

JUDGE OETKEN

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. COMMODITY FUTURES TRADING COMMISSION,)	
)	
Plaintiff,	)	Civil Action No. _____
)	
v.	)	DAB
	)	5/5/15
HEET KHARA and NASIM SALIM,	)	[PROPOSED] ORDER ON
	)	PLAINTIFF'S EX PARTE
Defendants.	)	APPLICATION FOR STATUTORY
	)	RESTRAINING ORDER, EXPEDITED
	)	DISCOVERY, ASSET FREEZE,
	)	ORDER TO SHOW CAUSE
	)	REGARDING PRELIMINARY
	)	INJUNCTION, AND OTHER
	)	EQUITABLE RELIEF
)	
	)	ECF Case

Plaintiff U.S. Commodity Futures Trading Commission (the "CFTC" or "Commission") applies to this Court, pursuant to Section 6c of the Commodity Exchange Act (the "Act"), as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII, §§ 13101-13204, 122 Stat. 1651 (enacted June 18, 2008), and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111-203, Title VII, §§ 701-774, 124 Stat. 1376 (enacted July 21, 2010), 7 U.S.C. § 13a-1 (2006 & Supp. IV 2011), for entry of an *ex parte* statutory restraining order, providing the following relief:

1. Freezing all of the assets of the Defendants;
2. Prohibiting Defendants and any person(s) acting or purporting to act for or on their behalf, from destroying or altering any books, records, or other documents and barring Defendants and their agents from denying access to those books, records, and documents to any representative of the Commission;

3. Granting leave to engage in expedited discovery in order to determine the full extent of Defendants' alleged wrongdoing, locate any other customers, identify customer funds and other assets of the Defendants, and clarify the source and whereabouts of various funds; and
4. Granting permission to serve Defendants via email;
5. Ordering the Defendants to appear before this Court to show cause why this Court should not enter a preliminary injunction enjoining the Defendants from further violating the Act as amended, continuing the relief granted in the Statutory Restraining Order, and ordering any additional relief this Court deems appropriate.

The Court has considered the Complaint, the Declaration of Andrew Vrabel, and the Memorandum of Law of the Commission in Support of Its Application for an *Ex Parte* Statutory Restraining Order and Order to Show Cause Regarding Preliminary Injunction, and now, being fully advised in the premises, finds that:

1. This Court has jurisdiction over the parties and over the subject matter of this action and is authorized to grant *ex parte* relief pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1.
2. Venue lies properly within this District pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e).
3. There is good cause to believe that the Defendants by and through their agents, principals, and control persons have engaged in, are engaging in, or are about to engage in trading practiced or conduct on or subject to the rules of a registered entity that is, is of the character of, or is commonly known as spoofing (bidding or

offering with the intent to cancel the bid or offer before execution), in violation of Section 4c(a)(5)(C) of the Commodity Exchange Act, 7 U.S.C. § 6c(a)(5)(C);

4. There is good cause for the Court to freeze assets owned, controlled, managed, or held by or on behalf of, or for the benefit, of Defendants;
5. There is good cause for entry of an order prohibiting Defendants, their agents, servants, employees, assigns, attorneys, and persons acting 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;
6. There is good cause for the Plaintiff to conduct expedited discovery in order to determine the full extent of Defendants' alleged wrongdoing, locate any other customers, identify customer funds and other assets of the Defendants, and clarify the source and whereabouts of various funds;
7. Absent the entry of this statutory restraining order, the Defendants are likely to dissipate or transfer assets, destroy, or otherwise prevent access to business records;
8. This is a proper case for granting an *ex parte* statutory restraining order to preserve the status quo, to protect public customers, clients or participants from loss and damage and enable the Commission to fulfill its statutory duties;

Therefore, the Court orders as follows:

DEFINITIONS

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

9. The term “asset” 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, insurance policies, and all cash, wherever located, whether in the United States or outside the United States;
10. 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, all writings or printed matter of any kind, including without limitation: records, correspondence, memoranda, notes, rolodexes, address books, diaries, statistics, e-mail, letters, telegrams, minutes, contracts, reports, studies, checks, statements, receipts, returns, summaries, pamphlets, books, prospectuses, interoffice or intra-office communications, telephone message slips, offers, notations of conversations, bulletins, drawings, plans, computer printouts, computer input or output, teletypes, facsimiles, invoices, worksheets, ledger books, books of accounts, and all drafts, alterations, modifications, changes and amendments of any of the foregoing. The term “document” also includes graphs, charts, photographs, phonographic record, audio and video recordings, computer records, and other data compilations from which information can be obtained or translated, if necessary, through detection devices into reasonable usable form. The term “document” also refers to each and every document in one’s actual or

constructive possession, including but not limited to: (i) all documents within the custody or control of any present or former agents, employers, employees, partners, and (ii) all documents which one has a legal or equitable right to obtain from another person. A draft or non-identical copy is a separate document within the meaning of the term. A document also includes the file and folder tabs associated with each original and copy;

11. The term "Defendants" refers to Heet Khara and Nasim Salim and any other person insofar as he or she is acting in the capacity of an officer, agent, servant, employee, or attorney of any of the Defendants, and any person who receives actual notice of this Order by personal service or otherwise insofar as he or she is acting in concert or participation with any of the Defendants. "Defendants" also refers to any d/b/a, successor, affiliate, subsidiary, or other entity owned, controlled, managed, or held by, on behalf of, or for the benefit of Khara and Salim.

RELIEF GRANTED

I. Asset Freeze Order Prohibiting the Transfer, Removal, Dissipation, and Disposal of Assets

IT IS HEREBY ORDERED that:

12. The Defendants and their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with them, 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 immediately restrained and enjoined, except as otherwise ordered by this Court, from directly or indirectly: transferring, selling, alienating, liquidating, encumbering, pledging,

leasing, loaning, assigning, concealing, dissipating, converting, withdrawing, or otherwise disposing of any assets, wherever located, including Defendants' Assets held outside the United States;

13. 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;
14. The assets affected by this paragraph shall not include assets that have been obtained by the Defendants after the entry of this order, unless such assets are derived from or otherwise related to the activities alleged in the Commission's complaint.

II. Directives to Financial Institutions and Others

IT IS FURTHER ORDERED that:

15. Pending further Order of this Court, any financial or brokerage institution, business entity, or person that holds, controls, or maintains custody of any account or asset titled in the name of, held for the benefit of, or otherwise under the control of any of the Defendants, or has held, controlled, or maintained custody of any such account or asset of the Defendants, and/or their affiliates, subsidiaries, and assigns, shall:
 - a. Prohibit Defendants and all other persons from withdrawing, removing, assigning, transferring, pledging, encumbering, disbursing, dissipating, converting, selling, or otherwise disposing of Defendants' assets, except as directed by further order of the Court;

- b. Deny Defendants and all other persons 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; or (b) otherwise subject to access by Defendants;
- c. Provide the Commission, within five (5) business days of receiving a copy of this Order, a statement setting forth: (a) the identification number of each and every account or asset owned, controlled, managed, or held by, on behalf of, or for the benefit of Defendants, 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, 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 either 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 the Defendants;
- d. Upon request by the Commission, promptly provide the Commission with copies of all records or other documentation pertaining to such account or asset, including, but not limited to, originals or copies of 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, trading records, and safe deposit box logs;

- e. Cooperate with all reasonable requests of the Commission relating to implementation of this Order, including producing records related to Defendants' accounts or assets.

III. Maintenance of and Access to Business Records

IT IS FURTHER ORDERED that:

16. The Defendants and all persons or entities who receive notice of this Order by personal service or otherwise, are restrained 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 any Defendant.

IV. Bond Not Required of Plaintiff

IT IS FURTHER ORDERED that:

17. As Plaintiff Commission is an agency of the United States of America which has made a proper showing under Section 6c(b), 7 U.S.C. 13a-1, this restraining order is granted without bond. Accordingly, the Commission need not post a bond.

V. Inspection and Copying of Books and Records

IT IS FURTHER ORDERED that:

18. Representatives of the Commission shall be immediately allowed to inspect the books, records, and other documents of the Defendants and their agents including, but not limited to, paper documents, electronically stored information, tape recordings, and computer discs, wherever they may be situated and whether they

are in the possession of the Defendants or others, and to copy said documents, data and records, either on or off the premises where they may be situated;

19. Upon request of the Commission, the Defendants shall within 48 hours cause to be prepared and delivered to the Commission, a detailed and complete schedule of all passwords and identification (ID) numbers for all websites, electronic mail accounts, videophone accounts and all accounts at any bank, financial institution, or brokerage firm (including any introducing broker or futures commission merchant) operated by or to which any of the Defendants has access;
20. Upon request of the Commission, Defendants shall within 48 hours cause to be prepared and delivered to the Commission, a detailed and complete schedule of all desktop computers, laptop computers, and personal digital assistants (PDA) owned and/or used by them in connection with their business. The schedules required by this section shall include at a minimum the make, model, and description of each, along with the location, the name of the person primarily assigned to use the computer and/or PDA, and all passwords necessary to access and use the software contained on the computer and/or PDA. The Commission shall be authorized to make an electronic, digital, or hard copy of all of the data contained on the computer(s) and/or PDA(s).

VI. Service of Order

IT IS FURTHER ORDERED that:

21. Copies of this Order may be served by any means, including via overnight delivery to home or business addresses, facsimile transmission, or email upon any Defendant, financial institution, or any agent of any Defendant, including agents

designated pursuant to CFTC Rule 15.05, 17 C.F.R. § 15.05, or other entity or person that may have possession, custody, or control of any documents or assets of any Defendant, or that may be subject to any provision of this Order;

22. Patryk Chudy, David Oakland, Neel Chopra, Katie Rasor and Trevor Kokal and representatives of the United States Marshals Service are specially appointed by the Court to effect service;
23. Pursuant to Federal Rule of Civil Procedure 4(f), the Commission is authorized to effect service of process by, inter alia: (i) seeking the assistance of any foreign futures authority, or any department or agency of a foreign government or political subdivision thereof, to deliver a copy of the summons, complaint, any other process and this Order to the Defendants, or in any other manner authorized or not prohibited by the foreign country's law to effect service; or (ii) by delivering a copy of the summons, complaint, any other process, and this Order on any agents of Defendants, including agents who are authorized by law to receive service of process for Defendants pursuant to Commission Regulation 15.05, 17 C.F.R. § 15.05.

VII. Expedited Discovery

IT IS FURTHER ORDERED that:

24. The Commission is granted leave, at any time after service of this Order, to take the deposition of and demand the production of documents from any person or entity for the purpose of discovering the nature, location, status, and extent of assets of the Defendants, and the location of documents reflecting the business

transactions of the Defendants. Forty-eight (48) hours' notice, personally, by facsimile, by overnight delivery, or by electronic mail, shall be deemed sufficient for any such deposition and five (5) days' notice, personally, by facsimile, by overnight delivery, or by electronic mail, shall be deemed sufficient for the production of any such documents.

25. The Commission may conduct expedited discovery to enable the Commission to fulfill its statutory duties and protect investors from further loss or damage. This expedited discovery will allow the Commission to determine the full extent of Defendants' alleged wrongdoing (including, but not limited to, the possible involvement of others), locate Defendants' other customers, identify customers' funds and other assets, and clarify the sources of various funds.
26. The limitations and conditions set forth in Federal Rule of Civil Procedure 30(a)(2)(A) regarding subsequent depositions of an individual shall not apply to depositions taken pursuant to this Order. No depositions taken pursuant to this Section shall count toward the ten-deposition limit set forth in Federal Rule of Civil Procedure 30(a)(2)(A).

VIII. Service on the Commission

IT IS FURTHER ORDERED that:

27. The Defendants shall comply with all electronic filing rules and requirements of the U.S. District Court for the Southern District of New York and shall serve all pleadings, correspondence, notices required by this Order, and other materials on the Commission by delivering a copy to Patryk Chudy, Chief Trial Attorney, Division of Enforcement, U.S. Commodity Futures Trading Commission, Eastern

Regional Office, 140 Broadway, 19th Floor, New York, New York 10005 by electronic filing, email, personal delivery, overnight delivery or courier service (such as Federal Express or United Parcel Service) and not by regular mail due to potential delay resulting from heightened security and decontamination procedures applicable to the Commission's regular mail.

IX. Order to Show Cause

IT IS FURTHER ORDERED that:

28. / Defendants shall appear before this Court on Tuesday 5/19/2015, at 11:00AM, before the Honorable Part I Judge, Room 903 at 40 Foley Sq. United States Courthouse, ~~500 Pearl Street~~, in the City, County, and State of New York, to show cause why this Court should not continue the freeze on the assets of the Defendants and why an order should not be issued pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, ordering that:

A. Defendants and any of their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with the Defendants, including any successor thereof, be restrained and preliminarily enjoined from further violations of the Act and Commission Regulations; specifically, prohibiting the Defendants from engaging in conduct in violation of Section 4c(a)(5)(C) of the Commodity Exchange Act, 7 U.S.C. § 6c(a)(5)(C).

B. Defendants and any of their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with the Defendants, including any successor thereof, be prohibited from directly or indirectly:

1. Engaging in any activity related to trading in any commodity, as that term is defined in Section 1a(4) of the Act, 7 U.S.C. § 1a(4) (“commodity interest”), including but not limited to the following:

- a. Trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(29) of the Act, 7 U.S.C. § 1a(29));
 - b. Entering into any transactions involving “commodity interests” (as that term is defined in Regulation 1.3(yy), 17 C.F.R. § 1.3(yy) (2014)) for their own personal account or for any account in which they have a direct or indirect interest;
 - c. Having any commodity interests traded on their behalf;
 - d. Controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity interests;
 - e. Soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling any commodity interests;
 - f. Applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission, except as provided for in Commission Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9); and
 - g. Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a)), agent, or any other officer or employee of any person registered, exempted from registration, or required to be registered with the Commission, except as provided for in Commission Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9);
- C. the Court’s Order Granting Plaintiff’s *Ex Parte* Motion for Statutory Restraining Order, Expedited Discovery, Asset Freeze, Order to Show Cause, And Other Equitable Relief remain in full force and effect until further order of the Court;
- D. and granting any additional relief this Court deems appropriate.
29. Should the Defendants wish to file a memorandum of law or other papers concerning the issuance of a preliminary injunction against the Defendants, such

materials shall be filed, served, and received by all parties at least three (3) days before the hearing date ordered above.

FORCE AND EFFECT OF ORDER

IT IS FURTHER ORDERED that:

30. This Order shall remain in full force and effect until further order of this Court, and this Court retains jurisdiction of this matter for all purposes.

SO ORDERED.

On this 5th day of May 2015 at 3:00 p.m.

Deborah A. Battis

UNITED STATES DISTRICT JUDGE

United States District Court

Southern District of New York

Part I