

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

U.S. COMMODITY FUTURES
TRADING COMMISSION,

Plaintiff,

v.

MICHAEL JUSTIN HOOPES

Defendant.

Case No. 4:11-CV-00510-EJL

ORDER

STATUTORY RESTRAINING ORDER

Having read the Complaint for Injunctive and Other Equitable Relief and Civil Monetary Penalties under the Commodity Exchange Act (“Complaint”) filed by Plaintiff Commodity Futures Trading Commission (“CFTC” or “Commission”), Plaintiff’s Motion for Statutory Restraining Order (“Motion”), Dkt. 5) and Plaintiff’s Memorandum in Support of Its Motion for Statutory Restraining Order and Motion for Preliminary Injunction, Dkt. 7, including the declarations and supporting exhibits attached thereto, and being fully advised in the premises,

THE COURT FINDS:

ORDER - 1

1. The Court has jurisdiction over the subject matter of this case. Section 6c of the Commodity Exchange Act (“Act”) as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of 2008 (“CRA”)), §§ 13101-13204, 122 Stat. 1651 (enacted June 18, 2008), and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”), Pub. L. No. 111-203, Title VII (the Wall Street Transparency and Accountability Act of 2010), §§701-774, 124 Stat. 1376 (enacted July 21, 2010), to be codified at 7 U.S.C. §§ 1 *et seq.*, authorizes this Court, if appropriate, to enter a statutory restraining order against Defendant Michael Justin Hoopes (“Hoopes”).

2. It appears there is good cause to believe that Hoopes has engaged, is engaging, or is about to engage in violations of Section 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. § 6b(a)(2)(i)-(iii); Section 4b(a)(1)(A)-(C) of the Act as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(1)(A)-(C); Sections 4o(1) and 4m(1) of the Act, 7 U.S.C. §§ 6o(1) and 6m(1); and Commission Regulation 4.20(c), 17 C.F.R. § 4.20(c).

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

4. Pursuant to the above findings, the Court is authorized pursuant to 7 U.S.C. § 13a-1, to enter a statutory restraining order against Hoopes prohibiting, among other conduct,

the destruction of documents or the withdrawal or dissipation of assets. *CFTC v. Co Petro Marketing Group, Inc.*, 680 F.2d 573, 583 (9th Cir. 1982) (“Upon a proper showing, the district court is empowered to issue permanent or temporary injunctions or restraining orders [under Section 6c of the Act] . . . or orders affording like relief, including orders to take such action as is necessary to remove the danger of violation.”)

ORDER

The Court orders that the Motion for Statutory Restraining Order (Dkt. 5) is GRANTED.

The terms of the restraining order are as follows:

DEFINITIONS

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

“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.

“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.

“Defendant” means Michael Justin Hoopes and any person insofar as he or she is acting in the capacity of an officer, agent, servant, employee, or attorney of Hoopes, 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 Hoopes.

RELIEF GRANTED

STATUTORY RESTRAINING ORDER

I. ASSET FREEZE

IT IS HEREBY ORDERED THAT Hoopes is restrained and enjoined from directly or indirectly withdrawing, transferring, removing, dissipating, selling, alienating, liquidating, encumbering, pledging, leasing, loaning, assigning, concealing, converting, or otherwise disposing of any funds, assets, or other property, wherever located, including funds, property, or assets held outside the United States, except as ordered by the Court. The assets affected by this Paragraph shall include both existing assets and assets acquired after the effective date of this Order, as well as accounts not specifically identified below.

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 Hoopes, or has held, controlled, or maintained custody of any funds, assets, or other property of Hoopes, and who receives notice of this Order by any means, including electronic mail, facsimile, United Parcel Service, or Federal Express, shall:

A. prohibit Hoopes 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. deny Hoopes and all other persons access to any safe deposit box that is:

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

2. otherwise subject to the control of or access by Hoopes; and

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

II. PROHIBITION ON DESTRUCTION OF BOOKS AND RECORDS

IT IS FURTHER ORDERED THAT Hoopes and all persons or entities who receive notice of this Order by personal service or otherwise, including electronic mail, facsimile, United Parcel Service, or Federal Express, 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 operations or practices, or the business or personal finances, of Hoopes.

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 Hoopes 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 Hoopes or others, and to copy said documents, data, and records, 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 electronic mail, facsimile, United Parcel Service, or Federal Express, upon any financial institution or other entity or person that may have possession, custody, or control of any documents or assets of Hoopes, or that may be subject to any provision of this Order. Joseph Patrick, Eleanor Oh, and Venice Bickham, all employees of the CFTC, are hereby specially appointed to serve process, including this Order and all other papers in this cause.

IT IS FURTHER ORDERED THAT the United States Marshals Service is directed to assist the CFTC with service of process, including 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 Hoopes.

V. SERVICE ON THE COMMISSION

IT IS FURTHER ORDERED THAT Hoopes shall serve all pleadings, correspondence, notices required by this Order, and other materials on the CFTC by delivering a copy to Stephanie Reinhart, Senior Trial Attorney, Division of Enforcement, Commodity Futures Trading Commission, 525 W. Monroe St., Suite 1100, Chicago, IL 60661.

VI. 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.

VII. SERVICE ON DEFENDANT

IT IS FURTHER ORDERED THAT Plaintiff shall serve the Complaint and other pleadings filed in this matter along with a copy of this Order on Defendant forthwith and provide an electronic courtesy copy to Defendant's known counsel immediately.

VIII. NO BOND REQUIRED

IT IS FURTHER ORDERED THAT pursuant to 7 U.S.C. § 13a-1(b) no bond shall be required by Plaintiff.

IX. FURTHER COURT HEARINGS

IT IS FURTHER ORDERED THAT unless this parties can reach a stipulation regarding the motion for preliminary injunction, Dkt. 6, this matter is set for a telephonic status hearing on **Monday, November 7, 2011 at 11:30 a.m.** Plaintiff shall initiate the conference call and shall conference in the Court after all parties are on the line at 208-334-9368. At the status hearing it will be determined if the parties can stipulate to a briefing schedule and/or a continuation of the restraining order pending the Court's ruling on the Plaintiff's Motion for Preliminary Injunction and the date for a hearing, if necessary, on the motion for preliminary injunction.

IT IS SO ORDERED.

DATED: **October 25, 2011**



A handwritten signature in black ink, appearing to read "Edward J. Lodge". The signature is written in a cursive style and is positioned above a horizontal line.

Honorable Edward J. Lodge
U. S. District Judge