 Defendants)

JVS (MLG))
 SACV08-00474 AHS (AFC))
 CIVIL ACTION NO. _____)
 Order)

FILED

1 **STATUTORY EX PARTE RESTRAINING ORDER FREEZING ASSETS,**
2 **PRESERVING RECORDS, AND ALLOWING ACCESS TO RECORDS**

3 Plaintiff, the U.S. Commodity Futures Trading Commission ("CFTC"), has
4 filed a complaint for permanent injunction and other relief, and moved *ex parte*,
5 pursuant to Section 6c of the Commodity Exchange Act ("Act"), 7 U.S.C. § 13a-1
6 (2002), for a Statutory Restraining Order. The Court, having considered the CFTC's
7 Complaint, Motion for Statutory Ex Parte Restraining Order Freezing Assets,
8 Preserving Records, and Allowing Access to Records ("Motion"), the memorandum
9 in support of the Motion, and all other evidence filed and presented by the CFTC,
10 and having heard the arguments of Plaintiff's counsel, finds that:

11 1. This Court has jurisdiction over the parties and over the subject matter
12 of this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002). Venue lies
13 properly within this District pursuant to Sections 6c(e) of the Act, 7 U.S.C. § 13a-
14 1(e) (2002).

15 2. There is good cause to believe that defendants have engaged, are
16 engaging, and are about to engage in acts and practices constituting violations of the
17 Act, 7 U.S.C. §§ 1, *et seq.* (2002).

18 3. There is good cause to believe that immediate and irreparable damage to
19 the Court's ability to grant effective final relief for customers in the form of monetary
20 redress will occur from the sale, transfer, assignment, or other disposition by
21

1 defendants of assets or records unless defendant are immediately restrained and
2 enjoined by Order of this Court.

3
4 4. Good cause exists for the freezing of defendants' assets and for entry of
5 an order that prohibits defendants from destroying records and prohibits defendants
6 from denying agents of the CFTC access to inspect and copy records.
7

8 5. This a proper case for granting a statutory restraining order *ex parte* to
9 preserve the status quo, to protect public customers from loss and damage, and to
10 enable the CFTC to fulfill its statutory duties.
11

12 DEFINITIONS

13
14 For the purposes of this Order, the following definitions apply:

15 6. The term "document" is synonymous in meaning and equal in scope to
16 the usage of the term in Federal Rule of Civil Procedure 34(a), and includes, but is
17 not limited to, writings, drawings, graphs, charts, photographs, audio and video
18 recordings, computer records, and other data compilations from which information
19 can be obtained and translated, if necessary, through detection devices into
20 reasonably usable form. A draft or non-identical copy is a separate document
21 within the meaning of the term.
22
23
24

25 7. "Assets" means any legal or equitable interest in, right to, or claim to,
26 any real or personal property, including but not limited to: chattels, goods,
27 instruments, equipment, fixtures, general intangibles, effects, leaseholds, mail or
28

1 other deliveries, inventory, checks, notes, accounts including bank accounts and
 2 accounts at financial institutions, credits, receivables, lines of credit, contracts
 3 including spot and futures contracts, insurance policies, and all cash, wherever
 4 located.
 5

6 **RELIEF GRANTED**

7 **I.**

8 **Order Against Transfer, Dissipation, and Disposal of Assets**

9 **IT IS HEREBY ORDERED** that

10 8. Defendants, their agents, owners, servants, employees, attorneys, and
 11 persons in active concert or participation with them who receive notice of this Order
 12 in accordance with the provisions of this Order, and except as otherwise ordered by
 13 this Court, or, as to receivership assets, as directed by the Receiver appointed
 14 herein, are restrained and enjoined from directly or indirectly transferring, selling,
 15 alienating, liquidating, encumbering, pledging, leasing, loaning, assigning,
 16 concealing, dissipating, converting, withdrawing, or otherwise disposing of any
 17 assets, wherever located, including assets held outside the United States. The
 18 assets affected by this paragraph shall include both existing assets and assets acquired
 19 after the effective date of this Order wherever located

20 9. **IT IS FURTHER ORDERED** that, except as otherwise ordered by
 21 this Court, an immediate freeze shall be placed on all monies and assets in all
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1 accounts at any bank, financial institution or brokerage firm (including any futures
 2 commission merchant), all certificates of deposit, and other funds or assets, held in
 3 the name of, for the benefit of, or over which account authority is held by Safevest,
 4 Ervin and/or Slye or any entity affiliated with any of them, including, but not
 5 limited to, the accounts set forth below:
 6
 7
 8

<u>Institution Name</u>	<u>Account Name</u>	<u>Account No.</u>
9 Wachovia Bank	Safevest, LLC	4004
10 Wachovia Bank	Safevest, LLC	3814
11 Wachovia Bank	Safevest, LLC	3759
12 Wachovia Bank	Mission Loans, Inc.	3762
13 Wells Fargo Bank	Safevest, LLC	7999
14 Wells Fargo Bank	Safevest, LLC	9003
15 Wells Fargo Bank	Safevest, LLC	0233
16 Wells Fargo Bank	Safevest, LLC	6041
17 Wells Fargo Bank	Safevest, LLC	0241
18 Wells Fargo Bank	Safevest Amor	5800
19	Holdings Ltd.	
20 Wells Fargo Bank	Mission Loans, Inc. dba	7502
21	Shiloh Investments	
22 Wells Fargo Bank	Mission Loans, Inc. dba	4648
23	Shiloh Investments	
24 Wells Fargo Bank	Mission Loans, Inc.	3290

<u>Institution Name</u>	<u>Account Name</u>	<u>Account No.</u>
Wells Fargo Bank	Mission Loans, Inc.	2209
UBS Financial Services, Inc.	Safevest, LLC	8666
Navy Federal Credit Union	John V. Slye	unknown

II.

Directives to Financial Institutions and Others

10. IT IS FURTHER ORDERED, pending further Order of this Court, that any financial or brokerage institution, business entity, or person that holds, controls, or maintains custody of any account or asset of any defendant, or has held, controlled, or maintained custody of any account or asset of any defendant at any time since January 1, 2007, shall:

A. Prohibit defendants, their owners, employees, agents and all other persons from withdrawing, removing, assigning, transferring, pledging, encumbering, disbursing, dissipating, converting, selling or otherwise disposing of any such asset except as directed by further order of the Court;

B. Provide counsel for the CFTC, within five (5) business days of receiving a copy of this Order, a statement setting forth: (a) the identification number of each and every such account or asset titled in the name, individually or

1 jointly, of defendant, or held their behalf of, or for the benefit of defendant; (b) the
2 balance of each such account, or a description of the nature and value of such asset
3 as of the close of business on the day on which this Order is served, or, if the
4 account or other asset has been closed or removed, the date closed or removed, the
5 total funds removed in order to close the account, and the name of the person or
6 entity to whom such account or other asset was remitted; and (c) the identification
7 of any safe deposit box that is either titled in the name, individually or jointly, of
8 any defendant or is otherwise subject to access by any defendant; and

12 C. Upon request by the CFTC, promptly provide the CFTC with copies
13 of all records or other documentation pertaining to such account or asset,
14 including, but not limited to, originals or copies of account applications, account
15 statements, signature cards, checks, drafts, deposit tickets, transfers to and from the
16 accounts, all other debit and credit instruments or slips, currency transaction
17 reports, 1099 forms, and safe deposit box logs.

21 III.

22 Maintenance of Business Records

25 11. **IT IS FURTHER ORDERED** that defendants and all persons or
26 entities who receive notice of this Order, are restrained and enjoined from directly
27 or indirectly destroying, mutilating, erasing, altering, concealing or disposing of, in
28

1 any manner, directly or indirectly, any documents or records that relate to the
2 business practices or business finances of defendants.

3
4 **IV.**

5 **Inspection and Copying of Books and Records**

6
7 **12. IT IS FURTHER ORDERED** that:

8 A. Representatives of the CFTC and the Receiver appointed herein shall
9 be immediately allowed to inspect the books, records, and other documents of
10 defendants and their agents including, but not limited to, electronically stored data,
11 tape recordings, and computer discs, wherever they may be situated and whether
12 they are in the possession of defendants or others, and to copy said documents,
13 data and records, either on or off the premises where they may be situated; and
14
15

16 B. Defendants and their agents, owners, servants, employees, attorneys,
17 and persons in active concert or participation with them who receive notice of this
18 Order, shall cooperate fully with the CFTC and the Receiver to locate and provide to
19 representatives of the CFTC and the Receiver all books and records of defendants,
20 wherever such books and records may be situated.
21
22

23
24 **V.**

25 **Appointment of Receiver**

26
27 **13. IT IS FURTHER ORDERED** that

28 Thomas A. Sermons, is appointed temporary Receiver for ^{SUT}

1 defendants and any affiliates, subsidiaries, or holding companies of defendants,
2 with the full powers of an equity receiver. The Receiver shall be the agent of this
3 Court in acting as Receiver under this Order.
4

5 **VI.**

6 **Powers of Receiver**

7
8 13. **IT IS FURTHER ORDERED** that the Receiver is directed and
9 authorized to accomplish the following:

- 10
11 A. Assume full control of defendants by removing any officer,
12 independent contractor, employee, or agent of defendants, from
13 control and management of the affairs of the defendants;
14
15 B. Take exclusive custody, control, and possession of all the funds,
16 property, mail and other assets of, in the possession of, or under the
17 control of defendants, wherever situated. The Receiver shall have full
18 power to sue for, collect, receive and take possession of all goods,
19 chattels, rights, credits, moneys, effects, land, leases, books, records,
20 work papers, and records of accounts, including computer-maintained
21 information, and other papers and documents of defendants, including
22 documents related to customers or clients whose interests are now
23 held by or under the direction, possession, custody or control of
24 defendants. The Receiver shall have discretion to determine that
25
26
27
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1 certain personal property or other assets of defendants shall be under
2 the Receiver's control, but shall remain in the possession or custody of
3 defendants;
4

5 C. Take all steps necessary to secure the business premises of defendants
6 and any and all other premises under the control of defendants;
7

8 D. Preserve, hold and manage all receivership assets, and perform all acts
9 necessary to preserve the value of those assets, in order to prevent any
10 loss, damage or injury to customers or clients;
11

12 E. Prevent the withdrawal or misapplication of funds entrusted to
13 defendants, and otherwise protect the interests of customers or clients;
14

15 F. Manage and administer the defendant by performing all acts
16 incidental thereto that the receiver deems appropriate, including hiring
17 or dismissing any and all personnel or suspending operations;
18

19 G. Collect all money owed to defendants;
20

21 H. Initiate, defend, compromise, adjust, intervene in, dispose of, or
22 become a party to any actions or proceedings in state, federal or
23 foreign court necessary to preserve or increase the assets of
24 defendants or to carry out his or her duties pursuant to this Order;
25

26 I. Choose, engage and employ attorneys, accountants, appraisers, and
27 other independent contractors and technical specialists, as the
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1 Receiver deems advisable or necessary in the performance of duties
2 and responsibilities under the authority granted by this Order;

3
4 J. Issue subpoenas to obtain documents and records pertaining to the
5 receivership, and conduct discovery in this action on behalf of the
6 receivership estate;

7
8 K. Open one or more bank accounts as designated depositories for funds
9 of defendants. The Receiver shall deposit all funds of defendants in
10 such designated accounts and shall make all payments and
11 disbursements from the receivership estate from such accounts; and

12
13 L. Make payments and disbursements from the receivership estate that
14 are necessary or advisable for carrying out the directions of, or
15 exercising the authority granted by, this Order. The Receiver shall
16 apply to the Court for prior approval of any payment of any debt or
17 obligation incurred by defendants prior to the date of entry of this
18 Order, except for payments that the Receiver deems necessary or
19 advisable to secure assets of defendants.
20
21
22

23 **VII.**

24 **Delivery of Assets to Receiver**

25
26 14. **IT IS FURTHER ORDERED** that, immediately upon service of this
27 Order upon them, defendants, and any other person or entity served with a copy of
28

1 this Order, shall forthwith or within such time as permitted by the Receiver in
2 writing, deliver over to the Receiver:

- 3
- 4 A. Possession and custody of all funds, assets, property, and all other
5 assets, owned beneficially or otherwise, wherever situated, of
6 defendants;
- 7
- 8 B. Possession and custody of documents of defendants, including but not
9 limited to, all books and records of accounts, all financial and
10 accounting records, balance sheets, income statements, bank records
11 (including monthly statements, canceled checks, records of wire
12 transfers, and check registers), client lists, title documents and other
13 papers;
- 14
- 15 C. Possession and custody of all funds and other assets belonging to
16 members of the public now held by the defendants;
- 17
- 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
20 of defendants, including but not limited to, access to the business
21 premises of defendants, means of communication, accounts, computer
22 systems, or other property; and
- 23
- 24 E. Information identifying the accounts, employees, properties or other
25 assets or obligations of defendants.
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VIII.

Cooperation with Receiver

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4 15. **IT IS FURTHER ORDERED** that defendants shall cooperate fully
5 with and assist the Receiver. Defendants' cooperation and assistance shall include,
6 but not be limited to, providing any information to the Receiver that the Receiver
7 deems necessary to exercising the authority and discharging the responsibilities of
8 the Receiver under this Order, and advising all persons who owe money to
9 defendants that all debts should be paid directly to the Receiver.
10
11

IX.

Stay of Action against Receivership

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15 16. **IT IS FURTHER ORDERED** that except by leave of the Court,
16 during the pendency of the receivership ordered herein, defendants and all other
17 persons and entities be and hereby are stayed from taking any action to establish or
18 enforce any claim, right or interest for, against, on behalf of, in, or in the name of
19 defendants, the Receiver, receivership assets, or the Receiver's duly authorized
20 agents acting in their capacities as such, including but not limited to, the following
21 actions:
22
23

- 24
25 A. Commencing, prosecuting, litigating or enforcing any suit, except that
26 actions may be filed to toll any applicable statute of limitations;
27
28

- 1 B. Accelerating the due date of any obligation or claimed obligation,
2 enforcing any lien upon, or taking or attempting to take possession of,
3 or retaining possession of, assets or property of defendant or any
4 assets or property claimed by defendants, or attempting to foreclose,
5 forfeit, alter or terminate any of defendants' interests in assets or
6 property, whether such acts are part of a judicial proceeding or
7 otherwise;
8
9
10
11 C. Using self-help or executing or issuing, or causing the execution or
12 issuance of any court attachment, subpoena, replevin, execution or
13 other process for the purpose of impounding or taking possession of
14 or interfering with, or creating or enforcing a lien upon any assets or
15 property, wherever located, owned by or in the possession of
16 defendants, or the Receiver, or any agent of the Receiver; and
17
18
19 D. Doing any act or thing to interfere with the Receiver taking control,
20 possession or management of the assets or property subject to the
21 receivership, or to in any way interfere with the Receiver or the duties
22 of the Receiver; or to interfere with the exclusive jurisdiction of this
23 Court over the property and assets of defendants.
24
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1 This Paragraph does not stay the commencement or continuation of an
2 action or proceeding by a governmental unit to enforce such
3 governmental unit's police or regulatory power.
4

5 **X.**

6 **Receiver Compensation**
7

8 17. **IT IS FURTHER ORDERED** that the Receiver and all personnel
9 hired by the Receiver as herein authorized, including counsel to the Receiver, are
10 entitled to reasonable compensation for the performance of duties pursuant to this
11 Order and for the cost of actual out-of-pocket expenses incurred by them, solely
12 from the assets now held by, or in the possession or control of, or which may be
13 received by defendants. The Receiver shall file with the Court and serve on the
14 parties periodic requests for the payment of such reasonable compensation, with
15 the first such request filed no more than sixty (60) days after the date of this Order.
16 The Receiver shall not increase the hourly rates used as the bases for such fee
17 applications without prior approval of the Court. The CFTC shall have the right to
18 object to any fee application made by the Receiver.
19
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23 **XI.**

24 **Bond Not Required of Plaintiff**
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26 18. **IT IS FURTHER ORDERED** that Plaintiff CFTC is an agency of the
27 United States of America and, accordingly, the CFTC need post no bond.
28

XII.

Service of Order

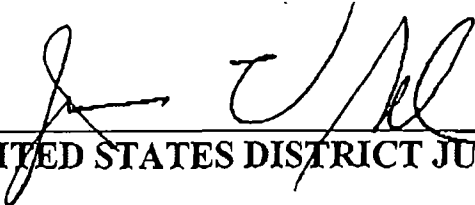
19. **IT IS FURTHER ORDERED** that copies of this Order may be served by any means, including facsimile transmission, upon any financial institution or other entity or person that may have possession, custody, or control of any documents or assets of any defendant, or that may be subject to any provision of this Order. Service of the summons, Complaint or other process may be affected by any U.S. Marshal or Deputy U.S. Marshal, or in accordance with Federal Rule of Civil Procedure 4.

XIII.

Force and Effect

20. **IT IS FURTHER ORDERED** that 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.

SO ORDERED, at JANINA ANA, CA on this 1st day of May, 2008 at NOON, MT.


UNITED STATES DISTRICT JUDGE

Presented by:

Peter M. Haas
Attorney for Plaintiff
U.S. Commodity Futures Trading Commission