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22 **UNITED STATES DISTRICT COURT**  
23 **CENTRAL DISTRICT OF CALIFORNIA**

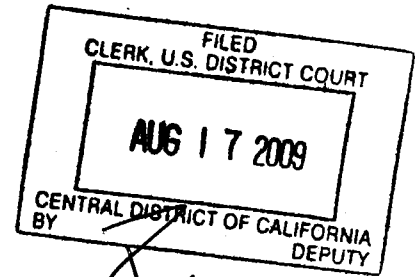
24 U.S. Commodity Futures Trading  
25 Commission,

26 Plaintiff,

27 vs.

28 Gordon A. Driver, Axxess Automation  
LLC, and Axxess Fund Management  
LLC,

Defendants.



SA  
Case No.: 09-cv-0578 ODW (RZx)

~~Proposed~~ ORDER OF  
PRELIMINARY INJUNCTION AND  
OTHER RELIEF AGAINST  
GORDON A. DRIVER, AXCESS  
AUTOMATION LLC, AND AXCESS  
FUND MANAGEMENT LLC

1 Plaintiff, U.S. Commodity Futures Trading Commission (the  
2 “Commission” or (“CFTC”) has filed a Complaint against Defendants Gordon A.  
3 Driver (“Driver”), Axxess Automation LLC (“AA”) and Axxess Fund  
4 Management LLC (“AFM”) (collectively “Defendants”) for Permanent Injunction,  
5 Civil Penalties, and Other Equitable Relief, and moved for an *Ex Parte* Statutory  
6 Restraining Order and Preliminary Injunction. The Court issued a Statutory  
7 Restraining Order (“SRO”) on May 14, 2009. Defendants were served with the  
8 Summons and Complaint and the Court’s SRO. As it appears to the Court that  
9 there is good cause to believe that Defendants have engaged, are engaging in, or  
10 are about to engage in violations of the Commodity Exchange Act, as amended  
11 (“Act”) 7 U.S.C. §§ 1 *et. seq.* (2006), and that this is a proper case for granting a  
12 preliminary injunction to preserve the *status quo*, protect customers from further  
13 loss and damage, and enable the CFTC to fulfill its statutory duties, the Court  
14 enters this Order of Preliminary Injunction and Other Relief Against Gordon A.  
15 Driver, Axxess Automation LLC, and Axxess Management LLC (“Order”) as  
16 follows:

17 **DEFINITIONS**

18 **For purposes of this order the following definitions apply:**

19 1. “Assets” means any legal or equitable interest in, right to, or claim to,  
20 any real personal property, including but not limited to chattels, goods,  
21 instruments, equipment, fixtures, general intangibles, effects, leaseholds, mail or  
22 otherwise deliveries, inventory, checks, notes, accounts, credits, receivables, lines  
23 of credit, contracts, insurance policies, and all cash, wherever located.

24 2. The term “document” is synonymous in meaning and equal to in scope  
25 to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes, but  
26 is not limited to, writings, drawings, graphs, charts, photographs, audio and video  
27 recordings, computer records, and other data compilations from which information  
28

1 can be obtained and translated, if necessary, through detection devices into  
2 reasonably usable form. A draft or non-identical copy is a separate document  
3 within the meaning of the term.

4 3. The term "Defendants" refers to Gordon A. Driver, Axxess  
5 Automation LLC and Axxess Fund Management LLC, and any person insofar as  
6 he or she is acting in the capacity of an officer, agent, servant, employee, or  
7 attorney of any of the Defendants, and any person who receives actual notice of  
8 this Order by personal service or otherwise insofar as he or she is acting in concert  
9 or participation with any of the Defendants.

10 **I.**

11 ***Jurisdiction and Venue***

12 **IT IS HEREBY ORDERED THAT:**

13 4. This Court has jurisdiction over this action pursuant to Section 6c(a)  
14 of the Act, 7 U.S.C. § 13a-1, which authorizes the Commission to seek injunctive  
15 relief against any person whenever it shall appear to the Commission that such  
16 person has engaged, is engaging, or is about to engage in any act or practice  
17 constituting a violation of the Act or any rule, regulation, or order thereunder.

18 5. Venue properly lies with this Court pursuant to Section 6c(e) of the  
19 Act, 7 U.S.C. § 13a-1(e), in that Defendants transact business in this District, and  
20 acts and practices in violation of the Act have occurred, are occurring, or are about  
21 to occur within this District.

22 **II.**

23 ***Prohibitions From Violating the Act***

24 6. Defendants, except as otherwise ordered by this Court, are restrained  
25 and preliminarily enjoined from directly or indirectly:

- 26 A. in or in connection with any order to make, or the making of,  
27 any contract of sale of any commodity in interstate commerce or  
28 for future delivery that is made, or to be made, on or subject to

1 the rules of a designated contract market, for or on behalf of any  
2 other person – (A) cheating or defrauding or attempting to cheat  
3 or defraud the other person; (B) willfully making or causing to  
4 be made to other persons any false reports or statements or  
5 willfully entering or causing to be entered for the other person  
6 any false record; or (C) willfully deceiving or attempting to  
7 deceive the other person by any means whatsoever in regard to  
8 any order or contract or the disposition or execution of any order  
9 or contract, or in regard to any act of agency performed, with  
10 respect to any order or contract for the other person in violation  
11 of Sections 4b(a)(1)(A)- (C) of the Act as amended by the  
12 CFTC Reauthorization Act (“CRA”), §§ 13101-13204, 122 Stat.  
13 1651 (effective June 18, 2008) to be codified at 7 U.S.C. §§ 6b  
14 (a)(1)(A) and (C);

15 B. Employing any device, scheme, or artifice to defraud any  
16 participant or prospective participant, or engaging in any  
17 transaction, practice, or course of business which operates as a  
18 fraud or deceit upon any participant or prospective participant,  
19 by use of the mails or any means of instrumentality of interstate  
20 commerce, in violation of Section 4o(1) of the Act, 7 U.S.C. §  
21 6o(1);

22 C. Commingling the property of any pool that they operate or that  
23 they intend to operate with the property of any other person, in  
24 violation of CFTC Regulation 4.20(c), 17 C.F.R. § 4.20(c)  
25 (2008); and

26 D. engaging in any activity related to trading in any commodity, as  
27 that term is defined in Section 1a(4) of the Act, 7 U.S.C. §  
28

1 1a(4), (“commodity interest”), including but not limited to the  
2 following:

- 3 i. Trading on or subject to the rules of any registered entity,  
4 at that term is defined in Section 1a(29) of the Act, 7  
5 U.S.C. § 1a(29);
- 6 ii. Engaging in, controlling or directing the trading for any  
7 commodity interest account for or on behalf of any other  
8 person or entity, whether by power of attorney or  
9 otherwise;
- 10 iii. Soliciting, receiving, or accepting any funds from any  
11 person in connection with the purchase or sale of any  
12 commodity interest contract;
- 13 iv. Applying for registration or claiming exemption from  
14 registration with the Commission in any capacity, and  
15 engaging in any activity requiring such registration or  
16 exemption from registration with the Commission, except  
17 as provided for in Commission Regulation 4.14(a)(9), 17  
18 C.F.R. § 4.14(a)(9), or acting as a principal, agent or any  
19 other officer or employee of any person registered,  
20 exempted from registration or required to be registered  
21 with the Commission, except as provided for in  
22 Commission Regulation 4.14(a)(9), 17 C.F.R. §  
23 4.14(a)(9);
- 24 v. Entering into any commodity interest transactions for  
25 their own personal accounts, for any account in which  
26 they have a direct or indirect interest and/or having any  
27 commodity interests traded on their behalf; and/or  
28

1 vi. Engaging in any business activities related to commodity  
2 interest trading.

3 7. Defendants Driver and Axxcess Automation, except as otherwise  
4 ordered by this Court, are restrained and preliminarily enjoined from directly or  
5 indirectly, while acting as an unregistered Commodity Pool Operator (“CPO”) as  
6 defined by Section 1a(5) of the Act, 7 U.S.C. § 1a(5), using the mails or any means  
7 or instrumentalities of interstate commerce in connection with their business as a  
8 CPO, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1).

9 8. Defendant Axxcess Fund Management, except as otherwise ordered by  
10 this Court, is restrained and preliminarily enjoined from directly or indirectly  
11 failing, while acting as a CPO registered under the Act, or pursuant to Regulation  
12 4.23 required to be registered, to maintain books and records required under the  
13 Act and CFTC Regulations and failing to open to inspection and copying of such  
14 books and records by any representative of the CFTC or U.S. Department of  
15 Justice, or failing to furnish, upon request by the CFTC, the name and address of  
16 each participant and copies of all reports, letters, circulars, memoranda,  
17 publications, writings, or other literature or advice distributed to participants or  
18 prospective participants, in violation of Section 4n(3)(A) of the Act, 7 U.S.C. §  
19 6n(3)(A), and CFTC Regulations 1.31(a) and 4.23, 17 C.F.R. §§ 1.31(a) and 4.23.

20 **III.**

21 ***Asset Freeze***

22 **IT IS HEREBY ORDERED THAT:**

23 9. Defendants, except as otherwise ordered by this Court, are enjoined  
24 from directly or indirectly:

- 25 A. Transferring, selling, alienating, liquidating, encumbering,  
26 pledging, leasing, loaning, assigning, concealing, dissipating,  
27 converting, withdrawing, or otherwise disposing of any assets,  
28



1 of the Defendants, or under the control of any of the  
2 Defendants;

- 3 ii. the balance of each such account, or a description of the  
4 nature and value of such asset as of the close of business  
5 on the day on which this Order is served, and, if the  
6 account or other asset has been closed or removed, the  
7 date closed or removed, the total funds removed in order  
8 to close the account, the name of the person or entity to  
9 whom such account or other asset was remitted; and  
10 iii. the identification of any safe deposit box that is either  
11 titled in the name, individually or jointly, of any  
12 Defendant, or is otherwise subject to access by any  
13 Defendant.

- 14 D. Upon request by the CFTC, promptly provide the CFTC with  
15 copies of all records or other documentation pertaining to such  
16 account or asset, including, but not limited to, originals or  
17 copies of account applications, account statements, signature  
18 cards, checks, drafts, deposit tickets, transfers to and from the  
19 accounts, all other debit and credit instruments or slips, currency  
20 transaction reports, 1099 forms, and safe deposit box logs; and  
21 E. Cooperate with all reasonable requests of the CFTC relating to  
22 implementation of this Order, including producing records  
23 related to Defendants' accounts.

24 **VI.**

25 ***Maintenance of and Access to Business Records***

26 **IT IS HEREBY ORDERED:**

27 11. Defendants, and all persons or entities who receive notice of this  
28 Order by personal service or otherwise, are enjoined from directly or indirectly



1 destroying, mutilating, erasing, altering, concealing or disposing of, in any manner,  
2 directly or indirectly, any documents that relate to the business practices or  
3 business finances of any Defendant.

4 **VII.**

5 *Commission's Access to and Inspection of Documents*

6 **IT IS HEREBY ORDERED THAT:**

7 12. Representatives of the CFTC be immediately allowed to inspect the  
8 books, records, and other documents of Defendants and their agents including, but  
9 not limited to, paper documents, electronically stored data, tape recordings, and  
10 computer discs, wherever they may be situated and whether they are in the  
11 possession of any of the Defendants or others, and to copy said documents, data  
12 and records, either on or off the premises where they may be situated. Upon  
13 request of the CFTC, Defendants are ordered to deliver to the CFTC documents of  
14 any of the Defendants, including but not limited to all books and records of  
15 accounts, all financial and accounting records, balance sheets, income statements,  
16 bank records (including monthly statements, cancelled checks, records of wire  
17 transfers, and check registers), lists of customers, title documents, other papers, all  
18 keys, computer passwords, entry codes, and combinations to locks necessary to  
19 gain or to secure access to any of the assets or documents of any of the Defendants,  
20 including but not limited to, access to the Defendant's business premises, means of  
21 communication, accounts, computer systems, or other property and information  
22 identifying the accounts, employees, properties, or other assets or obligations of  
23 the Defendants.

24 **VIII.**

25 *Repatriation of Foreign-Held Assets and Production of Documents*

26 **IT IS HEREBY ORDERED THAT:**

27 13. Defendants shall transfer to the territory of the United States all funds,  
28 documents, and assets located in foreign countries which are (1) titled in the name

1 individually or jointly of any Defendant; or (2) held by a person or entity for the  
2 benefit of any Defendant; or (3) under Defendants' direct or indirect control,  
3 whether jointly or singly.

4 **IX.**

5 *Service of Order*

6 **IT IS HEREBY ORDERED THAT:**

7 14. Copies of this Order may be served by any means, including facsimile  
8 or email transmission, upon any financial institution or other entity or person that  
9 may have possession, custody, or control of any documents or assets of Defendants  
10 or that may be subject to any provision of this Order.

11 **X.**

12 *Expedited Discovery*

13 **IT IS HEREBY ORDERED THAT:**

14 15. The parties are granted leave, at any time after service of this Order, to  
15 take the deposition of and demand the production of documents from any person or  
16 entity for the purpose of discovering the nature, location, status, and extent of  
17 assets of Defendants, and the location of documents reflecting the business  
18 transactions of Defendants; forty-eight (48) hours notice shall be deemed sufficient  
19 for any such deposition and five (5) days notice shall be deemed sufficient for the  
20 production of any such documents.

21 **XI.**

22 *Depositions*

23 **IT IS HEREBY ORDERED THAT:**

24 16. The limitations and conditions set forth in Federal Rule of Civil  
25 Procedure 30(a)(2)(B) regarding subsequent depositions of an individual shall not  
26 apply to depositions taken pursuant to this Order. No depositions taken pursuant to  
27 paragraph X shall count toward the ten-deposition limit set forth in Federal Rule of  
28 Civil Procedure 30(a)(2)(A).

**XII.**

*Service on the Commission*

**IT IS HEREBY ORDERED THAT:**

17. Defendants shall serve all notices and other such materials required by this Order, and other materials on the Commission by delivering a copy to W. Derek Shakabpa, Senior Trial Attorney, Division of Enforcement, Commodity Futures Trading Commission, Eastern Regional Office, 140 Broadway, 19<sup>th</sup> Floor, New York, New York 10005.

**XIII.**

*Force and Effect of Order*

**IT IS HEREBY ORDERED THAT:**

18. 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.

**IT IS SO ORDERED** this 17 day of August 2009.

  
\_\_\_\_\_  
Hon. Otis D. Wright II  
UNITED STATES DISTRICT COURT JUDGE