

JUDGE WOOD

FILED UNDER SEAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

03 CV 2258

Commodity Futures Trading Commission,
Plaintiff,

v.

U.S. Securities & Futures Corp.
Defendant.

03 CIV _____

Temporary,
**Statutory Restraining Order Freezing Assets, Prohibiting the Destruction of Evidence,
Permitting the Commission Immediate Access to Review Records, and Ordering Defendant
to Show Cause Why a Preliminary Injunction Should Not Be Granted**

Plaintiff, Commodity Futures Trading Commission (the "Commission"), has filed a complaint for permanent injunction and other relief, and moved *ex parte*, pursuant to Section 6c of the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. §13a-1 (1994), for a statutory restraining order freezing assets, and ordering the Defendant to show cause why a preliminary injunction should not be issued. The Court has considered the pleadings, declarations, exhibits, and memorandum filed in support of the Commission's motion and now being fully advised in the premises finds that:

- (1) this Court has jurisdiction over the subject matter of this case, and Section 6c of the Act, 7 U.S.C. §13a-1 (1994), authorizes *ex parte* relief;

- (2) there is good cause to believe that the Defendant has engaged in, is engaging in or is about to engage in violations of 7 U.S.C. § 6f(b) and 17 C.F.R. § 1.17(a) (2002);
- (3) absent the entry of this ^{temporary,} statutory restraining order, the Defendant is likely to dissipate or transfer assets and destroy business records; and
- (4) this is a proper case for granting a ^{temporary,} statutory restraining order *ex parte* to preserve the status quo, protect public customers 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:

1. "Assets" means any legal or equitable interest in, right to, or claim to, any real or personal property, including but not limited to chattels, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, mail or other deliveries, inventory, checks, notes, accounts, credits, receivables, contracts, insurance policies, and all cash, wherever located, whether in the United States or abroad.
2. 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, 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 reasonable usable form. A draft or non-identical copy is a separate document within the meaning of the term.

- 3. "Defendant" means U.S. Securities & Futures Corp. 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 U.S. Securities & Futures Corp.

RELIEF GRANTED

Asset Freeze

I.

IT IS HEREBY ORDERED that the Defendant, except as otherwise ordered by this Court, is ^{temporarily} restrained and enjoined from directly or indirectly:

- A. transferring, selling, alienating, liquidating, encumbering, pledging, leasing, loaning, assigning, concealing, dissipating, converting, withdrawing, or otherwise disposing of any assets, wherever located, including assets held outside the United States, or as otherwise ordered by the Court;
- B. opening or causing to be opened any safe deposit boxes titled in the name or subject to access by any of the Defendant.

II.

IT IS FURTHER ORDERED, ⁽¹⁰⁾ ~~pending further Order of this Court that~~ ^{that from now until ~~today~~ from now,} 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 the Defendant, or has held, controlled, or maintained custody of any such account or asset of the Defendant shall:

- A. Prohibit the Defendant 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. Deny the Defendant, and all other persons access to any safe deposit box that is: (1) titled in the name of the Defendant either individually or jointly; or (2) otherwise subject to access by the Defendant;

C. Provide counsel for the Commission, within five (5) business days of receiving a copy of this Order, a statement setting forth:

1. the identification number of each such account or asset titled in the name, individually or jointly, of the Defendant, or held on behalf of, or for the benefit of, the Defendant, or under the control of the Defendant;

2. 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

3. the identification of any safe deposit box that is either titled in the name, individually or jointly, of the Defendant, or is otherwise subject to access by the Defendant;

D. 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, 1099 forms, and safe deposit box logs; and

- E. Cooperate with all reasonable requests of the Commission relating to implementation of this Order, including producing records related to the Defendant's accounts.

III.

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

- A. Provide the Commission with a full accounting of all funds, documents, assets outside the United States which are (1) titled in the name individually or jointly of the Defendant; or (2) held by any person or entity, for the benefit of the Defendant; or (3) under the Defendant's direct or indirect control, whether jointly or singly;
- B. Provide the Commission access to all records of accounts or assets of the Defendant held by financial institutions located outside the territorial United States by signing the Consent to Release of Financial Records attached to this Order.

Maintenance of and Access to Business Records

IV.

IT IS HEREBY ORDERED that the Defendant and all persons or entities who receive notice of this Order by personal service or otherwise, are ^{temporarily} 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 the Defendant.

V.

IT IS FURTHER ORDERED that representatives of the Commission be immediately allowed to inspect the books, records, and other documents of the Defendant and its agents including, but not limited to, paper documents, electronically stored data, tape recordings, and computer discs, wherever they may be situated and whether they are in the possession of the Defendant or others, and to copy said documents, data and records, either on or off the premises where they may be situated.

Service of Order

VI.

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 the Defendant or that may be subject to any provision of this Order.

Service on the Commission

VII.

IT IS FURTHER ORDERED that the Defendant shall serve all pleadings, correspondence, notices required by this Order, and other materials on the Commission by delivering a copy to Beth R. Morgenstern, Chief Trial Attorney, Division of Enforcement, Commodity Futures Trading Commission, 140 Broadway, 19th Floor, New York, New York 10005.

Order to Show Cause**VIII.**

IT IS FURTHER ORDERED that the Defendant shall appear before this Court on the 11th day of April, 2003, at 9:30 a.m. before the Honorable Kimba M. Wood, SDNY at the United States Courthouse for the Southern District of New York at 500 Pearl Street, 15-B, New York, to show cause why this Court should not enter a preliminary injunction:

- A. enjoining the Defendant from further violations of the Act;
- B. continuing the freeze on the assets of the Defendant;
- C. ordering the Defendant to transfer to the territory of the United States all funds, documents, and assets located in foreign countries which are (1) titled in the name individually or jointly of the Defendant; or (2) held by a person or entity, or for the benefit of the Defendant; or (3) under the Defendant's direct or indirect control, whether jointly or singly;
- D. ordering any additional relief this Court deems appropriate.

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

IX.

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 New York - kW ~~12:30 pm~~, New York on this 2nd day of

✓ April, 2003, at 12:30 pm

William M. Conrad
UNITED STATES DISTRICT COURT JUDGE *mw*

CONSENT TO RELEASE OF FINANCIAL RECORDS

I, _____, do hereby direct any bank or trust company at which I have a bank account of any kind upon which I am authorized to draw, and its officers, employees and agents, to disclose all information and deliver copies of all documents of every nature in your possession or control which relate to said bank accounts to any attorney of the Commodity Futures Trading Commission, and to give evidence relevant thereto, in the matter of Commodity Futures Trading Commission v. U.S. Securities Corp., 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 the laws 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 apply to any of the bank accounts for which I may be a relevant principal.

Dated: _____, 2003

Signature of duly-authorized Corporate Officer

Printed Name of duly-authorized Corporate Officer