

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

U.S. COMMODITY FUTURES TRADING COMMISSION,	§	
	§	
	§	
Plaintiff,	§	
	§	No.: 3-09-cv-1831-M
v.	§	
	§	
M25 INVESTMENTS, INC., M37 INVESTMENTS, LLC, SCOTT P. KEAR, SR., JEFFREY L. LYON and DAVID G. SEAMAN,	§	
	§	
	§	
Defendants.	§	

STATUTORY RESTRAINING ORDER,  
ORDER FOR AN ACCOUNTING, ORDER FOR APPOINTMENT OF RECEIVER,  
ORDER FOR EXPEDITED DISCOVERY, AND OTHER EQUITABLE RELIEF  
AND  
ORDER TO SHOW CAUSE REGARDING PRELIMINARY INJUNCTION

This matter came before the Court on September 29, 2009, on Plaintiff U.S. Commodity Futures Trading Commission’s (“Commission”) Motion for Statutory Restraining Order, Order Requiring an Accounting, Order Granting Expedited Discovery, Order to Show Cause Regarding Preliminary Injunction, and Other Equitable Relief (the “Motion”). The Court, having considered the Motion and all other evidence presented by the Commission finds that:

1. This Court has jurisdiction over the parties and over the subject matter of this action pursuant to Section 6c of the Commodity Exchange Act, 7 U.S.C. §§ 13a-1 and 2(c)(2)(B) and (C) (2006) (the “Act”), and Section 2(c)(2) of the Act as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act (“CRA”)), §§ 13101-13204, 122 Stat. 1651 (enacted June 18, 2008) (to be codified at 7 U.S.C. § 2(c)(2)).

2. Venue lies properly within this District pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2006).

3. There is good cause to believe that Defendants M25 Investments, Inc. (“M25”) and M37 Investments, LLC (“M37”), individually and acting as a common enterprise, and Scott P. Kear, Sr. (“Kear”), Jeffrey L. Lyon (“Lyon”), and David G. Seaman (“Seaman”) (collectively, “Defendants”) have engaged in acts and practices constituting violations of the Act and Commission Regulations.

4. There is good cause to believe that immediate and irreparable damage to the Court’s ability to grant effective final relief for customers in the form of monetary redress will occur from the sale, transfer, assignment, or other disposition by Defendants of assets or records unless Defendants are immediately restrained and enjoined by Order of the Court.

5. Good cause exists for the freezing of assets owned, controlled, managed, or held by, on behalf of, or for the benefit of Defendants (hereinafter “assets”).

6. Good cause exists for entry of an order prohibiting Defendants, their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with the Defendants, including any successor thereof, from destroying records and/or denying agents of the Commission access to inspect and copy records to ensure that Commission representatives have immediate and complete access to those books and records.

7. Good cause exists to require an accounting to determine the location and disposition of customer funds.

8. Good cause exists for the Plaintiff to conduct expedited discovery in order to determine the full extent of Defendants’ alleged wrongdoing, locate Defendants’ other customers, identify customers’ funds and other assets, and clarify the source of various funds.

9. Good cause exists for the appointment of a Receiver to take all investigative steps deemed necessary with respect to assets owned, controlled, managed or held by, on behalf of, or for the benefit of Defendants (“Defendants’ Assets”) in order to preserve assets, investigate and determine customer claims, determine unlawful proceeds retained by Defendants and amounts due to customers as a result of Defendants’ alleged violations.

10. 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.

### **DEFINITIONS**

For purposes of this Order, the following definitions apply:

11. The term “document” is synonymous in meaning and equal in scope to the usage of the term in the Federal Rules of Civil Procedure (“FRCP”) 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 reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term.

12. The term “assets” means any legal or equitable interest in, right to, or claim to, any real or personal property, whether individually or jointly, directly or indirectly controlled, and wherever located, including but not limited to: chattels, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, mail or other deliveries, inventory, checks, notes, accounts (including, but not limited to, bank accounts and accounts at other financial institutions), credits, receivables, lines of credit, contracts (including spot, futures, or option contracts), insurance policies, and all cash.

13. “Defendants” shall mean and refer to not only M25 Investments, Inc. and M37 Investments, LLC, and Scott P. Kear, Sr., Jeffrey L. Lyon and David G. Seaman, but also to any d/b/a, successor, affiliate, subsidiary, or other entity owned, controlled, managed, or held by, or on behalf of any of them individually or collectively.

### **RELIEF GRANTED**

#### **I. Order Against Transfer, Dissipation, and Disposal of Assets**

##### **IT IS HEREBY ORDERED that:**

14. Defendants and their agents, servants, employees, assigns, attorneys, including any successor thereof, and persons in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise, are restrained and enjoined from directly or indirectly transferring, selling, alienating, liquidating, encumbering, pledging, leasing, loaning, assigning, concealing, dissipating, converting, withdrawing, or otherwise disposing of any of the assets, wherever located, including the assets held outside the United States, except as provided in Section II of this Order, or as otherwise ordered by the Court.

15. Defendants are restrained and enjoined from directly or indirectly opening or causing to be opened any safe deposit boxes titled in the name of or subject to access by Defendants, unless accomplished by the Receiver or a representative of the Commission.

#### **II. Accounting and Transfer of Funds and Documents**

**IT IS FURTHER ORDERED**, that within fifteen (15) business days following the service of this Order, Defendants shall:

16. Provide the Commission and the Receiver with a full detailed accounting of all funds, documents, and assets, including the assets inside and outside of the United States that are

held by each and every Defendant, for their benefit, or under their direct or indirect control, whether jointly or singly;

17. Transfer to the territory of the United States and to the possession, custody, and control of the Commission, all funds, documents, and non real estate assets located outside the United States that are held by each and every Defendant, for their benefit, or under their direct or indirect control, whether jointly or singly; and

18. Provide the Commission and the Receiver access to all records of Defendants held by financial institutions located within or outside the territorial United States by signing the Consent to Release of Financial Records (attached to this Order as attachments A – C).

### **III. Directives to Financial Institutions and Others**

**IT IS FURTHER ORDERED**, pending further Order of this Court, that any financial or brokerage institution, business entity, or person that holds or has held, controls or has controlled, or maintains or has maintained custody of any of the assets at any time since December 1, 2007, shall:

19. Prohibit Defendants, and all other persons from withdrawing, removing, assigning, transferring, pledging, encumbering, disbursing, dissipating, converting, selling, or otherwise disposing of the assets, except as directed by further Order of the Court;

20. Deny Defendants and all other persons (except for the Commission or a Court appointed receiver) access to any safe deposit box that is: (a) owned, controlled, managed, or held by, on behalf of, or for the benefit of Defendants, either individually or jointly, whether in the name, alias, or fictitious “doing business as” name; or (b) otherwise subject to access by Defendants;

21. Provide counsel for the Commission and the Receiver within fifteen (15) business days of receiving a copy of this Order, a statement setting forth: (a) the identification number of each and every account or other asset owned, controlled, managed, or held by, on behalf of, or for the benefit of Defendants (as defined above), either individually or jointly; (b) 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, and the name of the person or entity to whom such account or other asset was remitted; and (c) the identification of any safe deposit box that is owned, controlled, managed, or held by, on behalf of, or for the benefit of Defendants, either individually or jointly, or is otherwise subject to access by Defendants; and

22. Upon request by the Commission, promptly provide the Commission and the Receiver with copies of all records or other documentation pertaining to such account or asset, including, but not limited to, account applications, 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.

#### **IV. Maintenance of Business Records**

##### **IT IS FURTHER ORDERED that:**

23. Defendants and their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with the Defendants, including any successor thereof, and all other 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 or personal finances of Defendants.

**V. Inspection and Copying of Books and Records**

**IT IS FURTHER ORDERED that:**

24. Representatives of the Commission and the Receiver shall be immediately allowed to inspect the books, records, and other documents of Defendants, whether held by them or their agents, including, but not limited to, electronically stored information, 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, information and records, either on or off the premises; and Defendants and their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with the Defendants, including any successor thereof, who receive actual notice of this Order by personal service or otherwise, including via facsimile or e-mail transmission, shall cooperate fully with the Commission to locate and provide to representatives of the Commission all books and records of Defendants, wherever such books and records may be situated, and to locate and provide to representatives of the Commission information regarding the whereabouts of Defendants, provided, however, that any documents claimed to be protected by attorney-client or work product privileges or immunities shall be specifically described on a log given to the Commission and the Receiver.

**VI. Appointment Of A Temporary Receiver**

**IT IS FURTHER ORDERED that:**

25. Kelly M. Crawford is appointed temporary Receiver with the powers enumerated below:

- a. 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 under the authority granted by this Order; and
- b. Issue subpoenas to obtain documents and records pertaining to the receivership, and conduct discovery in this action on behalf of the receivership estate.

26. Immediately upon service of this Order upon them, the Defendants, and any other person or entity served with a copy of this Order, without need of any subpoena or further order, shall immediately or within such time as permitted by the Receiver in writing make available for inspection by the Receiver:

- a. 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;
- b. All precious metals, other commodities, funds, and other assets being held by or on behalf of the Defendants, or on behalf of the Defendants' customers, clients, pool participants or investors;
- c. All keys, computer passwords, entry codes, and combinations to locks necessary to gain access to any of the assets or documents of the Defendants, including but not limited to, access to the Defendants' residential and business premises, means of communication, accounts, computer systems, or other property; and

- d. Information identifying the accounts, employees, properties or other assets or obligations of the Defendants.

27. The Defendants, and all other persons or entities served with a copy of this Order, shall cooperate fully with and assist the Receiver. 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 providing any password required to access any computer or electronic files in any medium.

28. Except by leave of the Court, during the pendency of the receivership ordered herein, the Defendants, and all other persons and entities seeking relief of any kind from Defendants' Assets (other than the present action by the Commission) including but not limited to customers, clients, pool participants, investors, members, partners, trust beneficiaries, note holders, creditors, claimants, lessors, in law or in equity, and all persons acting on behalf of any such customer, client, pool participant, investor, member, partner, trust beneficiary, note holder, creditor, claimant, lessor, or other person, including sheriffs, marshals, and all offices and deputies, and their respective attorneys, servants, agents and employees, are, until further orders of this Court, be and hereby are restrained, enjoined and stayed from doing anything, directly or indirectly, to interfere with the Receiver's performance of his duties. Accordingly, all such persons are enjoined and stayed from taking any action to establish or enforce any claim, right or interest for, against, on behalf of, in, or in the name of, the 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:

- a. Commencing, prosecuting, litigating or enforcing any suit, except that actions may be filed to toll any applicable statute of limitations;

- b. 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 the Defendants or any property claimed by the Defendants, or attempting to foreclose, forfeit, alter or terminate any of the Defendants' interests in property, whether such acts are part of a judicial proceeding or otherwise;
- c. Using self-help or executing or issuing, or causing the execution or issuance of any court attachment, subpoena, replevin, execution 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 the Defendants, or the Receiver, or any agent of the Receiver; and
- d. Doing any act or thing to interfere with the control or 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 the Defendants.

This paragraph does not stay the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power.

29. Upon the request of the Receiver, the United States Marshal's Office is hereby ordered to assist the Receiver in carrying out his duties to identify the location of any Receivership Record.

30. Within sixty (60) days of the date of this Order, the Receiver shall file with this Court and serve Plaintiff Commission a report outlining the steps taken to identify customers, identify assets, determine the amount invested by each customer, and the portion of assets

available to pay back customers. This report shall also include a statement as to the estimated time it will take to take possession of and distribute available assets to customers and to conduct and expound and wind up the receivership. On or before that date the Receiver may seek additional authority from the Court.

31. 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, from the assets now held by, or in the possession or control of, or which may be received by the Defendants. The Receiver shall file with the Court and serve on the parties, including Plaintiff Commission, periodic requests for the payment of such reasonable compensation, with the first such request filed no more than sixty (60) days after the date of this Order. Plaintiff Commission may object to any part of a request within 30 calendar days of service of a request. The Receiver shall not increase the hourly rates used as the bases for such fee applications without prior approval of the Court.

32. All or any of Defendants may seek a modification to this Order to obtain access to assets for ordinary living expenses, professional fees, and other expenses.

## **VII. Order Granting Expedited Discovery**

### **IT IS HEREBY ORDERED that:**

33. The Commission may conduct expedited discovery in advance of discovery allowed by FRCP Rule 26. The Commission may take depositions of Defendants and non-parties subject to five calendar days notice pursuant to FRCP 30(a) and 45. Notice may be given personally, by facsimile, or by e-mail, and more than ten depositions may be taken. The Defendants may also conduct discovery on five calendar days notice.

**VIII. Bond Not Required of Plaintiff**

**IT IS FURTHER ORDERED that:**

34. The Commission is an agency of the United States of America and, accordingly, need not post a bond.

**IX. Order to Show Cause**

**IT IS FURTHER ORDERED that:**

35. Defendants shall appear before this Court on December 22, 2009 at 10 a.m., before the Honorable Barbara M.G. Lynn at the United States Courthouse for the Northern District of Texas, Dallas Division, 1100 Commerce St., Dallas, Texas, 75242, to show cause, if there be any, why an Order for Preliminary Injunction and an expanded receivership to take control of assets should not be granted to prohibit further violations of the Act and why the other relief requested by the Commission should not be granted pending trial on the merits of this action.

36. Should any party wish to file a memorandum of law or other papers in opposition to Plaintiff's Motion for a Preliminary Injunction, all papers shall be filed on or before November 30, 2009 and served via facsimile or overnight delivery to the Commission's Washington D.C. office no later than five o'clock p.m. on November 30, 2009. Any reply papers shall be filed with the Court and delivered to opposing counsel no later than five o'clock p.m. on December 14, 2009. Service of all papers shall be by electronic mail, facsimile, or personal service.

**X. Service**

**IT IS FURTHER ORDERED that:**

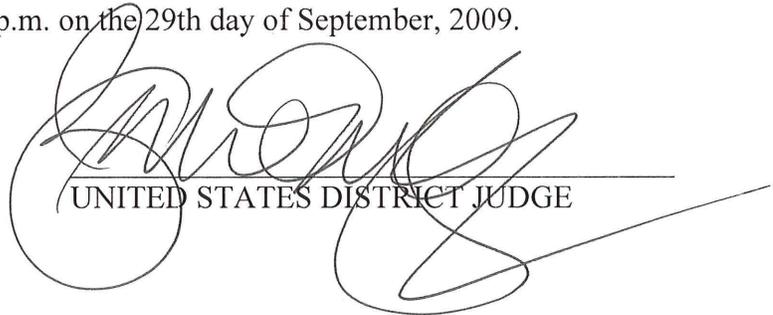
37. Copies of this Order may be served by any means, including facsimile and e-mail transmission, upon any entity or person that may have possession, custody, or control of any documents or the assets that may be subject to any provision of this Order, and, additionally, that Glenn Chernigoff, Luke Marsh, Gretchen Lowe, Kara Mucha, Michelle Bougas, and representative(s) of the U.S. Marshal Service are specially appointed by the Court to effect service. Further, service of the Summons, Complaint, or other process may be effected by any Commission representative, any U.S. Marshal or deputy U.S. Marshal, or in accordance with FRCP 4, and service on corporate entities may be effected by serving the Summons, Complaint, or other process via overnight delivery to the registered agent of said corporate entities.

**XI. Force and Effect**

**IT IS FURTHER ORDERED** that:

38. 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**, at 6:15 p.m. on the 29th day of September, 2009.



UNITED STATES DISTRICT JUDGE