

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

COMMODITY FUTURES TRADING  
COMMISSION,

Plaintiff,

v.

AMERICAN ENERGY EXCHANGE and YORK  
COMMODITIES,

Defendants.

06 CV \_\_\_\_\_

~~[PROPOSED]~~

*Ex Parte* Statutory Restraining Order  
Pursuant to 7 U.S.C. §13a-1 Prohibiting  
the Destruction or Altering of any Books,  
Records, or other Documents and an Order  
to Show Cause why a Preliminary  
Injunction Should Not be Entered



**WHEREAS** Plaintiff 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 prohibiting the destruction of books, records, or other documents, requiring Defendants American Energy Exchange (“AMENX”) and York Commodities (“York”) to permit access to and produce those books, records, and documents to Plaintiff and ordering Defendants to show cause why a preliminary injunction should not be issued, and

**WHEREAS** the Court has considered the pleadings, declarations, exhibits, and memorandum filed in support of the Commission’s application and now, being 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, authorizes *ex parte* relief;
- (2) There is good cause to believe that

(a) AMENX has engaged in, is engaging in, or is about to engage in the offering of entering into futures and options transaction that are not executed on a board of trade designated by or registered with the Commission as a either a contract market or derivatives transaction execution facility in violation of Section 4(a) of the Act, 7 U.S.C. § 6(a); and

(b) Defendants have engaged in, are engaging in, or are about to engage in the offering to enter into options transactions in violation of Section 4c(b) of the Act, 7 U.S.C. §6c(b), and Commission Regulation 32.9(a) and (c), 17 C.F.R. § 32.9(a) and (c);

(3) Absent the entry of this statutory restraining order, Defendants are likely to destroy business records. As such, good cause exists for entry of an Order prohibiting Defendants from destroying records and denying agents of the Commission access to inspect and copy records;

(4) 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

(5) 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 **IT IS HEREBY ORDERED THAT**

## **DEFINITIONS**

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

1. 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.

2. “Defendants” refers to AMENX and York, and any person insofar as he or she is acting in the capacity of an officer, agent, servant, employee, or attorney of AMENX or York, and any person in active concert or participation with defendants who receives actual notice of this Order by personal service or otherwise insofar as he or she is acting in concert or participation with AMENX or York.

## **RELIEF GRANTED**

### **I. Statutory Restraining Order (Maintenance of Business Records)**

**IT IS HEREBY FURTHER ORDERED** that Defendants 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 Defendants.

### **II. Statutory Restraining Order (Commission’s Access to and Inspection of Documents)**

**IT IS HEREBY FURTHER ORDERED** that representatives of the Commission be immediately allowed to inspect the books, records, and other documents of Defendants 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 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 Defendants are ordered to deliver to the Commission documents of the Defendants within ten (10) days of such request, 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 Defendants, including but not limited to, access to the 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 Defendants.

### **III. Service of Order on Defendants and Other Persons**

**IT IS HEREBY FURTHER ORDERED** that copies of this Order may be served by any means including e-mail, facsimile transmission, or a private express courier service, upon Defendants 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.

### **IV. Service on the Commission**

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

V. Order to Show Cause

IT IS HEREBY FURTHER ORDERED that Defendants shall appear before this Court on the 18<sup>th</sup> day of Sept, 2006, at 3:00 pm, before the Honorable Lewis A. Kaplan at the United States Courthouse for the Southern District of New York at 500 Pearl Street, New York, New York, to show cause why this Court should not enter a preliminary injunction:

A. Enjoining Defendants from further violations of the Act; specifically, prohibiting AMENX from violating Section 4(a) of the Act, and prohibiting Defendants from violating Section 4c(b) of the Act, 7 U.S.C. §§6(a) and 6c(b), and Sections 32.9(a) and (c) of the Commission Regulations, 17 C.F.R. §§ 32.9(a) and (c), including but not limited to fraudulently soliciting customers to open accounts to trade options on futures by knowingly misrepresenting: the existence of any organized board of trade called American Energy Exchange or AMENX in the United States, the membership of internationally recognized financial organizations in AMENX; the inaccurate physical locations of either AMENX or York in the United States; or the potential for profits.

B. Ordering Defendants to provide all documents specified in this Order to the Commission; and

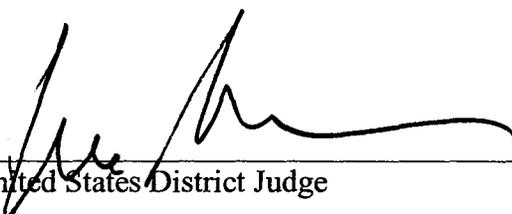
C. Ordering any additional relief this Court deems appropriate.

Should Defendants wish to file a memorandum of law or other papers concerning the issuance of a preliminary injunction against Defendants, such materials shall be filed, served and received by all parties on or before 9/15/06 at 5 p.m. ~~at least five (5) days before the hearing date ordered above.~~ The Commission shall serve and ~~may~~ file any reply papers no later than 10 a.m. on 9/18/06. ~~two (2) days before the hearing date ordered above.~~

**VI. Force and Effect of Order**

**IT IS HEREBY 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 12<sup>th</sup> day of September 2006, at 2:45 p.m.

  
United States District Judge

