

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA**

U.S. COMMODITY FUTURES TRADING COMMISSION,)	
)	
Plaintiff,)	
)	No. 3:13 CV 196
v.)	
)	
JAMES HARVEY MASON,)	
)	
Defendant,)	
)	
THE JHM FOREX ONLY POOL (f/k/a THE JHM FOREX ONLY POOL, LP), and FOREX TRADING AT HOME,)	
)	
Relief Defendants.)	
)	

STATUTORY RESTRAINING ORDER

Having read the Complaint for Injunctive and Other Equitable Relief and Penalties Under the Commodity Exchange Act (“Complaint”) filed by Plaintiff Commodity Futures Trading Commission (“CFTC” or “Commission”), Plaintiff’s Motion for *Ex Parte* Statutory Restraining Order (“Motion”), the Memorandum of Law in Support of the Commission’s Motions for Statutory Restraining Order and Preliminary Injunction (“Memorandum”) and the declarations and attachments thereto, and being fully advised in the premises,

THE COURT FINDS

1. The Court has jurisdiction over the subject matter of this case. Section 6c of the Commodity Exchange Act (“Act”), 7 U.S.C. §13a-1(a) (Supp. IV 2011), authorizes this Court to enter a statutory restraining order against Defendant James Harvey Mason (“Defendant”) and

Relief Defendants The JHM Forex Only Pool (f/k/a The JHM Forex Only Pool, LP), and Forex Trading at Home (collectively, “Relief Defendants”).

2. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e).

3. It appears that there is good cause to believe Defendant has engaged, is engaging, and/or is about to engage in violations of the Act. Specifically, it appears that Defendant has violated Sections 4b(a)(2)(A), (C) of the Act, 7 U.S.C. §§6b(a)(2)(A), (C) (Supp. II 2009), Sections 4m(1), and 4o(1)(A) and (B) of the Act, 7 U.S.C. §§ 6m(1), and 6o(1)(A), (B) (2006), and Commission Regulation (“Regulation”) 5.3(a)(2), 17 C.F.R. § 5.3(a)(2) (2012).

4. It further appears that there is good cause to believe immediate and irreparable harm to the Court’s ability to grant effective final relief to the participants in Defendant’s commodity pools in the form of monetary redress will occur from the sale, transfer, assignment, or other disposition by Defendant and Relief Defendants of their assets or destruction of records unless they are immediately restrained and enjoined by order of this Court. Accordingly, there is good cause to issue this Order.

ORDER

DEFINITIONS

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

5. “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 including bank accounts and accounts at financial institutions, credits, receivables, lines

of credit, securities, contracts including spot and futures contracts, insurance policies, and all cash, wherever located.

6. “Document” is synonymous in meaning and equal in scope to the usage of the term in FED. R. CIV. P. 34(a) and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained and translated through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term.

7. “Defendant” refers to James Harvey Mason, and any person insofar as he or she is acting in the capacity of an officer, agent, servant, employee, or attorney of Mason, and any person who receives actual notice of this Order by personal service or otherwise, including electronic mail, facsimile, United Parcel Service, or Federal Express, insofar as he or she is acting in concert or participation with Defendants.

8. “Relief Defendants” refers to (a) The JHM Forex Only Pool (f/k/a The JHM Forex Only Pool, LP), as defined in the CFTC’s Complaint to include all interrelated companies including, but not limited to, The JHM Forex Only Pool Irrevocable Trust and JHM Holdings, LLC, and (b) Forex Trading at Home, as defined in the CFTC’s Complaint to include all interrelated companies including, but not limited to, Forex Trading at Home Association, Forex Trading at Home Partners, and FTAH Partners.

RELIEF GRANTED

STATUTORY RESTRAINING ORDER

I. ASSET FREEZE

IT IS HEREBY ORDERED that Defendant and Relief Defendants, all persons insofar as they are acting in the capacity of Defendant’s or Relief Defendants’ agents, servants,

successors, employees, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation with Defendant or Relief Defendants who receive actual notice of this Order by personal service or otherwise, including email, facsimile, and UPS or other commercial overnight service, are restrained from directly or indirectly withdrawing, transferring, removing, dissipating, concealing, or disposing of, in any manner, any funds, assets, or other property, wherever situated, including, but not limited to, all funds, personal property, money, or securities held in safes or safety deposit boxes and all funds on deposit in any financial or brokerage institution, futures commission merchant, bank, or savings and loan account held by, under the actual or constructive control of, or in the name of Defendant or Relief Defendants. The assets affected by this paragraph shall include both existing assets and assets acquired after the effective date of this Order.

IT IS FURTHER ORDERED that, pending further order of this Court, any bank, financial or brokerage institution, entity, or person that holds, controls, or maintains custody of any funds, assets, or other property of Defendant or Relief Defendants, or has held, controlled, or maintained custody of any funds, assets, or other property of Defendant or Relief Defendants, and who receives notice of this Order by any means, including facsimile, electronic mail, United Parcel Service, or Federal Express, shall:

A. **Immediately upon receipt of a copy of this Order** prohibit Defendant and Relief Defendants and any other person from withdrawing, removing, assigning, transferring, pledging, encumbering, disbursing, dissipating, converting, selling, or otherwise disposing of any such assets, except as directed by further order of the Court;

B. **Immediately upon receipt of a copy of this Order** deny Defendant and Relief Defendants and all other persons access to any safe deposit box that is:

1. titled in the name of or maintained by Defendant or Relief Defendants, either individually, jointly, or in any other capacity, including safe deposit boxes titled in the name of or maintained by nominees of Defendant or Relief Defendants; or

2. otherwise subject to the control of or access by Defendant or Relief Defendants; and

C. cooperate with all reasonable requests of the CFTC relating to implementation of this Order, including producing records related to Defendant's and Relief Defendants' accounts and Defendant's and Relief Defendants' businesses.

II. PROHIBITION OF DESTRUCTION OF BOOKS AND RECORDS

IT IS FURTHER ORDERED that Defendant, all persons insofar as they are acting in the capacity of Defendant's agents, servants, successors, employees, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation with Defendant who receive actual notice of this Order by personal service or otherwise, including email, facsimile, and UPS or other commercial overnight service, are restrained from directly or indirectly refusing to permit authorized representatives of the Commission to inspect, when and as requested, any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records, or other property of Defendant, wherever located, including, but not limited to, all such records concerning Defendant's business operations and Defendant's business or personal finances.

III. ACCESS TO AND INSPECTION OF BOOKS AND RECORDS

IT IS FURTHER ORDERED that representatives of the CFTC be allowed immediately to inspect the books, records, and other documents of Defendant and his agents including, but not limited to, electronically stored data, tape recordings, and computer discs, wherever they may be

situated and whether they are in the possession of Defendant or others, and to copy said books, records, and other documents, either on or off the premises where they may be situated.

IV. SERVICE OF ORDER AND ASSISTANCE OF U.S. MARSHALS SERVICE

IT IS FURTHER ORDERED that copies of this Order may be served by any means, including personal service, United Parcel Service, Federal Express, or other commercial overnight service, email, facsimile, Rule 5 of the Federal Rules of Civil Procedure, or Articles 2 through 10 of the Hague Convention, Service Abroad of Judicial and Extrajudicial Documents, upon any financial institution or other entity or person that may have possession, custody, or control of any documents or assets of Defendants, or that may be subject to any provision of this Order. Barry R. Blankfield, Jennifer E. Smiley, Joseph Konizeski, and Heather Johnson, all employees of the CFTC, are hereby specially appointed to serve process, including of this Order and all other papers in this case.

IT IS FURTHER ORDERED that the U.S. Marshals Service is directed to assist the CFTC with service of process, including of the Summons and Complaint and all other papers in this case, as well as assist the CFTC with taking control and custody of the assets, records, and business premises of Defendant.

V. BOND NOT REQUIRED OF PLAINTIFF

IT IS FURTHER ORDERED THAT pursuant to Section 6c(b) of the Act, 7 U.S.C. § 13a-1(b), no bond need be posted by the Commission, which is an agency of the United States of America.

VI. ORDER APPOINTING RECEIVER

IT IS FURTHER ORDERED that:

Joseph W. Grier III of Grier, Furr & Crisp, P.A. is appointed temporary Receiver for the Defendant's and Relief Defendants' assets and the assets of any affiliates or subsidiaries of any Defendant and Relief Defendants, with the full powers of an equity receiver. The Receiver shall be the agent of this Court in acting as Receiver under this Order;

A. Powers of the Receiver

IT IS FURTHER ORDERED that the Receiver is directed and authorized to accomplish the following:

1. Take exclusive custody, control and possession of all funds, property, and other assets in the possession of, or under the control of Defendant and Relief Defendants, wherever situated, that he has a reasonable basis to believe are related to this action. The Receiver shall have full power to sue for, collect, receive and take possession of all goods, chattels, rights, credits, moneys, effects, land, leases, books, records, work papers, and records of accounts, including computer-maintained information and digital data and other papers and documents.
2. Enter and inspect the business premises of Defendant and to take documents or other property related to Defendant;
3. Preserve, hold and manage all receivership assets, and perform all acts necessary to preserve the value of those assets, in order to prevent any loss, damage or injury to customers or clients;
4. Prevent the withdrawal or misapplication of funds entrusted to Defendant and Relief Defendants, and otherwise protect the interests of customers or clients;
5. Collect all money owed to Defendant and Relief Defendants;

6. Initiate, defend, compromise, adjust, intervene in dispose of, or become a party to any actions or proceedings in state, federal or foreign jurisdictions necessary to preserve or increase the assets of Defendant or Relief Defendants necessary to carry out the duties pursuant to this Order;
7. Choose, engage, and employ attorneys, accountants, appraisers, and other independent contractors and technical specialists, as the Receiver deems advisable or necessary in the performance of duties and responsibilities upon obtaining leave of this Court and thereafter, only upon further order of this Court;
8. Issue subpoenas to obtain documents and records pertaining to the receivership, and conduct discovery in this action on behalf of the receivership estate;
9. Open one or more bank or securities accounts as designated depositories for funds of Defendant and Relief Defendants. The Receiver shall deposit all funds of Defendant and Relief Defendants in such designated accounts and shall make all payments and disbursements from the receivership estate from such accounts. The Receiver is authorized to invest receivership funds in U.S. Treasury securities, money market funds or other interest-bearing accounts as appropriate in the Receiver's judgment;
10. Make payments and disbursements from the receivership estate that are necessary or advisable for carrying out the directions of, or exercising the authority granted by, this Order. The Receiver shall apply to the Court for prior approval of any payment of any debt or obligation incurred by Defendant or Relief Defendants prior to the date of entry of this Order, except for payments that the Receiver deems necessary or advisable to secure assets; and

11. Close out all off-exchange foreign currency positions or other outstanding positions and/or hold such assets without further court order.

B. Delivery to Receiver

IT IS FURTHER ORDERED that, immediately upon service of this Order upon them, Defendant and Relief Defendants and any other person or entity served with a copy of this order shall, immediately or within such time as permitted by the Receiver in writing, deliver over to the Receiver;

1. Possession and custody of all funds and all other assets, belonging to Defendant and Relief Defendants;
2. Possession and custody of documents of Defendant and Relief 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, canceled checks, records of wire transfers, and check registers), client lists, title documents and other papers;
3. All keys, computer passwords, entry codes, PIN numbers and combinations to locks necessary to gain or to secure access to any of the assets or documents of Defendants, including but not limited to, access to business premises, means of communication, accounts, computer systems, or other property; and
4. Information identifying the accounts, employees, properties or other assets or obligations of Defendant or Relief Defendants.

C. Cooperation with Receiver

IT IS FURTHER ORDERED that Defendant, his agents and representatives, and all other persons or entities served with a copy of this Order shall cooperate fully with and assist the

Receiver in the performance of his duties. This cooperation and assistance shall include, but not be limited to, providing any information to the Receiver that the Receiver deems necessary to exercising the authority and discharging the responsibilities of the Receiver under this Order; providing all keys, entry codes, PIN numbers, and combinations to locks necessary to gain or secure access to any of the assets or documents of Defendant or Relief Defendants, and any password required to access any computer or electronic files in any medium of Defendant or Relief Defendants; and advising all persons who owe money to Defendant or Relief Defendants that all debts should be paid directly to the Receiver. However, this requirement does not impinge on any person's right to assert applicable privileges.

D. Stay

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

1. Commencing, prosecuting, litigating or enforcing any civil suit, except that actions may be filed to toll any applicable statute of limitations;
2. Accelerating the due date of any obligation or claimed obligation, enforcing any lien upon, or taking or attempting to take possession of, or retaining possession of, property of Defendant or Relief Defendants or any property claimed by Defendant or Relief Defendants, or attempting to foreclose, forfeit, alter or terminate the

Defendant or Relief Defendants' interests in property, whether such acts are part of a judicial proceeding or otherwise;

3. Using self-help or executing or issuing, or causing the execution or issuance of any court attachment, subpoena, replevin, execution, right of offset, or other process for the purpose of impounding or taking possession of or interfering with, or creating or enforcing a lien upon any property, wherever located, owned by or in the possession of Defendant, Relief Defendants, or the Receiver or any agent of the Receiver; and
4. Doing any act or thing to interfere with the Receiver taking control, possession or management of the property subject to the receivership, or to in any way interfere with the Receiver or the duties of the Receiver, or to interfere with the exclusive jurisdiction of this Court over the property and assets of Defendant or Relief Defendants. This paragraph does not stay the commencement or continuation of an action or proceeding by a governmental or regulatory unit, such as the National Futures Association, to enforce such governmental or regulatory unit's police or regulatory power.

E. Receiver's Report to the Court and Compensation

IT IS FURTHER ORDERED that the Receiver maintain written accounts, itemizing receipts and expenditures, describing properties held or managed, and naming the depositories of receivership funds; make such written accounts and supporting documentation available to the Commission for inspection, and, within ninety (90) days of being appointed and periodically thereafter, as directed by the Court, file with the Court and serve on the parties a report

summarizing efforts to marshal and collect assets, administer the receivership estate, and otherwise perform the duties mandated by this Order.

IT IS FURTHER ORDERED that the Receiver and all personnel hired by the Receiver as herein authorized, including counsel to the Receiver, are entitled to reasonable compensation for the performance of duties pursuant to this Order and for the cost of actual out-of-pocket expenses incurred by them for those services authorized by this Order that when rendered were (1) reasonably likely to benefit the receivership estate or (2) necessary to the administration of the estate. The Receiver and all personnel hired by the Receiver shall be compensated solely out of funds now held by or in the possession or control of or which may in the future be received by Defendant or Relief Defendants, or from proceeds of the sale of Defendant's or Relief Defendants' assets, and shall not be entitled to any compensation from the Commission. The compensation of the Receiver and his professionals shall be entitled to priority as administrative expenses. The Receiver shall file with the Court and serve on the parties periodic requests for the payment of such reasonable compensation, with the first such request filed no more than ninety (90) days after the date of this Order and subsequent requests filed quarterly thereafter. The requests for compensation shall itemize the time and nature of services rendered by the Receiver and all personnel hired by the Receiver. The Receiver shall not increase the hourly rates used as the bases for such fee applications without prior approval of the Court.

F. No Bond

IT IS FURTHER ORDERED that the Receiver is appointed without bond.

VII. SERVICE ON THE COMMISSION

IT IS FURTHER ORDERED that Defendant and Relief Defendants shall serve all pleadings, correspondence, notices required by this Order, and other materials on the CFTC by

delivering a copy to Barry R. Blankfield, Senior Trial Attorney, Division of Enforcement, U.S. Commodity Futures Trading Commission, 525 W. Monroe St., Suite 1100, Chicago, Illinois, 60661 and/or by filing such pleadings or other materials electronically with the Court.

VIII. COURT MAINTAINS JURISDICTION

IT IS FURTHER ORDERED that this Order shall remain in full force and effect until further order of this Court upon application, notice, and an opportunity to be heard, and that this Court retains jurisdiction of this matter for all purposes.

IX. FURTHER COURT HEARINGS

IT IS FURTHER ORDERED that Plaintiff's Motion for Preliminary Injunction is set for hearing on May 22, 2013 at 2:00 p.m.

IT IS SO ORDERED.

Signed: March 27, 2013



Graham C. Mullen
United States District Judge

