

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. Commodity Futures Trading Commission,)	05 CV 8446 (RCC)
)	
Plaintiff,)	ECF CASE
)	
v.)	<i>Ex Parte</i> Statutory Restraining Order
)	Freezing the Assets, Prohibiting the
International Currency Exchange, Inc., Michael)	Destruction or Altering of any Books,
Cottec, John Aucella, Eugene Aucella, and)	Records, or other Documents, and for
Worldwide Clearing, LLC,)	Expedited Asset Discovery, and an Order
)	to Show Cause why a Preliminary
)	Injunction Should Not be Entered
Defendants.)	
)	

Plaintiff, U.S. Commodity Futures Trading Commission (the "Commission"), has filed a complaint for a 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 (2001), for a statutory restraining order freezing assets, prohibiting the destruction of books, records, or other documents, granting leave to the Commission to engage in expedited asset discovery for the purpose of discovering the nature, location, status, and extent of assets, and ordering Defendants International Currency Exchange, Inc. ("ICE"), Michael Cottec ("Cottec"), John Aucella ("J. Aucella"), and Eugene Aucella aka G. Aucella ("G. Aucella") (collectively the "Injunctive Defendants")¹ 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 application and now, being fully advised in the premises, finds that:

¹ Co-defendant Worldwide Clearing, LLC, is a named defendant in the underlying action, but Plaintiff is not moving against defendant Worldwide Clearing, LLC for an *ex parte* statutory restraining order or preliminary injunction.

- (1) This Court has jurisdiction over the subject matter of this case, and Section 6c of the Act, 7 U.S.C. §13a-1, authorizes *ex parte* relief;
- (2) There is good cause to believe that Injunctive Defendants have engaged in, are engaging in, or are about to engage in fraud constituting a violation of 7 U.S.C. § 6c(b)², 17 C.F.R. § 32.9 (a) and (c);³
- (3) Absent the entry of this statutory restraining order, Injunctive Defendants are likely to dissipate or transfer assets and destroy business records. As such, good cause exists for the freezing of Injunctive Defendants' assets and for entry of an Order prohibiting Injunctive Defendants from destroying records and denying agents of the Commission access to inspect and copy records;
- (4) Good cause exists to permit asset discovery before the early meeting of counsel pursuant to Rule 26(d) of the Federal Rules of Civil Procedure;
- (5) 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; and
- (6) This is a proper case for granting a 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,

² Section 4c(b) of the Commodity Exchange Act (the "Act").

³ Sections 32.9(a) and (c) of the Commission's Regulations (the "Regulations").

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. “Injunctive Defendants” refers to ICE, Cottec, J. Aucella and G. Aucella, and any person insofar as he or she is acting in the capacity of an officer, agent, servant, employee, or attorney of ICE, Cottec, J. Aucella, and/or G. Aucella, 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 ICE, Cottec, J. Aucella, and/or G. Aucella.

RELIEF GRANTED

I. Asset Freeze

IT IS HEREBY ORDERED that Injunctive Defendants, except as otherwise ordered by this Court, are 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, except as provided in this Order, or as otherwise ordered by the Court; or

- B. Opening or causing to be opened any safe deposit boxes titled in the name or subject to access by the Injunctive Defendants.
- C. Notwithstanding the provisions of this paragraph, Injunctive Defendants shall repatriate to the territory of the United States and deliver to the Registry of this Court all funds and general intangibles, inventory, checks, notes, accounts, credits, receivables, contracts, insurance policies, and all cash located outside the United States.

II. Identification and Preservation of Assets

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 titled in the name of, held for the benefit of, or otherwise directly or indirectly under the control of Injunctive Defendants, or has held, controlled, or maintained custody of any such account or asset of Injunctive Defendants, shall:

- A. Prohibit Injunctive Defendants 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 Injunctive Defendants and all other persons access to any safe deposit box that is:
 - (1) titled in the name of Injunctive Defendants either individually or jointly; or
 - (2) otherwise subject to access by Injunctive Defendants;
- 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 Injunctive Defendants or held on behalf of, or for the benefit of, Injunctive Defendants, or under the control of Injunctive Defendants;
 - (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 Injunctive Defendants, or is otherwise subject to access by Injunctive Defendants;
- 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, trading records, 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 transferring funds and producing records related to Injunctive Defendants' accounts.

III. Accounting of Assets

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

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

IV. Maintenance of and Access to Business Records

IT IS FURTHER ORDERED that Injunctive Defendants, and all 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 finances of Injunctive Defendants.

V. Commission's Access to and Inspection of Documents

IT IS FURTHER ORDERED that representatives of the Commission be immediately allowed to inspect the books, records, and other documents of Injunctive Defendants and their 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 Injunctive Defendants or others, and to copy said documents, data and records, either on or off the premises where they may be situated. Upon request of the Commission, the Injunctive Defendants are ordered to deliver to the Commission documents of the Injunctive Defendants, including but not limited to all books and records of accounts, all financial and accounting records, balance sheets, income statements, bank records (including monthly statements, cancelled checks, records of wire transfers, and check registers), lists of all customers, title documents, other papers, all keys, computer passwords, entry codes, and combinations to locks necessary to gain or to secure access to any of the assets or documents of the Injunctive Defendants, including but not limited to, access to the Injunctive Defendants' business premises, home offices, means of communication, accounts, computer systems, or other property and information identifying the accounts, employees, properties, or other assets or obligations of the Injunctive Defendants.

VI. Service of Order

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 Injunctive Defendants or that may be subject to any provision of this Order.

VII. Expedited Asset Discovery

IT IS FURTHER ORDERED that 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 Injunctive Defendants, and the location of documents reflecting the business transactions of Injunctive Defendants; forty-eight (48) hours notice shall be deemed sufficient for any such deposition and five (5) days notice shall be deemed sufficient for the production of any such documents.

VIII. Service on the Commission

IT IS FURTHER ORDERED that Injunctive Defendants shall serve all pleadings, correspondence, notices required by this Order, and other materials on the Commission by delivering a copy to Nancy Gogel, Trial Attorney, Division of Enforcement, U.S. Commodity Futures Trading Commission, Eastern Regional Office, 140 Broadway, 19th Floor, New York, New York 10005.

IX. Order to Show Cause

IT IS FURTHER ORDERED that Defendants shall appear before this Court on the 28th day of October, 2005, at 10:30 a.m., before the Honorable Richard Conway Casey at the United States Courthouse for the Southern District of New York at 500 Pearl Street, New York, New York 10007, to show cause why this Court should not enter a preliminary injunction:

A. Enjoining Injunctive Defendants from further violations of the Act; specifically, prohibiting Injunctive Defendants from violating Section 4c(b) of the Act, and Sections 32.9(a) and (c) of the Regulations, including but not limited to fraudulently soliciting

customers to open accounts to trade foreign currency ("forex") options by knowingly misrepresenting: the likelihood that a customer would realize large profits trading forex options, the risk of loss involved in trading forex options, and the performance record; and prohibiting the Injunctive Defendants from engaging in any commodity-related activity, including soliciting customer funds;

B. Continuing the freeze on the assets of Injunctive Defendants;

C. Ordering Injunctive Defendants to repatriate to the territory of the United States and deliver to the Registry of this Court all funds and assets located in foreign countries which are (1) titled in the name individually or jointly of Injunctive Defendants; or (2) held by a person or entity for the benefit of any Injunctive Defendants; or (3) under such Injunctive Defendants' direct or indirect control, whether jointly or singly;

D. Ordering Injunctive Defendants, financial or brokerage institutions, business entities, and others to provide all documents specified in this Order to the Commission; and

E. 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 Injunctive Defendants, such materials shall be filed, served and received by all parties at least two (2) days before the hearing date ordered above.

X. Force and Effect of Order

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, New York on this 14 day of October 2005, at 11:40 a.m.

A TRUE COPY
J. MICHAEL McMAHON CLERK
BY Michael O. Bentley
DEPUTY CLERK

Richard Conway Casey
The Honorable Richard Conway Casey
United States District Judge

CONSENT TO RELEASE OF FINANCIAL RECORDS

I, _____, do hereby direct any bank, financial institution or trust company at which I have an 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 accounts to any attorney of the U.S. Commodity Futures Trading Commission, and to give evidence relevant thereto, in the matter of U.S. Commodity Futures Trading Commission v. International Currency Exchange, Inc. et. al., 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: _____, 2005

Signature