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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. Commodity Futures Trading Commission,)	05 CIV <u>8422 (KMW)</u>
Plaintiff,)	<i>Ex Parte</i> Statutory Restraining Order
v.)	Freezing Defendants' Assets,
Alexsander Efrosman a/k/a Alex Besser, AJR)	Prohibiting Defendants from
Capital Inc., and Century Maxim Fund Inc.,)	Destroying or Altering any Books,
)	Records, or other Documents
Defendants.)	
)	
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)	

Plaintiff, U.S. Commodity Futures Trading Commission (the "Commission"), has filed a complaint for permanent injunction and other relief, and moved *ex parte*, pursuant to Section 6c of the Commodity Exchange Act ("Act"), 7 U.S.C. §13a-1, for a statutory restraining order freezing assets, ordering foreign-held assets and documents to be transferred and repatriated to the United States, prohibiting the destruction of books, records, or other documents, granting leave to the parties to engage in expedited discovery for the purpose of discovering the nature, location, status, and extent of assets, and ordering Defendants Alexsander Efrosman a/k/a Alex Besser ("Efrosman"), AJR Capital Inc. ("AJR Capital"), and Century Maxim Fund Inc. ("Century Maxim") (collectively, "Defendants") to show cause why a preliminary injunction should not issue. The Court has considered the pleadings, declarations, exhibits, and memorandum filed in support of the Commission's application and now, being fully 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 Defendants have engaged in, are engaging in, or are about to engage in: (a) fraud in violation of Section 4b(a)(2) of the Act, 7 U.S.C. § 6b(a)(2) and Commission Regulation 1.1(b), 17 C.F.R. § 1.1(b), and; (b) trading or solicitation to trade in illegal off-exchange foreign currency futures contracts in violation of Section 4(a) of the Act, 7 U.S.C. § 6(a);
- (3) Absent the entry of this statutory restraining order, Defendants are likely to dissipate or transfer assets and destroy business records;
- (4) There is a good cause to believe that immediate and irreparable damage to the Court's ability to grant effective final relief for investors 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 this Court.
- (5) Good cause exists for the freezing of Defendants' assets and for entry of an order prohibiting Defendant from destroying records and denying agents of the Commission access to inspect and copy records.
- (6) Good cause exists to permit discovery before the early meeting of counsel pursuant to Rule 26(d) of the Federal Rules of Civil Procedure.
- (7) Pursuant to Rule 30(a)(2) of the Federal Rules of Civil Procedure, immediate depositions are consistent with the principles of Rule 26(b)(2) of the Federal Rules of Civil Procedure.

- (8) 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.
- (9) 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 the Court orders as follows:

DEFINITIONS

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

1. "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, credits, receivables, contracts, insurance policies, and all cash, wherever located, whether in the United States or abroad.
2. 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.
3. "Defendants" shall refer both individually and collectively to Defendants Aleksander Efrosman a/k/a Alex Besser, AJR Capital Inc., and Century Maxim Fund Inc., and includes any person or entity acting in the capacity of an officer, agent, servant, employee, or attorney of either Efrosman, AJR Capital, or Century Maxim, 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 Efrosman, AJR Capital, or Century Maxim.

RELIEF GRANTED

Asset Freeze

I.

IT IS HEREBY ORDERED that Defendants, except as otherwise ordered by this Court, are restrained and enjoined from directly or indirectly:

- A. Transferring, selling, alienating, liquidating, encumbering, pledging, leasing, loaning, assigning, concealing, dissipating, converting, withdrawing, or otherwise disposing of any assets, wherever located, including assets held outside the United States, except as provided in this Order, or as otherwise ordered by the Court; or
- B. Opening or causing to be opened any safe deposit boxes titled in the name or subject to access by Defendants.
- C. Notwithstanding the provisions of this paragraph, Defendants shall transfer possession of all assets to the Clerk of the Court for deposit into an interest-bearing account, pursuant to this Order.

Identification and Preservation of Assets

II.

IT IS FURTHER ORDERED, pending further Order of this Court that 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, either individually or jointly, or has held,

controlled, or maintained custody of any such account or asset of any of the Defendants, either individually or jointly, shall:

- A. Prohibit Defendants and all other persons from withdrawing, removing, assigning, transferring, pledging, encumbering, disbursing, dissipating, converting, selling or otherwise disposing of any such asset, except as directed by further order of the Court;
- B. Deny Defendants and all other persons access to any safe deposit box that is: (1) titled in the name of any of the Defendants either individually or jointly; or (2) otherwise subject to access by any of the Defendants;
- C. Provide counsel for the Commission, within five (5) business days of receiving a copy of this Order, a statement setting forth:
 - (1) the identification number of each such account or asset titled in the name, individually or jointly, of Defendants or held on behalf of, or for the benefit of, Defendants, or under the control of Defendants;
 - (2) 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
 - (3) the identification of any safe deposit box that is either titled in the name, individually or jointly, of Defendants, or is otherwise subject to access by 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, trading records, 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; and
- E. Cooperate with all reasonable requests of the Commission relating to implementation of this Order, including transferring funds to the Clerk of the Court and producing records related to Defendants' accounts.

Accounting of Assets

III.

IT IS FURTHER ORDERED that within five (5) business days following the service of this Order, Defendants shall:

- A. Provide the Commission with a full accounting of all funds, documents, and assets both within and outside the United States which are (1) titled in the name individually or jointly of Defendants; or (2) held by any person or entity, for the benefit of Defendants; or (3) under Defendants' direct or indirect control, whether jointly or singly;
- B. Transfer to the territory of the United States all funds, documents, and assets located in foreign countries which are held by Defendants, for Defendants' benefit, or under Defendants' direct or indirect control; and
- C. Provide the Commission access to all records of accounts or assets of Defendants held by financial institutions located both within and outside the territorial United

States by signing the Consent to Release of Financial Records attached to this Order.

Delivery of Assets to the Clerk of the Court

IV.

IT IS FURTHER ORDERED that, immediately upon service of this Order upon them, Defendants, and any other person or entity served with a copy of this Order, shall immediately or within such time as permitted by the Court in writing, deliver over to the Clerk of the Court:

- A. Possession and custody of all funds, assets, property, and all other assets, owed beneficially or otherwise, wherever situated, of the Defendants;
- B. Possession and custody of all precious metals, other commodities, funds, and other assets being held by or on behalf of the Defendants;
- C. To the extent that assets other than funds or monies from accounts are delivered, the Clerk of the Court may seek a revised Order of the Court regarding the disposition of such assets.

Maintenance of and Access to Business Records

V.

IT IS HEREBY ORDERED that Defendants, and all 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 finances of Defendants.

Commission's Access to and Inspection of Documents

VI.

IT IS FURTHER ORDERED that representatives of the Commission be immediately allowed to inspect the books, records, and other documents of Defendants and their agents 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, 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 commodity pool participants, 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, means of communication, accounts, computer systems, or other property and information identifying the accounts, employees, properties, or other assets or obligations of the Defendants.

Service of Order

VII.

IT IS FURTHER ORDERED that copies of this Order may be served by any means, including facsimile transmission, upon any financial institution 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.

Expedited Discovery

VIII.

IT IS FURTHER ORDERED that the parties are 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 Defendants, and the location of documents reflecting the business transactions of Defendants; forty-eight (48) hours notice shall be deemed sufficient for any such deposition and five (5) days notice shall be deemed sufficient for the production of any such documents.

Depositions

IX.

IT IS FURTHER ORDERED that the limitations and conditions set forth in Federal Rule of Civil Procedure 30(a)(2)(B) regarding subsequent depositions of an individual shall not apply to depositions taken pursuant to this Order. No depositions taken pursuant to Paragraph XV shall count toward the ten-deposition limit set forth in Federal Rule of Civil Procedure 30(a)(2)(A).

Service on the Commission

X.

IT IS 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 Stephen R. Morris, Trial Attorney, Division of Enforcement, U.S.

Commodity Futures Trading Commission, Eastern Regional Office, 140 Broadway, 19th Floor, New York, New York 10005.

Order to Show Cause

XI.

IT IS FURTHER ORDERED that Defendants shall appear before this Court on the 14th day of October, 2005, at 4:00 p.m., before the Honorable William M. Wood, 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;
- B. Continuing the freeze on the assets of Defendants;
- C. Ordering Defendants to transfer to the territory of the United States and deliver to the Clerk of the Court all funds and assets located in foreign countries which are (1) titled in the name individually or jointly of Defendants; or (2) held by a person or entity for the benefit of Defendants; or (3) under Defendants' direct or indirect control, whether jointly or singly;
- D. Ordering Defendants, financial or brokerage institutions, business entities, and others to provide all documents specified in this Order to the Commission; and
- E. Ordering any additional relief this Court deems appropriate.

Should any party wish to file a memorandum of law or other papers concerning the issuance of a preliminary injunction against Defendants, such materials shall be filed with the Court, and served on all parties on or before October 13, 2005, at

4:00 pm Service of this Order shall be effected by October 7, 2005.

Force and Effect of Order

XII.

IT IS 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 30th day of September 2005, at 11:37 a.m.

William M. Wood

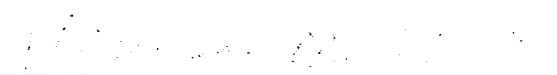
UNITED STATES DISTRICT JUDGE

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CONSENT TO RELEASE OF FINANCIAL RECORDS

I, Aleksander Efrosman, do hereby direct any bank or trust company at which I have a bank account of any kind upon which I am authorized to draw, and its officers, employees and agents, to disclose all information and deliver copies of all documents of every nature in your possession or control which relate to said bank accounts to any attorney of the U.S. Commodity Futures Trading Commission, and to give evidence relevant thereto, in the matter of U.S. Commodity Futures Trading Commission v. Aleksander Efrosman a/k/a Alex Besser, AJR Capital Inc., and Century Maxim Fund Inc., now pending before the United States District Court for the Southern District of New York, and this shall be irrevocable authority for so doing. This direction is intended to apply to the laws of countries other than the United States which restrict or prohibit the disclosure of bank information without the consent of the holder of the account, and shall be construed as consent with respect thereto, and the same apply to any of the bank accounts for which I may be a relevant principal.

Dated: _____, 2005



Signature